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**FLORIDA | Board of Optometry**

**DRAFT MINUTES**

**May 19, 2017**

**Embassy Suites by Hilton  
1100 SE 17th Street  
Ft. Lauderdale, Florida 33316**



**Stuart Kaplan, O.D.  
Chair**

**Carl Spear, O.D.  
Vice-Chair**

**Anthony Spivey, DBA  
Executive Director**

23

24 **The Florida Board of Optometry held a meeting on Friday, May 19, 2017, commencing at**  
25 **9:04 a.m. This was held at the Embassy Suites by Hilton, 1100 SE 17<sup>th</sup> Street, Ft.**  
26 **Lauderdale, Florida 33316, (954) 315-1326, to which all persons were invited to attend.**  
27 **Participants in this public meeting were made aware that these proceedings were being**  
28 **recorded and that an audio file of the meeting will be posted to the board's website.**

29 **General Board Business started: 9:04 a.m.**

30 **AGENDA**

31

32 **I. CALL TO ORDER (Roll Call):**

33

34 **BOARD MEMBERS PRESENT:**

35 Stuart Kaplan, O.D., Chair

36 Carl Spear, O.D., Vice Chair

37 Tamara Maule, O.D.,

38 Stephen Kepley, O.D.

39 Christopher King, O.D., F.A.A.O.

40 John Griffin, J.D.

41 Lucille Turner, JD.

42

43 **BOARD STAFF:**

44 Anthony Spivey, DBA, Executive Director

45 Gail Curry, Program Operations Administrator

46

47 **BOARD COUNSEL:**

48 Lawrence Harris, Assistant Attorney General

49 Office of Attorney General

50

51 **COURT REPORTER:**

52 Downtown Reporting LLC

53 (954) 522-3376

54

55 **Section II began: 9:05 a.m.**

56

57 **II. APPROVAL OF MINUTES**

58

59 **i. February 17, 2017**

60

61 Dr. King had corrections that were sent into the office and have been corrected.

62

63 **Action:** Motion to approve as amended was made by Dr. King. Second by Dr. Spear

64 **Vote:** 6 yeas/ 0 opposed; motion carries.

65

66 **Section II concluded: 9:12 a.m.**

67 **Section III began: 9:12 a.m.**

68

69 **III. DOAH Case 16—6663RX**

70

71 **i. Final Order**

72

73 Nichole Geary, Deputy General Counsel, Office of General Counsel, gave Department of  
74 Health’s position on rule 64B13-4.001 F.A.C. and 64B13-4.004 F.A.C.

75

76 Mr. Harris gave a summary of all the items listed in part III. Mr. Harris asked the Board to  
77 initiate rulemaking that would strike the language in the rule that is now void. The Board also  
78 needs to direct staff on the process on applications that have been received on May 16 and  
79 forward. Mr. Harris asked for advice on the attorney fees.

80

81 **Discussion:** There was much discussion between the Board, Board Counsel and concerned  
82 parties on the rule.

83

84 **ii. Data Summary of Applications received**

85

86 For your review.

87

88 **iii. Correspondence to Board Members regarding Licensing**

89

90 For your review.

91

92 **iv. Proposed Amendment of Rule 64813-4.001, F.S.**

93

94 Mr. Harris gave proposed language for the Board to consider for amendment of rule 64B13-  
95 4.001, F.A.C.

96

97 **Action:** Motion to delete the last sentence of the currently adopted 4.001(2) was made by Dr.  
98 King. Second by Mr. Griffin.

99 **Vote:** 6 yeas/ 0 opposed; motion carries.

100

101 **Discussion:** There was discussion from Dr. King and he is asking for clarification on what parts  
102 of the exams are required. Mr. Harris gave information, clarification and the options for the  
103 board. There was a discussion between the board members, board counsel and concerned parties.

104

105 **BREAK 10:34 – 10:48**

106

107 **v. Request for Attorney Fee’s from rule challenge proceeding**

108

109 **Discussion:** Mr. Harris needs to have a meeting with the Board for the payment of attorney’s  
110 fees and the action the Board wants him to take. This can be a public meeting or it can be a  
111 meeting outside of the sunshine. Second issue he needs advice and a decision about the  
112 settlement negotiations.

113

114 **Action:** Motion to discuss this in the shade was made by Mr. Griffin. Second by Dr. Maule.

115 **Vote:** 6 yeas/ 0 opposed; motion carries.

