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**FLORIDA | Board of Optometry**

DRAFT MINUTES  
July 19, 2017

Disney's Contemporary Resort  
4600 N. World Drive  
Lake Buena Vista, Florida 32830



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

Tamara Maule, O.D.  
**Vice-Chair**

Anthony Spivey, DBA  
**Executive Director**

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46 The Florida Board of Optometry held a meeting on Wednesday, July 19, 2017, commencing at  
47 9:06 a.m. This meeting was held at the Disney's Contemporary Resort, 4600 N. World Drive, Lake  
48 Buena Vista, Florida 32830, (407) 824-1864, to which all persons were invited to attend.  
49 Participants in this public meeting were made aware that these proceedings were being recorded  
50 and that an audio file of the meeting will be posted to the board's website.

51  
52 **General Board Business started: 9:06 a.m.**

53  
54 **AGENDA**

55  
56 **I. CALL TO ORDER (Roll Call):**

57 The meeting was called to order by Dr. Kaplan, Chair. Gail Curry called the  
58 roll. Those present for all or part of the meeting included the following:

59  
60 **MEMBERS PRESENT:**

61 Stuart Kaplan, O.D., Chair  
62 Carl Spear, O.D., Vice Chair  
63 Tamara Maule, O.D.,  
64 Stephen Kepley, O.D.  
65 Christopher King, O.D., F.A.A.O.  
66 John Griffin, J.D.  
67 Lucille Turner, J.D.

68  
69 **BOARD COUNSEL:**

70 Lawrence Harris, Assistant Attorney General  
71 Office of Attorney General

72  
73 **STAFF PRESENT:**

74 Adrienne Rodgers, BSN, JD, Chief of General Operations  
75 Anthony Spivey, DBA, Executive Director  
76 Gail Curry, Program Operations Administrator

77  
78 **COURT REPORTER:**

79 Downtown Reporting LLC  
80 (954) 522-3376

81  
82 **OTHERS PRESENT**

83 Mr. Ed Tellechea, Chief Assistant Attorney General  
84 Virginia Daily, Esquire  
85 Mia McKnown, Esquire  
86 Thu Pham, Esquire  
87 Leonard Carson, General Counsel to Florida Optometric Association  
88 Dean David Loshin, NOVA  
89

90 Section VI began: 9:07 a.m. (Taken out of order)

91  
92 **VI. DECLARATORY STATEMENT (Taken out of order)**

93  
94 a. Kenneth W. Lawson

95 Dr. Lawson is asking the Board to review the Declaratory Statement regarding  
96 Cooperate Practice Act. In the current environment, different entities have entered  
97 the field of insurance payment processing, auditing, policy making, etc. The current  
98 proposed model that he is asking you to consider is a model whereby currently Dr.  
99 Sid Stern owns access to a network that he provides insurance processing and  
100 payments to on behalf of other payers. He is looking to retire and as such he has a  
101 son, who is a non-physician, who may wish to take over in his role. Would this be a  
102 violation of the Practice Act? Dr. Lawson believes it would not be in violation.

103  
104 **ACTION:** Motion to say under the circumstances presented, we find this is a  
105 payment entity, it is not practicing optometry therefore the Cooperate Practice Act is  
106 not implicated was made by Dr. Spear. Second by Dr. Kepley. 7 yeas / 0 opposed.  
107 Motion carries.

108  
109 Section VI concluded: 9:17 a.m.

110 Section II began: 9:07 a.m. (Taken out of order)

111  
112 **II. APPROVAL OF MINUTES**

113  
114 i. May 19, 2017

115  
116 Dr. King:

117 Pg. 4, line 111- “is” between about and the.

118 Pg. 9, line 334 – subscribe should be prescribe.

119  
120 Lucille Turner was not at the May 19 meeting.

121  
122 Motion to approve the May 19 minutes as amended was made by Dr. King.

123 Second by Dr. Spear. 7 yeas / 0 opposed; motion carried

124  
125 Section II concluded: 9:20 a.m.

