

FLORIDA | Board of Optometry

MEETING MINUTES

February 27, 2015

Telephone Conference Call



Timothy Underhill, OD
Chair

Stuart Kaplan, OD
Vice-Chair

Adrienne Rodgers, BSN, JD
Executive Director

1 **General Board Business started: 8:03 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 Tamara Maule, OD
10 Rosa McNaughton, JD, MS
11 Clarence R. Presnell, R.Ph.

12 **STAFF PRESENT:**

Adrienne Rodgers, BSN, JD, Executive Director
Joseph Lesho, Program Operations Administrator
Keri Meany, Regulatory Specialist II
Savada Knight, Regulatory Specialist II
Kelly Woodard, Regulatory Specialist II
Julia Gilyard, Regulatory Specialist II

13 **BOARD COUNSEL:**

14 Diane Guillemette, Assistant Attorney General
15 Office of Attorney General

16
17 **PROSECUTION COUNSEL:**

18 Elana Jones, Assistant General Counsel

19
20 **COURT REPORTER:**

21 For the Record
22 (850) 222-5491

23
24 *Please note the minutes reflect the actual order agenda items were discussed and may differ from the agenda outline. AUDIO from*
25 *this meeting can be found online: <http://floridasoptometry.gov/>*

26
27
28 **II. PETITION FOR VARIANCE/WAIVER:**

29
30 **a. Jason D. Blankenship, O.D. – Rule 64B13-4.001, F.A.C.**

31 Petitioner was not present and was not represented by counsel.

32
33 Petitioner asked the Board to waive the requirement for passing the national examination within 7 years of application
34 for a Florida license. Petitioner holds an optometric license in Virginia and the District of Columbia.

35
36 Motion to deny the Petition for Variance/Waiver based on Petitioner's failure to demonstrate that the application of the
37 rule would create a substantial hardship or would violate principles of fairness made by Dr. Naberhaus, seconded by Dr.
38 Kaplan.

39 Vote: 6 yeas / 0 opposed; motion carried

40
41 **b. Elliot Roth, O.D. – Section 463.006, F.S.**

42 Petitioner was not present and was not represented by counsel.

43
44 Ms. Guillemette stated she did not find the application met the standards required in statute. Further, the Board does not
45 have authority to grant a variance or waiver of a statute. Petitioner asked the Board to waive the requirement for passing
46 the national examination within 7 years of application for a Florida license. Petitioner holds an optometric license in
47 New York.

48
49 Motion to dismiss the Petition based on the Petition not meeting statutory requirements made by Dr. Naberhaus,
50 seconded by Ms. McNaughton.

51 Vote: 6 yeas / 0 opposed; motion carried

52
53 **c. Tammy Wittmann, O.D. – Rule 64B13-4.001, F.A.C.**

54
55 Petitioner was present and was represented by Jason Cornell, Esq.

56

1 Petitioner asked the Board to waive the requirement for passing the national examination within 7 years of application
2 for a Florida license. Petitioner has held optometric licenses in Massachusetts, Missouri and Minnesota, and currently
3 holds optometric licenses in New York and New Jersey.
4

5 Dr. Wittmann was sworn in and was then asked a series of questions on record by Mr. Cornell pertaining to her
6 education, examination, and professional history. Dr. Wittmann then explained her reasons for seeking licensure and
7 explained her petition.
8

9 Dr. Naberhaus stated that he did not believe there was a hardship and recommended denial.
10

11 Motion to deny the Petition for Variance/Waiver based on Petitioner's failure to demonstrate that the application of the
12 rule would create a substantial hardship or would violate principles of fairness made by Dr. Naberhaus, seconded by Dr.
13 King.
14

15 Vote: 6 yeas / 0 opposed; motion carried
16

17 **III. PETITION FOR VARIANCE/WAIVER:**

18 **a. Dara Martin, O.D. – Rule 64B13-4.001, F.A.C.**

19 Petitioner was present and was not represented by counsel.
20

21 Petitioner asked the Board to waive the requirement for passing the national examination within 7 years of application
22 for a Florida license. Petitioner holds optometric licenses in New York, New Jersey, and Minnesota.
23