116

117 **Back to iv. Proposed Amendment of Rule 64813-4.001, F.S.**

118

119 **Discussion:** There was discussion among the board members regarding the examination. Dr.  
120 Maule suggested the State give the exam. Mr. Harris explained that 456.017(1)(c)(2) F.S. does  
121 not allow a state written exam to be developed. He went on to explain 456.017(1)(c)(3) F.S. The  
122 board can contract with the outside vendors to administer the exam.

123

124 **vi. Application for licensure**

125

126 **Discussion:** Motion for board staff to process applications received after May 16 must take all  
127 four parts of the NBEO exam was made by Dr. King. Second by Dr. Maule.

128 **Vote:** 6 yeas/ 0 opposed; motion carries.

129

130 **BREAK 12:00 – 12:15**

131

132 **Section III concluded: 12:45 a.m.**

133 **Section IV began: 12:45 a.m.**

134

135 **IV. PETITIONS**

136

137 **a. Variance/Waiver**

138

139 **i. Dr. Nicole Yontz**

140 **Not present/ Represented by Mia McKown, Holland & Knight LLP**

141

142 Petitioner requests a waiver of Florida Department of Health, Board of Optometry  
143 (“Board”) Rule 64B13-4.001(1)-(2), F.A.C., which imposes rules and related to examination  
144 requirements for licensure.

145

146 Ms. McKown is waiving the statutory 90-day requirement for the application to be acted on and  
147 asking the board to table this matter until the July meeting.

148

149 **Action:** Motion to waive and table until the July 19 meeting was made by Mr. Griffin. Second  
150 by Dr. Spear.

151

152 Motion amended to include Variance/Waiver for Dr. Yontz.

153

154 **Action:** Motion to table the Variance/Waiver for Dr. Yontz until the July 19 meeting was made  
155 by Mr. Griffin. Second by Dr. Spear.

156 **Vote:** 6 yeas/ 0 opposed; motion carries.

157

158 **ii. Dr. Tammy Johnson**

159 **Not present/ Represented by Mia McKown, Holland & Knight LLP**

160

161 Petitioner requests a waiver of Florida Department of Health, Board of Optometry  
162 (“Board”) Rule 64B13-4.001(1)-(2), F.A.C., which imposes rules and related to examination  
163 requirements required for licensure.

164

165 Ms. McKown is waiving the statutory 90-day requirement for the application and asking to table  
166 this matter until the July meeting.

167

168 **Action:** Motion to table the Variance/Waiver and application for Dr. Johnson until the July 19  
169 meeting was made by Dr. Spear. Second by Mr. Griffin.

170 **Vote:** 6 yeas/ 0 opposed; motion carries.

171

172 **iii. Thanh Dau, O.D.**

173 **Not present/ No counsel**

174

175 The Petitioner sought a variance or waiver of subsection 64B13-4.001(2), Florida  
176 Administrative Code, with regards to the requirements that all parts of the NBEO be  
177 obtained within 7 years preceding licensure application. The Petitioner also sought for a waiver  
178 of subsection 64B13—6.001(5) F.A.C. The application fee for a certification as a certified  
179 optometrist shall be \$250.

180

181 **Action:** Motion to deny variance or waiver as the petitioner has failed to demonstrate that the  
182 petitioner has achieved the purpose of the statute by other means and has failed to demonstrate  
183 that the application of the rule would be undue hardship or would violate principles of fairness  
184 was made by Dr. Spear. Second by Dr. King.

185

186 **Discussion:** This person has asked for a waiver of a rule that has been determined to be invalid?  
187 What does this do to this case? Mr. Harris explained that you can’t waive the 7-year provision  
188 because there is no 7-year provision. You are converting the petition to waive parts I, II and III  
189 of the exam and find that something else is the licensure exam.

190

191 **Vote:** 6 yeas/ 0 opposed; motion carries.

192

193 **Action:** Motion to deny the petitioner’s application was made by Dr. Spear. Second by Dr. King.

194 **Vote:** 6 yeas/ 0 opposed; motion carries.

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**iv. Rebecca Jacquemin, O.D.**  
**Not present/ Patricia Dignum, (personal assistant)**

The Petitioner sought a variance or waiver of subsection 64B13-4.001(2), F.A.C., with regards to the requirements that all parts of the NBEO be obtained within 7 years preceding licensure application.

**Discussion:** Ms. Dignum gave information on Dr. Jacquemin’s experience and the petition for waiver or the 7 year look back.

**Action:** Motion to deny the variance or waiver as the petitioner has failed to demonstrate that the petitioner has achieved the purpose of the statute by other means and has failed to demonstrate that the application of the rule would be undue hardship or would violate principles of fairness was made by Dr. King. Second by Dr. Kepley.