126 Section III began: 9:20 a.m.

127  
128 **III. ADRIENNE RODGERS, BUREAU CHIEF**

129  
130 Ms. Rodgers addressed the Board with the statistics of the Optometry profession and  
131 the need for more licensed Optometrists in the State of Florida. She has been in contact  
132 with the NBEO to provide more exams and placing them in Florida vs North Carolina.  
133 There was discussion between the Board and Ms. Rodgers concerning the examination.  
134 Ms. Rodgers offered any DOH assistants that the Board may need.

135  
136 Section III concluded: 9:50 a.m.

137 Section IV began: 9:50 a.m.

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**IV. CONSIDERATION OF SETTLEMENT AGREEMENTS**

- i. Nicole Yontz, O.D.
- ii. Tammy Johnson, O.D.

Mia McKnown, Counsel representing Dr. Dr. Yontz and Dr. Johnson, gave the details of the settlement agreements.

Motion to accept the settlement agreements for Dr. Yontz and Dr. Johnson was made by Dr. Spear. Second by Ms. Turner. 7 yeas / 0 opposed; motion carried

**Section IV concluded: 10:00 a.m.**  
**BREAK**  
**Section V began: 10:18 a.m.**

**VII. PETITION FOR REVIEW**

- a. Nova Southeastern University

Nova filed a Declaratory Statement with the Department of Health. Virginia Dailey, J.D., representing Nova, believes there are two available interpretations of the statute. One is the interpretation of the statutes that the board discussed at the May meeting that required a sequencing of the exams such that students would, graduate, take the exam and then apply to the state for licensure. The other interpretation, which Nova is seeking, of 456 and 463 would allow students to apply in August of their 4<sup>th</sup> year in school then take the exams during their 4<sup>th</sup> year of school, graduate and then the department would proceed with examination and licensure. The concern is that students will not be accepted into a residency program. There was discussion between Ms. Dailey and the Board on the declaratory statement. Mr. Harris asked if the Nova would withdraw the statement from the department and filing it with the board. Ms. Dailey isn't inclined to withdraw at this time.

Mr. Carson, General Counsel for FOA, presented that FOA is certainly an interested party and leans in opposition of the declaratory statement. FOA will be participating.

**ACTION:** Motion to intervene in the Declaratory Statement to the Department of Health was made by Dr. Spear. Second by Dr. King. 7 yeas / 0 opposed; motion carried.

**ACTION:** Motion to hire outside counsel in the event the Board Counsel is unable to represent the Board due to a conflict of interest was made by Dr. King. Second by Ms. Turner. 7 yeas / 0 opposed; motion carried.

**Section VII concluded: 10:49 a.m.**  
**Section V began: 10:49 a.m.**

**VI. PETITIONS**

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i. Variance/Waiver

**b. Ronald E. Monacelli**

Not present, not represented by counsel

Mr. Monacelli has filed a Petition for Variance or Waiver and also has a pending application for licensure in Florida. Mr. Monacelli is before the board to ask that his NBEO part I exam score be rounded up.

**ACTION:** Motion to deny the Petition for Variance or Waiver finding that the Board has no statutory authority to change the NBEO Part I score was made by Dr. King. Second by Dr. Maule. 7 yeas / 0 opposed; motion carried

**ACTION:** Motion to deny the application for licensure since he has not met the requirements of application, the Board will give Mr. Monacelli 5 business days to withdraw his application before the denial is made was made by Dr. King. Second by Mr. Griffin. 7 yeas / 0 opposed; motion carried

*Taken out of order.*

**a. Yaritza Flores, O.D.**

Present with counsel, Thu Pham

Dr. Flores is asking the Board to waive examinations Parts I, II, and III of the NBEO and only allow her to take Part IV.

Counsel, Thu Pham, explained the examinations that Dr. Flores has taken and those results.

Dr. Spear asked that this be tabled until Thu Pham and Dr. Flores can get all the Part III NBEO scores, with the breakdown, for the Board to review. The Board will move on with the agenda until this information is provided. Board agrees.