24 Motion to deny the Petition for Variance/Waiver based on Petitioner's failure to demonstrate that the application of the
25 rule would create a substantial hardship or would violate principles of fairness made by Dr. Naberhaus, seconded by Dr.
26 Kaplan.
27

28 Vote: 6 yeas / 0 opposed; motion carried
29

30 Ms. Guillemette explained to the board that they must also make a motion to address Dr. Martin's application for
31 licensure. Ms. Rodgers stated that Dr. Martin had the option to withdraw her application to avoid having a denial on
32 record. Dr. Martin agreed to withdraw her application.
33

34 **b. Delicia A. Morris, O.D. – Rule 64B13-4.001, F.A.C.**

35 Petitioner was present and not represented by counsel.
36

37 Dr. Underhill asked for clarification on why the petitioner was specifically seeking a waiver or variance because the
38 petition cited a rule chapter, and not a specific rule. Ms. Guillemette explained that she sent Dr. Morris a letter asking for
39 clarification, and she had yet to receive a response. She then recommended that the board dismiss the petition because it
40 did not meet the criteria of a petition for waiver or variance as established in Rule 28-104.002, F.A.C.
41

42 Dr. Morris stated that she had sent in additional documentation clarifying her petition. The issue was tabled while board
43 staff searched for the documentation.
44

45 Before proceeding to the next petition, Dr. Underhill noted that one of Dr. Morris's examination scores did not meet the
46 requirement, and asked if the application could be dismissed.
47

48 Dr. Morris asked that the board continue to hear the case once the documentation was located, which they agreed to do.
49

50 **VI. GENERAL BUSINESS:**

51 **d. Committee Reports:**

52 **ii. Continuing Education – Dr. Maule**

53 **5. Petition for Variance/Waiver:**

54 **A. David Brancati, O.D.**

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1 Petitioner was present and not represented by counsel.

2
3 Petitioner asked the board for an extension to complete the CE requirements for the 2013-2015 biennium. The petitioner
4 had obtained the required hours prior to the end of the biennium, but four of the hours that were thought to have been TQ
5 hours were only approved as general hours. The petitioner registered for an additional course in January 2015 in an
6 attempt to obtain the four TQ hours required of him, but then suffered an accident that prevented him from attending. He
7 then scheduled another course for April 2015, which is after the end of the biennium, and would like the board to grant
8 an extension so that he may use this course to complete his renewal.
9

10 Dr. Underhill opened the discussion by asking what the most appropriate way would be to grant the extension because he
11 had concerns about limitations with CE Broker.
12

13 Dr. Brancati explained that he spoke with CE Broker, and they informed him that there was a qualifier that could be
14 added next to his name in the system that would acknowledge his situation and mark him as complete so that he may
15 proceed with his renewal.
16

17 The board members agreed that the extension should be granted, but were concerned about what to do if Dr. Brancati
18 failed to complete the April 2015 course.
19

20 After additional discussion, a motion to allow four of Dr. Brancati's existing CE hours to be considered TQ for the 2013-
21 2015 biennium, and require that an additional four hours of TQ be completed for the 2015-2017 biennium by June 1,
22 2015 was made by Ms. McNaughton, seconded by Dr. Kaplan.
23

24 Vote: 6 yeas / 0 opposed; motion carried

25 **1. CE Providers and Courses Approved by Committee Chair**

26 **2. CE Providers and Courses Approved by Board Staff**

27
28 Dr. Maule requested that the CE Providers and Courses approved by the committee chair and the CE Providers and
29 Courses approved by board staff be ratified.
30

31 Motion to ratify made by Dr. Kaplan, seconded by Dr. Naberhaus.

32 Vote: 6 yeas / 0 opposed; motion carried
33
34

35 **3. Provider – American Optometric Association:**

- 36
37 **a. Course #20-474931 (Corneal Manifestations of Systemic Disease)**
38 **b. Course #20-474933 (Microbial Keratitis in Contact Lens Wear)**
39 **c. Course #20-474937 (AOA Vision Rehabilitation Section and College of Optometrists in Vision**
40 **Development: Prism Usage in Neurohabilitative Optom)**