**Vote:** 6 yeas/ 0 opposed; motion carries.

**Action:** Motion to table the application until the Laws and Rules exam is complete was made by Mr. Griffin. Second by Dr. King.

**Vote:** 6 yeas/ 0 opposed; motion carries.

**v. Harry Snyder (Reconsideration)**

**Present/ No counsel**

Reconsideration from the February meeting.

The Petitioner sought a variance or waiver of subsection 64B13-4.001(3), F.A.C., with regards to the requirements that applicants for certification must take and pass the TMOD examination.

**Discussion:** There was discussion on the waiver and what it was asking. Mr. Harris explained that the statute cannot be waived. The order was filed. The board needs to determine if there a point of fact or law that should be reconsidered. Dr. Snyder addressed the board. If there was a way to look at both exams to see if they are equal to the TMOD there might be a way to approve the variance or waiver.

There is a petition for variance or waiver of subsection 64B13-4.001(3), F.A.C., regarding the certification examination. Dr. Snyder has achieved the purpose of the underlying statute by other means and has taken an examination in Virginia that could be considered equal and he has an undue hardship, given his age and the time he has been in practice, or would violate principles of fairness was made by Dr. Spear. Second by Dr. King.

**Action:** Motion to deny the variance or waiver as the petitioner has failed to demonstrate that the petitioner has achieved the purpose of the statute by other means and has failed to demonstrate

237 that the application of the rule would be undue hardship or would violate principles of fairness  
238 was made by Dr. Spear. Second by Dr. King.

239  
240 **Discussion:** There was discussion among the board members and Dr. Snyder about the exam that  
241 he passed in Virginia.

242  
243 **Action:** Dr. Snyder waives his 90 days in which the board must act on his application and wants  
244 to come back to the board in the future for further action.

245  
246 **Action:** Dr. Spear withdraws his motion.

247  
248 **vi. Yaitza Mates—Cruz (Continuance)**

249 **Not present/ No counsel**

250 Filed a Petition of Variance or Waiver in February. This was tabled so that Dr. Mates-Cruz could  
251 amend her petition for two provisions of the examination to be considered.

252  
253 **Discussion:** There seems to be 3 parts that need to be considered. Dr. Mates-Cruz has only asked  
254 for 2 parts to be considered. Part III also need to have a petition for variance or waiver.

255  
256 **Action:** Motion to deny the variance or waiver as the petitioner has failed to demonstrate that the  
257 petitioner has achieved the purpose of the statute by other means and has failed to demonstrate  
258 that the application of the rule would be undue hardship or would violate principles of fairness  
259 was made by Dr. King. Second by Dr. Kepley.

260 **Vote:** 6 yeas/ 0 opposed; motion carries.

261  
262 **Section IV concluded: 1:44 p.m.**

263 **Section V began: 1:44 a.m.**

264  
265 **V. RATIFICATION LIST:**

266  
267 **a. Licensure**

268  
269 **i. Optometrist**

270 License number 5322 – 5346. Total of 25

271  
272 **Action:** Motion to approve Optometrist license numbers 5322 – 5346 for a total of 25 was made  
273 by Dr. Maule. Second by Mr. Griffin.

274 **Vote:** 6 yeas/ 0 opposed; motion carries.

275  
276 **ii. Optometry Facility Ratifications Certificate**

277 None

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279 **b. Continuing Education**

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**i. Providers & Courses approved by CE Chair**

**Action:** Motion to accept Providers & Courses approved by CE Chair was made by Dr. Maule. Second by Mr. Griffin.

**Vote:** 6 yeas/ 0 opposed; motion carries.

**ii. Providers & Courses approved by Board Staff**

**Action:** Motion to approve Providers & Courses approved by Board Staff was made by Dr. Maule. Second by Dr. King

**Vote:** 6 yeas/ 0 opposed; motion carries.

**iii. Continuing Education Committee's Recommendation  
Integrating the Optometric Practice Embracing Disruptive Technology**

Dr. Maule doesn't believe this meets the requirements for 64B13-5.001(1)(a), F.A.C. Dr. Maule believes it can be approved for general hours but the provider would like it to be approved for transcript quality. It has been brought before the board for further review.

**Action:** Deny for transcript quality and approve for general hours because the transcript does not meet the requirements for 64B13-5.001(1)(a) was made by Dr. Maule. Second by Dr. King.

**Vote:** 6 yeas/ 0 opposed; motion carries.

**Section V concluded: 1:48 a.m.**  
**Section VI began: 1:48 a.m.**

**VI. PROSECUTION REPORT:**

There are 10 cases that are older than 1 year.