**Section V concluded: 11:08 a.m.**

**Section VI began: 11:08 a.m.**

**VIII. RATIFICATION LIST:**

a. Licensure

i. Optometrists 5347-5439, total of 93

Motion to approve Optometrists licenses 5347-5439, total of 93 was made by Dr. Kepley. Second by Dr. Maule. 7 yeas / 0 opposed; motion carried.

ii. Optometry Ratifications Certificate  
None now.

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b. Continuing Education

i. Providers & Courses approved by CE Chair

**ACTION:** Motion to approve Provides and Courses approved by the CE Chair was made by Dr. Spear. Second by Dr. Kepley. 7 yeas / 0 opposed; motion carried.

ii. Providers & Courses approved by Board Staff

Motion to approve Providers & Courses approved by Board Staff was made by Mr. Griffin. Second by Ms. Turner. 7 yeas / 0 opposed; motion carried.

iii. Continuing Education Committee's Recommendation

**ACTION:** Motion to deny as TQ for SECO course #20-574201: The Best of Paul and Paul, as the course was not approved prior to its Presentation. If SECO can show they submitted the information prior to the course being presented, the Board may reconsider it approval as TQ was made by Mr. Griffin. Second by Dr. King. 7 yeas / 0 opposed; motion carried.

Dr. Kepley does have some concern for the doctors who took these courses.

Section VI concluded: 11:20 a.m.  
Section IX began: 11:20 a.m.

**IX. TWO YEAR PRESCRIPTION LAW**

No one was in attendance to address this issue.

Dr. Kaplan addressed how this related to the Board's law and rules. This seems to be a complaint against doctors without any documented issues or specifics. There was some discussion between the Board and Mr. Harris regarding educating the public.

Section VII concluded: 11:23 a.m.  
Section VIII Resumed: 11:23 a.m.

**X. PROSECUTION REPORT:**

**ACTION:** Motion to authorizing the prosecution unit to continue prosecuting cases that are over a year old was made by Dr. Maule. Second by Mr. Griffin. 7 yeas / 0 opposed; motion carried.

278 **Section VIII concluded: 11:25 a.m.**  
279 **Section IX began: 11:25a.m.**

280

281 **XI. CHAIR/VICE CHAIR REPORT:**

282

283 Dr. Kaplan will be doing his FAO presentation tomorrow.

284 Dr. Spear attended the ARBO meeting and he gave a briefing on the details of the  
285 meeting.

286

287 **Section XI concluded: 11:25 a.m.**

288 **Section XII began: 11:25 a.m.**

289

290 **XII. EXECUTIVE DIRECTOR'S REPORT:**

291

292 Dr. Spivey reminded the Board that the Chair/Vice Chair meeting will be on September  
293 18 in Tallahassee. He encouraged full participation.

294

295 **Section X concluded: 11:28 a.m.**

296 **Section XI began: 11:28 a.m.**

297

298 **XIII. BOARD COUNSEL REPORT:**

299

300 i. Rules Report for June 2017

301

302 The two rules that were in process have been adopted. These were the changes  
303 for the fee rule for dispensing practitioner's and the rule that referenced the fee.  
304 There are two open rules for development. 4.001 was opened to remove the  
305 seven-year language that was declared void. This is being held up at JAPC  
306 because there is a pending rule challenge. Rule 4.004 is also open for  
307 development and will be discussed later in the agenda.

308

309 **Section XI concluded: 11:31 p.m.**

310 **Section V began: 11:31 p.m. (Taken out of order)**

311

312 **VI. PETITIONS**

313

314 i. **Variance/Waiver**

315

316 a. **Yaritza Flores, O.D**

317

318 The documents from the NBEO were presented to the Board members for review.  
319 There was discussion between the Board Members, Board Counsel, Mr. Harris, Dr.  
320 Flores and her counsel, Thu Pham regarding the examination scores for Parts I, II, and  
321 III.