41 Courses were submitted in 2014 with all of the necessary documentation for TQ credit, but a clerical error during
42 submission lead to the course only requesting approval for general hours. The AOA requested that the course be
43 approved for TQ credit.
44

45 Ms. Guillemette advised the board that though an e-mail from board staff stated that this issue was submitted as a
46 petition for waiver/variance, a petition was not submitted. She suggested that the board hear the case as a
47 reconsideration.
48

49 Dr. Underhill asked Dr. Maule if all of the required documentation for TQ approval was submitted for these courses.
50

51 After verifying that all documentation was submitted properly, a motion was made to direct board staff to contact CE
52 Broker to have this course designation changed to TQ by Dr. Maule, seconded by Ms. McNaughton. Dr. Naberhaus
53 requested to add to the motion "due to a scrivener's error;" addendum to motion seconded by Dr. Kaplan.
54

55 Vote: 6 yeas / 0 opposed; motion carried
56

57 **4. Ferris State University/Michigan College of Optometry**

- a. **Course #20-478672 (Anterior Segment Ocular Disease Management – An Evidence Based Approach Part I & Part II)**
- b. **Course #20-478676 (NSAID and Steroid Update)**
- c. **Course #20-478680 (Clinical Decisions in Retina)**
- d. **Course #20-478688 (The Latest Trends in Contemporary Medicine)**
- e. **Course #20-478696 (Change is Coming: Coding, Compliance, and ICD-10)**

Craig Norman and Rebecca Burgenmeyer from the Michigan College of Optometry were present.

Ferris State University/Michigan College of Optometry held a CE course in December 2014 intending to be given for TQ credit, but was submitted for approval incorrectly and was instead approved for general hours. After realizing their error, the course was re-submitted for consideration as TQ credit in January 2015. A Petition for Waiver/Variance was submitted to allow the course to be considered TQ credit.

Dr. Maule explained that the required documentation for TQ credit was not submitted upon initial approval and made a motion to deny the petition.

Mr. Norman requested to speak and explain the petition.

Dr. Underhill reiterated the motion on the floor, and that motion was seconded by Dr. Naberhaus. After additional discussion, the board voted on the motion.

Motion to deny the Petition for Waiver/Variance made by Dr. Maule, seconded by Dr. Naberhaus.

Vote: 6 yeas / 0 opposed; motion carried

Before proceeding to the next section, the board directed board staff to add a note in the CE Broker system to alert providers that COPE approval does not automatically mean a course is approved for CE in Florida.

II. PETITION FOR VARIANCE/WAIVER:

b. Delicia A. Morris, O.D. – Rule 64B13-4.001, F.A.C. (Continued from previous discussion)

Ms. Rodgers informed the board that the documentation clarifying Dr. Morris's petition was located by board staff, and that the documentation was submitted on January 26, 2015. The board resumed discussion of the petition.

Dr. Morris explained that she had obtained passing scores for all of the required parts of the examination, but not all at the same time.

Dr. Underhill stated that all parts must be passed in one sitting, and as such, Dr. Morris does not qualify for a license. Dr. Underhill then asked if Dr. Morris would like to withdraw her application. Ms. Guillemette clarified that even if the application were to be withdrawn, an action would still need to be taken on the petition.

Motion to deny the Petition for Variance/Waiver based on Petitioner's failure to demonstrate that the application of the rule would create a substantial hardship or would violate principles of fairness made by Dr. Maule, seconded by Dr. Kaplan.

Dr. Morris asked why the board believes that there is no hardship, as she believes there is an extreme hardship. She reiterated points of her petition that attempt to prove the hardship.

Dr. Naberhaus clarified that she has not been able to prove a hardship based on the rule.

After additional discussion, the board voted on the motion.

