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FLORIDA | Board of Optometry

DRAFT MINUTES

February 26, 2016

Buena Vista Suites
8203 World Center Drive
Orlando, Florida 32821



Stuart Kaplan, O.D.
Chair

Tamara Maule, O.D.
Vice Chair

Anthony Spivey, DBA
Executive Director

1 **General Board Business started: 9:00 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 Stuart Kaplan, O.D., Chair
7 Tamara Maule, O.D., Vice Chair
8 Christopher King, O.D.
9 Carl Spear, O.D.
10 Stephen Kepley, O.D.

11 **STAFF PRESENT:**

12 Anthony Spivey, DBA, Executive Director
13 Joseph Lesho, Program Operations Administrator

14 **BOARD COUNSEL:**

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

17 **ALSO PRESENT:**

18 Ed Tellechea, Chief Assistant Attorney General
19 Office of Attorney General

20 Liz Brady, Chief, Multistate Antitrust Enforcement
21 Office of Attorney General

22 **COURT REPORTER:**

23 Cindy Green
24 For the Record
25 (850) 222-5491

26
27 *Please note the minutes reflect the actual order agenda items were discussed and may differ from the agenda outline.*
28 *AUDIO from this meeting can be found online: <http://floridasoptometry.gov/>*

29
30
31 **Section II began: 9:01 a.m.**

32
33 **II. ANTI-TRUST PRESENTATION**

34
35 Mr. Tellechea and Ms. Brady gave a presentation on Anti-Trust and how it relates to the Board following the North Carolina
36 Board of Dental Examiners v FTC ruling. The presentation provided background information on the case, the FTC's
37 guidelines in response to the ruling, and possible changes that may arise in the State of Florida.

38
39 **Section II concluded: 10:35 a.m.**

40 **Break: 10:35 a.m.**

41 **Resumed: 10:47 a.m.**

42 **Section III began: 10:47 a.m.**

43
44 **III. MINUTES:**

45
46 **a. December 4, 2015 – Teleconference**

47
48 Dr. King noted that page 77, line 11 should read "Food and," rather than just "Food." He also noted line 4 on the same
49 page, and asked whether or not the Board decided to amend Rule 64B13-3.009, F.A.C. Ms. Guillemette said she would
50 review her notes from that meeting and let the board know for sure.

51
52 **Action:** Motion to approve the minutes with the noted corrections was made by Dr. King. Seconded by Dr. Maule.
53 Vote: 5 yeas / 0 opposed; motion carried

54
55 **Section III concluded: 10:51 a.m.**

56 **Section IV began: 10:51 a.m.**

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58 **IV. PETITIONS:**

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a. **Variance/Waiver:**

iii. **Elena Utkina, M.D.**

Dr. Utkina was present and was not represented by legal counsel. Serge Kuptsoff was present on behalf of Dr. Utkina, but did not file as a qualified representative, so Dr. Utkina represented herself.

Dr. Utkina submitted a Petition for Variance/Waiver, filed on January 12, 2016, requesting a waiver from Rule 64B13-4.004(1)(b)3., F.A.C. Dr. Utkina obtained a Medical Doctor degree from Khabarovsk State Medical University in Russia, and requested that the board accept this degree in lieu of a degree from a school or college of optometry accredited by the Accreditation Council of Optometric Education (ACOE). According to the petition, Dr. Utkina has taken and passed parts I and II of the NBEO examination.

Discussion:

Ms. Guillemette explained that rules can be waived via petition, but statutes cannot. She told Dr. Utkina that the requirement that she requested to be waived was established by 463.006, F.S.; therefore, the Board did not have authority to grant a waiver.

Action: Motion to deny the Petition for Variance/Waiver because the petitioner asked for a waiver of statute rather than rule was made by Dr. King. Seconded by Dr. Kopley.

Vote: 5 yeas / 0 opposed; motion carried

ii. **Tammy Wittmann, O.D.**

Dr. Wittmann was present and was not represented by counsel.

Dr. Wittmann submitted a Petition for Variance/Waiver, filed on January 6, 2015, requesting a waiver of the 7 year requirement established by Rule 64B13-4.001, F.A.C. The board denied the petition, citing Dr. Wittmann's failure to prove that application of the rule would create a substantial hardship or violate principles of fairness. On January 11, 2016, a new petition from Dr. Wittmann was received and filed, once again requesting a waiver of Rule 64B13-4.001, F.A.C. In the second petition, Dr. Wittmann explained that the circumstances that lead to her submitting her original petition had become more severe, and argued that the change in circumstances created an undue hardship.

