

FLORIDA | Board of Optometry

DRAFT MINUTES
November 14, 2014

Orlando, Florida



Timothy Underhill, OD
Chair

Stuart Kaplan, OD
Vice-Chair

Adrienne Rodgers, BSN, JD
Executive Director

1 **General Board Business started: 9:06 a.m.**

2
3 I. The meeting was called to order by Dr. Underhill, Chair. Those present for all or part of the meeting included the following:

4
5 **MEMBERS PRESENT:**

6 Timothy Underhill, OD Chair
7 Stuart Kaplan, OD, Vice Chair
8 Christopher King, OD
9 Terrance Naberhaus, OD
10 Rod Presnell, R.Ph.
11 Tamara Maule, OD

12
13 **STAFF PRESENT:**

14 Adrienne Rodgers, Executive Director
15 Edith Rogers, Administrative Assistant II

16
17 **MEMBERS EXCUSED:**

18 Rosa McNaughton, JD, MS

19
20 **BOARD COUNSEL:**

21 Lawrence Harris, Assistant Attorney General
22 Diane Guillemette, Assistant Attorney General
23 Office of Attorney General

24
25 **PROSECUTION COUNSEL:**

26 Elana Jones, Assistant General Counsel
27 Cheryl Roberts
28 Department of Health, Office of the General Counsel

29
30 **COURT REPORTER:**

31 American Court Reporting
32 Phone: (407) 896-1813

33 *Please note the minutes reflect the actual order agenda items were discussed and may differ from the agenda outline. AUDIO from this meeting can be found online: <http://floridasoptometry.gov/>*

34 Introductions from the those in attendance in the audience.

35 **General Board Business started at 9:07 a.m.**

36
37 **II. APPROVAL OF PREVIOUS MEETING'S MINUTES OF THE BOARD OF OPTOMETRY**

38 Minutes of the July 23, 2014 General Business Meeting were reviewed.

39 Dr. King noted the following corrections to the minutes:

40 Page 8, should reflect under Examination Report that the inaugural process went well

41
42 Dr. Naberhaus noted the following correction to the minutes

43 Page 3 – change Ophthalmology to Optometric

44
45 Motion to accept the minutes as amended was made by Dr. Naberhaus and seconded by Dr. Maule.

46
47 Vote: 6 yeas. Motion carried

48
49 Minutes of the September 11, 2014 (Special Telephone Conference Call) were reviewed.

50
51 Dr. King was not present for the meeting and a motion to excuse his absence was made by Dr. Naberhaus. The Board excused his absence.

52
53 Motion to accept the minutes was made by Dr. King and seconded by Dr. Kaplan.

54
55 Vote: 6 yeas. Motion carried

56
57
58

1 **Section II ended at 9:11 a.m.**
2 **Section III started at 9:11 a.m.**

3
4 **III. FINAL ORDER ACTION**

5
6 **1. Motion for Determination of Waiver and for Final Order by Hearing Not Involving Disputed**
7 **Issues of Material Fact**

8 a. Navindra Singh, O.D.

9 Dr. Singh was not present and was not represented by counsel.

10 Mr. Presnell recused due to participation on the problem cause panel.

11
12 An Administrative Complaint filed by the Department charged Respondent with violation of section 463.016(1)(r), Fla.
13 Stat., by failing to comply with the terms of Final Order DOH-12-2229-FOI.

14 Motion made to find Respondent was properly served the Administrative Complaint and waived the right to a hearing.

15
16
17 Vote: 6 yeas. Motion carried.

18
19 Motion made that the facts as alleged in the Administrative Complaint are not in dispute and the Board adopt the allegations
20 of fact set out in the Administrative Complaint as the Board's findings of fact for this proceeding.

21
22 Vote: 6 yeas. Motion carried.

23
24 Motion made to adopt the conclusions of law as set forth in the Administrative Complaint as the conclusions of law of the
25 Board.

26
27 Vote: 6 yeas. Motion carried .

28
29 Motion made to accept all the investigative report and all case materials, including all confidential and addendum materials,
30 if any, into evidence in this proceeding.

31
32 Vote: 6 yeas. Motion carried.

33
34 Motion made to find that the facts in this case as set out in the Administrative Complaint constitute a violation of the
35 Practice Act, as set forth in the Florida Administrative Code.

36
37 Vote: 6 yeas. Motion carried.