Vote: 6 yeas / 0 opposed; motion carried

Dr. Underhill then reiterated that Dr. Morris's application did not meet the requirements for licensure, so even if the petition were approved, she would not have qualified. He asked Dr. Morris if she wished to withdraw her application.

1 Dr. Morris explained that the requirements for licensure were changed after she submitted her application, and that she
2 was scheduled to take an examination that, had she passed, would have qualified per the requirements at the time of
3 submission. The application was submitted in February 2011.
4

5 After discussion and research by the board staff about why the application had been open for so long, it was discovered
6 that the application had expired in July 2014. Upon this discovery, Ms. Guillemette informed the board that no further
7 action was required.
8

9 **IV. PROSECUTION REPORT:**

10 Ms. Elana Jones reported that there had been no substantial changes since the last report. She informed the board that a
11 Probable Cause Panel meeting has been scheduled for March 9, 2015. Ms. Rodgers also reported that Ms. Jones provided
12 her with a report stating that all complaints coming in through Consumer Services have been reviewed by the in-house
13 consultant, which addressed the board's prior concerns.
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16 **V. RATIFICATION OF LICENSURE:**

17 **a. Optometrist**

18 Motion to ratify optometrist license numbers 5011 through 5024 was made by Dr. Kaplan, seconded by Dr. King.

19 Vote: 6 yeas / 0 opposed; motion carried
20
21

22 **VI. GENERAL BUSINESS**

23 **a. Chair/Vice Chair Report:**

24 **i. Future Agenda Items**

25 **ii. New Business:**

26 **1. Letter from The Optometric Society**

27 Dr. Underhill explained that the letter expressed concerns that the Optometric Society had regarding online refractive eye
28 exams, which are similar to those of the board.
29

30 Dr. Kaplan had nothing to report.
31

32 **b. Executive Direct Report:**

33 **i. Laws and Rules Exam – DOH Request for Change**

34 Zohre Bahrayni, Ph.D. was present and requested that the board consider no longer requiring the Laws and Rules
35 examination for initial licensure; instead, a Laws and Rules course should become a requirement for continuing
36 education.
37

38 Discussion:

39 Dr. Underhill spoke out against the proposed changes, stating that he feels the Laws and Rules examination is important,
40 and that it contributes to the health and welfare of the citizens of Florida.
41

42 Dr. Naberhaus asked if the board or department could open an RFP to contract a vendor to develop and administer the
43 examination. Dr. Bahrayni explained that she has already contacted the national board, who administers the other
44 licensure examinations, and they have agreed to take over the Laws and Rules examination if the board does not want to
45 eliminate the examination from initial licensure requirements. Dr. Naberhaus asked if the board had the authority to
46 select any vendor, not necessarily on the national level, but one located in the state of Florida. Dr. Bahrayni said yes, but
47 that it would be preferable to allow the national board to handle the examination so that the applicants could take all of
48 the required examinations at one place.
49

50 Dr. Maule spoke in favor of leaving the initial licensure examination in place, but also requiring the examination for
51 continuing education purposes.
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2 Ms. Guillemette suggested that the board open Rule 64B13-4.001, F.A.C. for development to address how the
3 examination will be developed and administered. Dr. Naberhaus made a motion to that effect, which was seconded by
4 Dr. Maule.

5 Vote: 6 yeas / 0 opposed; motion carried
6

7 **c. Board Counsel Report:**

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9 **i. Rules Status Report**

10 Ms. Guillemette had no rules to report, but informed the board that she received a Petition for Declaratory Statement on
11 February 26, 2015, which must be acted upon within 90 days. She explained that she can ask the petitioner to waive the
12 90-day requirement to hear the petition, but if the petitioner does not wish to do so, the board will need to hold an
13 additional meeting before April 27, 2015 to address the petition.
14
15

16 **d. Committee Reports:**

17 **i. Budget – Mr. Presnell:** Nothing to report

18 **iii. Complaints, Investigations, and Enforcement – Dr. Kaplan:** Nothing to report

19 **iv. Disciplinary Compliance – Ms. McNaughton:** Nothing to report; Board staff was directed to ensure that
20 compliance reports are provided to the board in advance of future meetings.
21