322

323 Mr. Harris explained that if the Board were to grant the Petition for Waiver of  
324 the requirement, of passing Parts I, II, III after application, for this particular applicant,  
325 with her particular facts and circumstances, if the Board were to waive part I, II, and

326 III. She would have to take part IV. The Board has the ability to condition a Variance  
327 or Waiver or modify it. There are several ways the Board could address the Variance  
328 or Waiver. The first option would be for the Board could grant the Variance or Waiver  
329 today and give her the license finding that she has achieved the purpose of the underlying  
330 statute by other means and has a hardship. The second option is, the Board could grant a  
331 Variance or Waiver in part by saying you will accept Part I, III and IV, but require her to  
332 take the TMOD. The third option would be in lieu for the TOMD, accept her taking the  
333 Ocular Pharmaceutical Examination, which would comply with the Statutory terms.  
334 Keep in mind this is not the certification exam. The TMOD is the certification exam. The  
335 Fourth option is to deny the Variance or Waiver and the application. The fifth option  
336 would be to offer her a settlement agreement.

337  
338 **BREAK 12:15**  
339

340 **ACTION:** Motion to grant the Petition for Variance or Waiver for the NBEO scores on  
341 Part I, II, and III. Accept the application with the contingency that she takes, and passes,  
342 the 20 hour online Ocular Pharmaceutical course and Dr. Flores will need to drop the  
343 rules challenge was made by Dr. Spear. Second by Dr. King.  
344

345  
346 **ACTION:** Amend the motion to read, The Board is offering to settle all pending ligation.  
347 The settlement offer is that the Board will issue the license upon passage of part of the  
348 Ocular Pharmaceutical examination. In return Dr. Flores will withdraw the pending rule  
349 challenge and all litigation associated with that. This settlement offer is good for 20  
350 minutes from now. If the offer is rejected the Board will come back and consider the  
351 Variance and Waiver Petition indepently. Dr. Flores will bear her own attorney fees. This  
352 motion was made by Dr. Spear. Second by Dr. King. 7 yeas / 0 opposed; motion carried.  
353

354 Dr. Griffin made the comment that anyone coming before the Board seeking licensure will  
355 need to take Clinical examination and the Ocular Pharmaceutical examination for  
356 subsequent licensure.  
357

358 The Board gave Dr. Flores and her attorney 35 minutes. 12:15, to make a decision before  
359 the Board.  
360

361 **Section V concluded: 12:40 p.m.**

362 **Section XII began: 12:40 p.m.**  
363

364 **XV. COMMITTEE REPORTS:**  
365

- 366 a. Budget – Dr. Kepley  
367 Dr. Kepley turned over the budget report to Dr. Spivey for questions. The Board had  
368 several items they asked for clarification on.  
369
- 370 b. Continuing Education – Dr. Maule  
371 This has already been addressed in the agenda.  
372



373 c. Complaints, Investigation, and Enforcement Liaison – Dr. Kaplan  
374 Nothing at this time.

375  
376 d. Disciplinary Compliance – Dr. Kaplan  
377 Nothing at this time.

378  
379 e. Examination – Dr. King / Dr. Kepley  
380 The Board must approve the Laws and Rules examination every year.

381  
382 **ACTION:** Dr. King moved to approve the Laws and Rules examination for the  
383 upcoming year. Second by Dr. Maule. 7 yeas / 0 opposed; motion carried.

384  
385 **ACTION:** Dr. King moved to approve the Oral Course given for oral certification for  
386 Optometry. This is a joint test given by the Florida Optometric Association of Florida  
387 Medical Association. Second by Dr. Maule. 7 yeas / 0 opposed; motion carried.

388  
389 Dr. King has concerns that the contract with NBEO was rewritten and some items  
390 were taken out. He would like the Board to see the next contract before it is executed.  
391 Ms. Rodgers has been in contact with the contract department to have Dr. King and  
392 Dr. Kepley review the contract.

393  
394 Dr. Kepley asked if any of the Board members have been to North Carolina to audit  
395 the exam. Mr. Harris advised this would be a positive action.

396  
397 f. FOA – Dr. Kaplan  
398 Dr. Kaplan will be giving a presentation tomorrow at the FOA meeting. Dr. Spear  
399 would like to see the corporate practice portion of the Optometry Act and the two-year  
400 contact lens prescription rule reviewed.

401  
402 g. Healthiest Weight – Dr. King  
403 Nothing to present at this time.

404  
405 h. Legislative – Dr. Kaplan  
406 Nothing to present at this time.