Discussion:

Dr. Kaplan noted that Dr. Whittmann's parents were patients of his, and asked Dr. Whittmann if she would like him to recuse himself. Dr. Whittmann stated that Dr. Kaplan did not need to be recused.

Ms. Guillemette asked Dr. Whittmann if she had been in active practice in another jurisdiction, and asked whether or not she was up to date on her Continuing Education (CE). Dr. Whittmann explained that she had been in active practice for 18 years, and had 97 CE credits for the current period; a majority of which were Florida-approved. She specifically noted that she had taken Florida approved Jurisprudence and Medical Errors courses. Ms. Guillemette recommended granting petition in light of these facts.

Dr. King asked Ms. Guillemette how the underlying statute would be met if the board granted the petition. Ms. Guillemette reviewed the statutory requirements for licensure and pointed out the Dr. Whittmann met all of them.

Dr. Maule expressed concern over the application of the rule going forward if the petition were to be granted. Ms. Guillemette explained that only the petition was before the board, not the rule, so the Board's ruling would only affect Dr. Whittmann. She went on to state that petitions are heard and granted or denied on a case-by-case basis.

Dr. Spear asked Dr. Whittmann to explain her hardships. Discussion ensued and a motion was made.

CK, SKep

Action: Motion to deny the Petition for Variance/Waiver for failure to prove a substantial hardship or achieve the purpose of the underlying statute by other means was made by Dr. King. Seconded by Dr. Kopley.

Vote: 5 yeas / 0 opposed; motion carried

Dr. Whittmann asked the Board to explain the criteria for hardship. Ms. Guillemette referred her to s. 120.542, F.S.

1 **Break: 11:45 a.m.**
2 **Resumed: 11:54 a.m.**
3

4 **i. Long D. Tran, O.D. -**

5 Dr. Tran was present and was not represented by counsel.
6

7 Dr. Tran submitted a Petition for Variance/Waiver from Rule 64B13-4.001(2), F.A.C., which was filed on
8 November 9, 2015. The petition requested a permanent waiver from the 7-year examination requirement because it
9 had been more than 7 years since Dr. Tran had taken and passed parts I-III of the NBEO examination, but he was
10 unable to retake any parts of the examination because of his involvement with NBEO examination preparation. The
11 board heard the petition at the December 4, 2015 meeting, and asked that Dr. Tran obtain additional information
12 from NBEO regarding his possible disqualification from taking the examinations. Dr. Tran obtained the information,
13 and reappeared before the board to receive a response to his petition.
14

15 **Discussion:**

16 Dr. Maule asked Dr. Tran when he completed the NBEO. He stated that he completed it in 2003.
17

18 **Action:** Motion to grant the Petition for Variance/Waiver for Parts I and II of the NBEO was made by Dr. King.
19 Seconded by Dr. Spear.
20

21 Ms. Guillemette pointed out that Rule 64B13-4.001, F.A.C. requires that an applicant pass all parts of the NBEO
22 examination in one sitting, and granting the waiver for Parts I and II would cause Dr. Tran to complete Part III
23 independent from Parts I and II. Discussion ensued.
24

25 Ms. Guillemette asked for Dr. King to specify the reason for his motion to grant the petition. Dr. King explained that
26 application of the rule would violate the principles of fairness and create an undue hardship, as Dr. Tran was unable
27 to sit for the examinations per NBEO policy.
28

29 Dr. King amended his motion.
30

31 **Action:** Motion to grant the Petition for Variance/Waiver for Parts I and II of the NBEO and allow Dr. Tran to
32 complete Part III independent from Parts I and II because application of the rule would create a substantial hardship
33 was made by Dr. King. Seconded by Dr. Maule.
34

35 Vote: 5 yeas / 0 opposed; motion carried
36

37 **b. Declaratory Statement:**

38 **i. Nova Southeastern University**

39 This item was tabled for a future meeting.
40

41 **Section IV concluded: 12:02 p.m.**

42 **Section V began: 12:02 p.m.**
43

44 **V. APPLICATIONS**

45 **a. Continuing Education Courses**

46 **i. Reed Elsevier/Vision Council of American: "VW 15 42C2 The Good, The Bad, and The Orals"**
47 **Course #20-535800**

48 **Discussion:**

49 Dr. Maule explained that she recommended denial of this course application because the provider failed to comply
50 with Rule 64B13-5.002(3)(c), F.A.C., but the provider requested a hearing before the board.
51

52 **Action:** Motion to deny the course application was made by Dr. Maule. Seconded by Dr. Spear.
53