22 **v. Examination – Dr. King:** Nothing to report

23 **vi. FOA – Dr. Underhill:** Nothing to report

24 **vii. Healthiest Weight – Dr. King:**

25 **1. Talking with Patients about Weight Loss: Tips for Primary Care Providers**

26 **2. Choose MyPlate – 10 Tips to a Great Plate**

27 **3. Moving Our State to its Healthiest Weight**
28

29 Dr. King informed the board that information about Healthiest Weight can be found on the website.
30

31 **viii. Legislative – Dr. Underhill:** Nothing to report

32 **ix. Probable Cause – Mr. Presnell:** Nothing to report

33 **x. Rules – Dr. Naberhaus:**
34

35 Dr. Naberhaus asked board counsel about the status of Rule 64B13-18.003, F.A.C., which was agreed at the November
36 2014 meeting to be opened to include NovaBay i-Lid Cleanser in the miscellaneous section of the formulary. After Ms.
37 Guillemette confirmed that development had been opened, Dr. Naberhaus recommended that that particular development
38 be vacated, and that the product be considered under the definition of “medical device.” In addition, he asked that while
39 the rule was open for development, that the board consider amending 64B13-18.002(6)(c), F.A.C. to account for a higher
40 concentration of Olopatadine that has been released to market.
41

42 While Ms. Guillemette advised that the current Notice of Rule Development refers to Rule 64B13-18.002(9), F.A.C., so
43 a new Notice of Rule Development would have to be issued to address Rule 64B13-18.002(6)(c).
44

45 Dr. Naberhaus made a motion to open rule development of Rule 64B13-18.002(6)(c), F.A.C. to increase the
46 concentration percentage of Olopatadine from .02% to .07%, seconded by Dr. Kaplan.
47

48 Vote: 6 yeas / 0 opposed; motion carried
49

50 Ms. Guillemette asked if the proposed rule amendment would have an adverse impact on small business. The board
51 stated no. Ms. Guillemette then asked if the proposed rule amendment is likely to directly or indirectly increase
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1 regulatory costs to any entity, including government, in excess of \$200,000 in the aggregate in Florida within 1 year after
2 implementation. The board stated no.
3

4 Dr. Naberhaus made a motion to that effect, which was seconded by Dr. Kaplan.

5 Vote: 6 yeas / 0 opposed; motion carried
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7 Dr. Naberhaus made a motion to abandon the development of Rule 64B13-18.002(9), F.A.C., seconded by Dr. Kaplan.

8 Vote: 6 yeas / 0 opposed; motion carried
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10 Dr. Naberhaus reiterated that NovaBay i-Lid Cleanser is to be considered under the definition of a medical device. No
11 additional action was required on that matter.
12

13 **ii. Continuing Education – Dr. Maule**

14 **5. Petition for Variance/Waiver:**

15 **B. Stephanie Parrish, O.D.**

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19 Petitioner was not present and was not represented by counsel.
20

21 Petitioner asked the Board to waive the requirement for passing the national examination within 7 years of application
22 for a Florida license. Petitioner holds an optometric license in Minnesota.
23

24 Motion to deny the Petition for Variance/Waiver based on Petitioner's failure to demonstrate that the application of the
25 rule would create a substantial hardship or would violate principles of fairness made by Dr. Naberhaus, seconded by Dr.
26 Kaplan.

27 Vote: 6 yeas / 0 opposed; motion carried
28

29 **xi. Unlicensed Activity – Dr. Kaplan:** Nothing to report
30

31 **APPROVAL OF MINUTES:**

32
33 Motion to approve the November 14, 2014 Full Board meeting minutes made by Dr. Maule, seconded by Dr. Kaplan.

34 Vote: 6 yeas / 0 opposed; motion carried
35

36 Motion to approve the December 9, 2014 Conference Call meeting minutes made by Dr. Naberhaus, seconded by Dr.
37 Maule.

38 Vote: 6 yeas / 0 opposed; motion carried
39

40 **The meeting was adjourned at 11:00 a.m.**
41