407  
408 i. Probable Cause - Dr. Spear  
409 Nothing to present at this time.

410  
411 j. Probationary – Dr. Kaplan  
412 Nothing to present at this time.

413  
414 k. Rules – Dr. Kaplan  
415 Nothing to present at this time.

416

- 417 1. Unlicensed Activity – Dr. Maule  
418 Nothing to present at this time.

419 **Section V concluded: 1:02 p.m.**  
420 **Section XIV began: 1:02 p.m.**

- 422  
423 **XV. OLD BUSINESS:**  
424 Nothing to discuss at this time.

425  
426 **Section V concluded: 11:59 p.m.**  
427 **Section XIV began: 11:59 p.m.**

- 428  
429 **XVI. NEW BUSINESS:**  
430 This has been addressed already in the agenda.

431  
432 **Section XIV concluded: 11:59 p.m.**  
433 **Section XV began: 11:59 p.m.**

- 434  
435 **XVII. NEXT MEETING DATE:**  
436  
437 a. November 17, 2017

438  
439 **Section XII concluded: 1:03 p.m.**  
440 **BREAK**  
441 **Section V began: 1:20 p.m.**

442 **TAKEN OUT OF ORDER**

443  
444  
445 **VI. PETITIONS**

446  
447 **i. Variance/Waiver**

448  
449 **a. Yaritza Flores, O.D.**

450  
451 Ms. Pham addressed the Board to accept the settlement agreement on behalf of her client,  
452 Dr. Yaritza Flores. Dr. Flores will send in the proof of passing the 20 course to the board  
453 office. Mr. Harris asked Dr. Flores if she would accept the settlement agreement set  
454 forth by the Board. Dr. Flores accepted the terms of the settlement agreement.

455  
456 **Section XV concluded: 11:59 p.m.**  
457 **Section XVI began: 11:59 p.m.**

458  
459 **V. PROPOSED RULE DEVELOPMENT**

- 460  
461 i. Letter from Virginia Dailey, J.D.  
462  
463 ii. 64B13-4.001, FAC  
464 iii. 64B13- 4.004, FAC

465 Mr. Harris discussed the edits that need to be done to the application. These edits are  
466 being prepared by board staff and the updated application will be on the next agenda.  
467

468  
469 Is there any language in 64B13- 4.004, FAC, that is required to be changed due to the  
470 seven-year provision becoming void? Mr. Harris believes there are no changes now.  
471 There will be some changes to the online application to allow the applicant to apply  
472 without having taken the NBEO exams.

473  
474 v. 64B13-4.001. FAC

475  
476 Mr. Harris asked the Board for direction in the development of the potential language for  
477 64B13-4.001. FAC. Mr. Harris is asking the Board to allow him to make it extremely  
478 clear that Part III is not only the National examination, the Part III Clinical Skills  
479 examination but there is a Florida practical examination component to the current Part 3  
480 administered by the NBEO for Florida students. That is the 3 skills that have been  
481 specifically pull out and the passing scores established by the Board for those skills. The  
482 statutes say that, by rule the Board may require a practical examination. You can rely on  
483 that statutory authority to create some language in 64B13-4.001 that specifically says the  
484 Florida Practical examination is whatever the Board says it is. At this point it is the 3  
485 skills and set passing scores for that. The language could read that it is developed in  
486 conjunction with the Florida Board and the NBEO and is administered by the NBEO.

487  
488 There was much discussion between the Board members and Mr. Harris concerning the  
489 rule language and the administering the examinations.

490  
491 Mr. Harris will draft some rule language, working with other persons involved. There  
492 will be a meeting set up in two weeks to look at the new language.

493  
494 Dr. Spear asked Ms. Dailey if NOVA would drop the declatory statement in lieu of this  
495 conversation. Ms. Dailey replied that will hold the decotoatory statement for further  
496 discussion.

497  
498 **Section XV concluded: 2:54 p.m.**  
499 **Section XVI began: 2:54 p.m.**

500  
501 **V. ADJOURNMENT**

502  
503 **The meeting was adjourned at 2:55 p.m.**  
504