38
39 Department recommendation for discipline: Revocation due to the nature of the violations causing patient harm.

40
41 Mr. Harris advised that rule 64B13-15.007, F.A.C., contains aggravating and mitigating factors for the Board's
42 consideration. The Board determined that the aggravating factors listed are present in this discipline case.

43
44 Vote: 6 yeas. Motion carried.

45
46 Department recommendation for costs: Motion for costs in the amount of \$965.83 and \$1,750.87 totaling \$2,716.70

47
48 Motion made to assess costs in the amount of \$2,716.70.

49
50 Vote: 3 yeas / 3 opposed. Motion failed.

51
52 **Section III ended at 9:27 a.m.**
53 **Section IV started at 9:27 a.m.**

54
55 **IV. PROSECUTION REPORT**

56 Motion made to allow continuing prosecution of cases older than one year.

57
58 Vote: 6 yeas. Motion carried.

1
2 **Section IV ended at 9:31 a.m.**
3 **Section V began at 9:31 a.m.**
4

5 **V. RATIFICATION OF LICENSURE**

6
7 1. Optometrists

8 Motion to ratify issuance of optometry license numbers 4918 through 5010 made by Dr. King, second by Dr. Kaplan.
9

10 Vote: 6 yeas. Motion carried.
11

12 2. Optometry Faculty

13 Ms. Rodgers read the following names into the record:

- 14 1. Alicia Groce OFC 64
15 2. Jessica Steen OFC 65
16 3. Brandon Prete OFC 66
17 4. Hong-Hang Dinah OFC 67
18 5. So Yeon Lee OFC 68
19

20 Motion to ratify issuance of optometric faculty license numbers 64 through 68 made by Dr. Kaplan, second by Dr. Maule.
21

22 Vote: 6 yeas. Motion carried.
23

24 **9:33 a.m. – ratification paused**

25 **Section VI began at 9:33 a.m.**

26 **9:58 a.m. - ratification resumed**

27 **Section V ended at 9:59 a.m.**
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29

30 **VI. CHAIR/VICE CHAIR REPORT**

- 31 a. Changes to D.E.A. drug schedules were noted
32 b. FYI - National Board of Examiners in Optometry for continued professional development was noted
33 c. Florida Board of Optometry Formulary – Request for addition of new topical drug
34

35 Motion to approve NovaBay i-Lid Cleanser placement on the formulary made by Dr. Naberhaus, seconded by Dr. Kaplan.
36

37 Discussion: Glen Moro, VP sales and marketing, was present on behalf of Nova Bay and explained that: the product was based on
38 agents similar to those manufactured in the human body and therefore had no adverse effect such as corneal burns, etc., and played an
39 antimicrobial and anti-inflammatory role. He stated the US government agency that regulates medical devices regulates this product.
40 The Board considered and suggested that the product be placed in the miscellaneous category of the formulary. Mr. John Griffin,
41 attorney for the Florida Optometric Association (FOA), asked the Board to consider whether this is a pharmaceutical agent or a
42 medical device; if its use is as a medical device, then it does not belong on the formulary. Mr. Harris concurred with Mr. Griffin. Mr.
43 Harris also advised that trade names were taken out in the last rule revision. Mr. Presnell asked if it is a legend drug.
44

45 Motion to by Dr. Naberhaus, second by Dr. Kaplan to add NovaBay i-Lid Cleanser to the miscellaneous section of the formulary.
46

47 Vote: 6 yeas. Motion carried.
48

49 Motion by Dr. Naberhaus made to open rule 64B13-18.002(9)(g), F.A.C., for development to propose language as discussed, second
50 by Dr. Kaplan.
51

52 Vote: 6 yeas. Motion carried.
53

54 SERC language discussed by the Board: There is no impact on small business and this will not increase regulatory costs to any
55 industry. The rule will not create costs in excess of \$1MM because optometrists may now prescribe additional medication to their
56 patients.
57
58

1 **Section VI ended at 9:59 a.m.**
2 **Section VII began at 9:59 a.m.**
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4

5 **VII. EXECUTIVE DIRECTOR'S REPORT**

6
7 Ms. Rodgers reported a change of location to West Palm Beach Marriott for the July 2015 meeting. The Board requested email
8 information on the hotel. The FOA offered that it can guarantee a meeting room for the Board's meeting. The Board asked Ms.
9 Rodgers to coordinate with FOA.
10

11
12 **Section VII ended at 10:04 a.m.**
13 **Section VIII began at 10:04 a.m.**
14
15

16 **VIII. BOARD COUNSEL'S REPORT**

17 18 1. Rules Status Report-October 2014

19
20 The Board reviewed the enacted versions of rule 64B13-4.001, 4.005 and 4.006, F.A.C.
21

22 2. Letters from Joint Administrative Procedures Committee regarding rules 64B13-3.007 and 4.009, F.A.C.