**Action:** Motion to continue to authorize the department to pursue those investigations and prosecution cases was made by Dr. Kepley. Second by Dr. Spear.

**Vote:** 6 yeas/ 0 opposed; motion carries.

**Section VI concluded: 1:49 p.m.**  
**Section VII began: 1:49 p.m.**

**VII. CHAIR/VICE CHAIR REPORT:**

Dr. Kaplan has nothing now.  
Dr. Spear there is a probable case meeting next Monday so hopefully some of those cases will move.

**Section VII concluded: 1:49 p.m.**



323 **Section VIII resumed: 1:49 p.m.**

324

325 **VIII. EXECUTIVE DIRECTOR'S REPORT:**

326

327 Chair/ Vice Chair meeting will be September 18.

328 The Governor has asked all boards to do a rule reduction project.

329

330 **Section VIII concluded: 1:50 p.m.**

331 **Section IX began: 1:50 p.m.**

332

333 **IX. BOARD COUNSEL REPORT:**

334

335 i. Autologous Serum for dry eye treatment approved for certified optometrists to subscribe.

336

337 Dr. Larson presented a declaratory statement requesting approval from the board to pursue this  
338 treatment and make it available for Florida. Dr. Larson is not in attendance to discuss this matter.  
339 The board agrees this is not a legally sufficient petition for a declaratory statement and will not  
340 discuss until a legal declaratory statement is submitted.

341

342 ii. Request for Attorney Fee's from rule challenge proceeding

343

344 iii. Rules Report for March 2017

345 iv. Rules Report for April 2017

346 v. Rules Report for May 2017

347

348 The rules report for March, April and May are contained in the materials for board review.

349

350 vi. Sunshine Law and Public Records Law

351 Mr. Harris clarified the Sunshine Law and the Public Records Law. A power point was also  
352 given to the board members.

353

354 **Section IX concluded: 2:01 p.m.**

355 **Section X began: 2:01 p.m.**

356

357 **X. COMMITTEE REPORTS:**

358

359 **a. Budget - Dr. Kepley**

360 No report

361

362 **b. Continuing Education - Dr. Maule**

363 Already addressed earlier in the agenda.

364

365 **c. Complaints, Investigation, and Enforcement Liaison - Dr. Kaplan**

366 No report

367

368

369 **d. Disciplinary Compliance - Dr. Kaplan**

370 No report

371

372 **e. Examination - Dr. King**

373 **Take Prometric out of the application and replace with the correct testing vendor.**

374

375 **f. FOA - Dr. Kaplan**

376 **Dr. Kaplan will be giving a report to ROA in July.**

377

378 **g. Healthiest Weight - Dr. King**

379 No report. This is still an active project.

380

381 **h. Legislative - Dr. Kaplan**

382 No report

383

384 **i. Probable Cause - Dr. Spear**

385 No report

386

387 **j. Probationary - Dr. Kaplan**

388 No report

389

390 **k. Rules - Dr. Kaplan**

391 Continues to work on rules.

392

393 **l. Unlicensed Activity - Dr. Maule**

394 No report

395

396 **Section X concluded: 2:03 p.m.**

397 **Section XI began: 2:03 p.m.**

398

399 **XI. OLD BUSINESS:**

400

401 **2018 Meeting Dates**

402

403 MARCH 9, 2018 (ORL)

404 JUNE 1, 2018 (TCC)

405 SEPTEMBER 28, 2018 (ORL)

406 NOVEMBER 16, 2018 (TCC)

407

408 **Section XI concluded: 2:03 p.m.**

409 **Section XII began: 2:03 p.m.**

410

411 **XII. NEW BUSINESS:**

412

413 Dr. Goodman has sent in a request to have the board consider allowing the Medical Errors course  
414 to be online. There is a process in place for approving online CE. Dr. Goodman would need to  
415 follow that process.

416

417 **Section XII concluded: 2:06 p.m.**

418 **Section XIII began: 2:06 p.m.**

419

420 **XIII. NEXT MEETING DATE:**

421

422 a. July 19, 2017

423 TCC for now unless otherwise advised.

424

425 **Section XIII concluded: 2:07 p.m.**

426 **Section XIV began: 2:07 p.m.**

427

428 **XIV. ADJOURNMENT**

429

430 **Action:** Motion to adjourn was made by Dr. King. Second by Dr. Kepley.

431 **Vote:** 6 yeas/ 0 opposed; motion carries.

432

433 **The meeting was adjourned at 2:11 p.m.**

434

435