54 Vote: 5 yeas / 0 opposed; motion carried
55

56 **ii. National Glaucoma Society: "My Favorite Cases"**
57
58

1 **Course #20-519119**

2
3 **Discussion:**

4 Dr. Maule explained that the provider requested a board review of the course application. She explained that the
5 course for which they applied for approval was a live lecture that would be streamed online.
6

7 Discussion ensued regarding the provider's technological abilities to monitor an attendee who would be viewing
8 online to make sure that they are in attendance for the duration of the lecture. Dr. King asked Mr. Lesho how they
9 could verify attendance. Mr. Lesho stated he did not know, but that the board could require an appearance by the
10 provider, which would waive the 90 days and allow the Board to ask the provider directly about their monitoring
11 technology.
12

13 **Action:** Motion to require an appearance by the provider at a future meeting was made by Dr. Maule. Seconded by
14 Dr. King.

15 Vote: 5 yeas / 0 opposed; motion carried
16

17 **iii. Final Eyes CE: "Florida Jurisprudence"**

18 **Course #20-519281**

19
20 **Discussion:**

21 Dr. Maule explained that she had questions about whether or not the speakers at this lecture were properly qualified
22 to give the lecture in accordance with Rule 64B13-5.002, F.A.C. Dr. King stated that he did not see anything that
23 would qualify them to give a lecture on Florida Laws and Rules.
24

25 Dr. Spear mentioned that one of the speakers had contacted him directly to speak about the course, and then offered
26 to recuse himself due to having prior knowledge of the issue. Dr. Kaplan asked Dr. Spear if he had any financial
27 interest related to the provider. Dr. Spear stated no. Dr. Kaplan told Dr. Spear that he did not need to recuse himself.
28

29 Dr. King made a motion to deny the course application for failure to demonstrate competence in Florida Law in
30 accordance with Rule 64B13-5.002, F.A.C. Dr. Kepley seconded the motion.
31

32 Before a vote was taken, additional discussion ensued regarding the qualifications of the speakers.
33

34 **Action:** Motion to deny the course application for failure to demonstrate competence in Florida Law in accordance
35 with Rule 64B13-5.002, F.A.C. was made by Dr. King. Seconded by Dr. Kepley.

36 Vote: 1 yeas (King) / 4 opposed; motion failed
37

38 **Action:** Motion to approve the course application was made by Dr. Spear. Seconded by Dr. Kepley.

39 Vote: 5 yeas / 0 opposed; motion carried
40

41 **Section V concluded: 12:27 p.m.**

42 **Section VI began: 12:27 p.m.**
43

44 **VI. RATIFICATION LIST:**

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46 **a. Licensure:**

47
48 **i. Optometrist**

49
50 **Action:** Motion to ratify the issuance of Optometrist license numbers 5156 through 5162 was made by Dr. Maule.
51 Seconded by Dr. Kepley.

52 Vote: 5 yeas / 0 opposed; motion carried
53

54 **ii. Optometry Faculty Certificate**

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56 There were no Optometry Faculty Certificates issued during this period.
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58 **b. Continuing Education:**

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i. **CE Providers and Courses Approved by Committee Chair**

Action: Motion to ratify the approval of CE Providers and Courses Approved by Committee Chair was made by Dr. Spear. Seconded by Dr. Kepley.
Vote: 5 yeas / 0 opposed; motion carried

ii. **CE Providers and Courses Approved by Board Staff**

Action: Motion to ratify the approval of CE Providers and Courses Approved by Board Staff was made by Dr. Maule. Seconded by Dr. Spear.
Vote: 5 yeas / 0 opposed; motion carried

Section VI concluded: 12:35 p.m.

Section VII began: 12:35 p.m.

VII. PROSECUTION REPORT:

Prosecution was not present, so no report was given.

Section VII concluded: 12:35 p.m.

Section VIII began: 12:35 p.m.

VIII. CHAIR/VICE CHAIR REPORT:

- a. **Future Agenda Items:** Dr. Kaplan stated that he would like the board to discuss Rule 64B13-3.009, F.A.C. He then appointed Dr. Kepley to the budget and legislation committees, appointed himself to the FOA committee, and appointed Dr. Spear to PCP.

Section VIII concluded: 12:36 p.m.

Section IX began: 12:36 p.m.

IX. EXECUTIVE DIRECTOR'S REPORT:

Dr. Spivey congratulated the board members on their respective appointments. He then recognized Mr. Lesho, as it was his last meeting with the department. Finally, he explained to the board that the travel reimbursement process will be changing soon, and that a training will be conducted at a future meeting.

Section IX concluded: 12:38 p.m.

Section X began: 12:38 p.m.