23 JAPC has three objections, only one of which is that the request was made to modify the wrong rule. Mr. Harris stated
24 that 3.007(6)(c) is where the language requested by NOVA should have been placed.
25

26 Motion to withdraw the language of rule 64B-13-3.007, F.A.C., as presented was made by Mr. Presnell, second by Dr.
27 Maule.
28

29 Vote: 6 yeas. Motion carried.
30

31 Ms. Guillemette suggested that NOVA make a request for a declaratory statement. The Board asked that Board staff
32 make contact with NOVA.
33

34 Motion to withdraw the suggested changes to the rule language of 64B13-4.009, F.A.C., as presented, was made by Mr.
35 King, second by Dr. Naberhaus.
36

37 Vote: 6 yeas. Motion carried.
38

39 Mr. Harris suggested placing a tab on the optometry website with a link to the pharmacy website showing penalties
40 under Chapter 465, Fla.Stat., regarding dispensing practitioners.
41

42 **Section VIII ended at 10:40 a.m.**
43 **Break 10:40 a.m.**
44 **Meeting resumed at 10:54 a.m.**
45 **Section IX began at 10:54 a.m.**
46
47

48 **IX. COMMITTEE REPORTS**

49 1. Budget – Mr. Presnell No report.

50 51 2. Continuing Education – Dr. Maule

52 a. CE Providers & Courses Recommended by CE Committee

53 Failed to demonstrate compliance with the rule.

54 Motion to not approve course 20-453899 was made by Dr. Maule and seconded by Dr. Naberhaus.
55
56

57 Vote: 6 yeas. Motion carried.
58

1 b. CE Providers & Courses Approved by Staff

2
3 Motion to ratify the report was made by Dr. Maule and seconded by Dr. Kaplan.

4
5 Vote: 6 yeas. Motion carried.

6
7 The question arose as to when the mandatory reporting period begins and how CEs are reported for the new biennium.

8
9 Ms. Rogers requested the Board set a teleconference regarding certain CE courses by a provider who had general hours approved but now desires to have some of the hours converted to TQ hours. Mr. Harris suggested speaking with the provider regarding a variance/waiver from the rule. Further discussion ensued on dates for the conference call.

10
11 3. Complaints, Investigation & Enforcement Liaison – Dr. Kaplan. No report.

12
13 4. Disciplinary Compliance – Ms. McNaughton, Esq. was not present.

14
15 Dr. Machiela completed his contract with Professional Resources Network. Dr. Naberhaus requested board staff to determine whether Dr. Machiela had ever attended a board meeting prior to probation's commencement or at its completion.

16
17 5. Examination – Dr. King. No report.

18
19 6. FOA – Dr. Kaplan. No report.

20
21 7. Healthiest Weight– Dr. King. No report.

22
23 8. Legislative – Dr. Underhill. No report.

24
25 9. Probable Cause – Mr. Presnell. Discussion that there is a lack of panel members. A suggestion was made to schedule the PCP meeting before or after the board meeting. Board staff was asked to provide a list of former board members to each current board member.

26
27 a. statistics presented

28
29 10. Rules – Dr. Naberhaus. No report. Dr. Underhill asked about how long an eye glass prescription was valid. It appears that the matter is covered by Chapter 463, Fla. Stat.

30
31 11. Unlicensed Activity – Dr. Kaplan. No report.

32
33 **XII. ELECTION OF 2015 CHAIR/VICE CHAIR**

34
35 Motion to elect Dr. Underhill as Chair and Dr. Kaplan as Vice Chair made by Dr. Kaplan, second by Dr. Maule.

36
37 Vote: 5 yeas / 1 opposed. Motion carried

38
39 **Section XII General Board Business ended at 11:45 a.m.**

40
41 NEXT MEETING – February 27, 2015

42
43 **General Board Business concluded at: 11:45 a.m.**

44
45 The meeting was adjourned at 11:45 a.m.