X. BOARD COUNSEL REPORT:

- a. **Rules Status Report – January 2016:** Ms. Guillemette provided an updated report from February 2016.

b. **Discussion – Rule Repeal Project**

- i. **64B13-2.009, F.A.C.**
- ii. **64B13-3.019, F.A.C.**
- iii. **64B13-16.001, F.A.C.**
- iv. **64B13-16.002, F.A.C.**
- v. **64B13-16.003, F.A.C.**
- vi. **64B13-16.004, F.A.C.**
- vii. **64B13-16.005, F.A.C.**

Ms. Guillemette explained that these rules were not acted upon when the board took action on the Rule Repeal Project at the December 2015 meeting. She recommended that the board repeal the 64B13-16, F.A.C. rules, and that they amend Rule 64B13-3.019, F.A.C. to remove all references to Branch Offices. She then recommended taking no action on Rule 64B13-2.009, F.A.C.

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2 Dr. King stated that he was the one that objected to removing references to Branch Office's at the December 2015
3 meeting, but had since changed his mind.
4

5 **Action:** Motion to accept the proposed revisions/deletions was made by Dr. King. Seconded by Dr. Maule.
6 Vote: 5 yeas / 0 opposed; motion carried
7

8 **Action:** Motion to find that the proposed rule amendments would not have an adverse impact on small business; and
9 would not be likely to increase regulatory costs to any entity, including the government, in excess of \$200,000 in the
10 aggregate in the State of Florida within one year of implementation was made by Dr. King. Seconded by Dr. Spear.
11 Vote: 5 yeas / 0 opposed; motion carried
12

13 The board agreed to not make any changes to Rule 64B13-2.009, F.A.C.
14

15 Ms. Guillemette then recommended that the board review Rule 64B13-4.001, F.A.C. to address the 7-year
16 requirement. She suggested that the board open the rule for development and hold a workshop. Discussion ensued.
17

18 **Action:** Motion to open Rule 64B13-4.001, F.A.C. for development was made by Dr. King. Seconded by Dr. Maule.
19 Vote: 5 yeas / 0 opposed; motion carried
20

21 **Section X concluded: 1:10 p.m.**

22 **Section XI began: 1:10 p.m.**
23

24 **XI. COMMITTEE REPORTS:**

- 25
- 26 a. **Budget – Dr. Kepley:** Nothing to report.
 - 27
 - 28 b. **Continuing Education – Dr. Maule:** Dr. Maule expressed concern over TQ course providers not submitting test grades
29 to CE Broker in enough time to allow licensees to renew. After discussion, it was determined that it should be up to the
30 licensees to work with the providers to make sure that they received credit in time for renewal.
31
 - 32 c. **Complaints, Investigations, and Enforcement – Dr. Kaplan:** Nothing to report.
33
 - 34 d. **Disciplinary Compliance – Dr. Kaplan:** Nothing to report.
35
 - 36 e. **Examination – Dr. King:** Dr. King asked board staff questions about the annual approval of the Part IV of the NBEO
37 examination. Mr. Lesho stated that Sue Terry from NBEO had recently contacted him about that issue, and that he would
38 forward him the e-mail so the two of them could collaborate.
39
 - 40 f. **FOA – Dr. Kaplan:** Nothing to report.
41
 - 42 g. **Healthiest Weight – Dr. King:** Nothing to report.
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 - 44 h. **Legislative – Dr. Kepley:** Nothing to report.
45
 - 46 i. **Probable Cause – Dr. Spear**
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 - 48 i. **Stats:**
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50 Nothing to report.
 - 51
 - 52 j. **Rules – Dr. Kaplan:** Nothing to report.
53
 - 54 k. **Unlicensed Activity – Dr. Kaplan:** Nothing to report.
55

56 **Section XI concluded: 1:22 p.m.**

57 **Section XII began: 1:22 p.m.**
58

1 **XII. OLD BUSINESS:**

2 The board discussed what action could be taken on licensees whose licenses were issued based on false information.

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4 **Section XII concluded: 1:31 p.m.**

5 **Section XIII began: 1:31 p.m.**

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7 **XIII. NEW BUSINESS**

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10 **Section XIII concluded: 1:31 p.m.**

11 **Section XIV began: 1:31 p.m.**

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13 **XIV. NEXT MEETING DATE**

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15 **a. June 14, 2016**

16 It was noted that this date is incorrect, and that the next meeting will actually be held on May 13, 2016.

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18 **Section XIV concluded: _____ p.m.**

19 **Section XV began: _____ p.m.**

20
21 **XV. ADJOURNMENT**

22 Dr. Maule made a motion to adjourn the meeting.

23
24 **The meeting was adjourned at 1:32 p.m.**