

FLORIDA | Board of Optometry

DRAFT MINUTES

November 17, 2017

Teleconference
Department of Health
4042 Bald Cypress Way
Tallahassee, FL 32399-3257



Stuart Kaplan, O.D., *Chair*
Carl Spear, O.D., *Vice-Chair*
Anthony Spivey, DBA, *Executive Director*

The Florida Board of Optometry held a meeting on Friday, November 17, 2017, commencing at 9:00 a.m. This meeting was held at the Department of Health, 4042 Bald Cypress Way, Tallahassee, Florida, at meet me number (888) 670-3525, participant code **7342425515**, to which all persons were invited to attend. Participants in this public meeting were made aware that these proceedings were being recorded and that an audio file of the meeting will be posted to the board's website.

AGENDA

1 **Section I began: 9:00 a.m.**

2
3 **I. CALL TO ORDER (Roll Call):**

4
5 Stuart Kaplan, O.D., Chair
6 Carl Spear, O.D., Vice Chair
7 Tamara Maule, O.D.,
8 Stephen Kepley, O.D.
9 Christopher King, O.D., F.A.A.O.
10 John Griffin, J.D.

11
12 **Board Staff Present:**

13
14 Dr. Anthony Spivey, DBA, Executive Director
15 Gail Curry, Program Operations Administrator
16 Kelly Woodard, Regulatory Supervisor
17 Nicole Wiley, Regulatory Specialist II
18 Alisha Mughal, Regulatory Specialist II
19 Keri Kilgore, Regulatory Specialist II
20

21 **Board Counsel:**

22
23 Lawrence Harris, Assistant Attorney General
24 Cassandra Fullove, Paralegal Specialist
25

26 **Prosecution Services:**

27
28 Cecilie Sykes, Assistant General Counsel
29

30 **Court Reporter:**

31
32 For the Record
33 (850) 222-5491
34

35 **Section I ended: 9:03 a.m.**

36 **Section II began: 9:03 a.m.**

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38 **II. APPROVAL OF MINUTES**

39
40 **i. August 21, 2017**

41 **ii. August 28, 2017**

42
43 Dr. King addressed corrections to Line 126 by removing punctuation and Line 128 by
44 adding verbiage. Dr. Maule addressed corrections to the cover page by indicating the
45 correct Vice-Chair.

46
47 **Action:** Motion to approve minutes (upon correction) made by Dr. King. Second by Dr.
48 Kepley.

49
50 **Vote:** 6 yeas/ 0 opposed. Motion carried.

51
52 **Section II ended: 9:07 a.m.**

53 **Section III began: 9:07 a.m.**

54
55 **III. PETITION TO HEARING NOT INVOLVING DISPUTED ISSUES OF**
56 **MATERIAL FACTS**

57
58 **a. SECO International**

59
60 Leonard Carson, representing counsel for the Southern Council of Optometrists (SECO),
61 presented a legal argument and facts regarding their approval of transcript quality courses
62 for continuing education. Discussion ensued. Upon final review, Dr. Maule concluded
63 that there was no indication in the application that it was a transcript quality course. Dr.
64 Spear suggested contacting CE Broker for revisions to the website allowing confirmation
65 of their approval requests.

66
67 **Action:** Motion requesting a notice of intent to deny for the approval of the course by
68 failing to submit the petition in a timely fashion made by Dr. King. Second by Mr.
69 Griffin.

70
71 **Vote:** 6 yeas/ 0 opposed. Motion carried.

72
73 **Action:** Motion to accept the entire documentation and application file into evidence
74 made by Dr. Kepley. Second by Dr. King.

75
76 **Vote:** 6 yeas/ 0 opposed. Motion carried.

77
78 **Action:** Motion to adopt the findings of fact in the notice of intent to deny made by Dr.
79 Spear. Second by Dr. King.

80
81 **Vote:** 6 yeas/ 0 opposed. Motion carried.

82
83 **Action:** Motion to deny petition for informal hearing made by Dr. Spear. Second by Dr.
84 Maule.

85
86 **Vote:** 6 yeas/ 0 opposed. Motion carried.

87
88 **Action:** Motion to grant the petition for variance/waiver of the transcript quality
89 continuing education courses because the underlying statute has otherwise been met and
90 denying the petition would violate the principals of fairness made by Dr. Spear. Second
91 by Dr. Maule.

92 **Vote:** 6 yeas/ 0 opposed. Motion carried.

93 **Section III ended: 9:50 a.m.**

94 **Section IV began: 9:50 a.m.**

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97 **IV. PETITIONS FOR VARIANCE OR WAIVER**

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99 **i. Variance/Waiver**

100
101 **a. Ami D. Casis**

102
103 **Action:** Motion amended to deny petition and to table action on the licensure application
104 until March 2018 meeting made by Dr. King. Second by Mr. Griffin.

105
106 **Vote:** 6 yeas/ 0 opposed. Motion carried.

107
108 **b. Shahzad Irfan, M.D.**

109
110 **Action:** Motion to deny the petition because petitioner is requesting variance/waiver of a
111 statute made by Mr. Griffin. Second by Dr. Kepley.

112
113 **Vote:** 6 yeas/ 0 opposed. Motion carried.

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115 **Section IV ended: 10:04 a.m.**

116 **Section V began: 10:04 a.m.**

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118 **V. PETITION FOR REVIEW**

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120 **a. Nova Southeastern University**

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122 Ms. Virginia Dailey presented information on the merits of the petition on behalf of Nova
123 Southeastern University and Southeastern University College of Optometry Student
124 Government Association (SGA). Discussion ensued. Board members expressed difficulty
125 in determining approval of the petition. Dr. Spear suggested for Nova Southeastern to
126 withdraw the petition and await a legislative change. Mr. Griffin concluded that the
127 petition was incomplete and needed further review to establish standing. Mr. Harris
128 indicated the rule proposals for chapter 64B13-4.001 should be effective by the end of
129 December and 64B13-4.004 should be effective by mid-January. Ms. Dailey agreed to
130 waive the 90 day time frame for Board action for Nova Southeastern University and the
131 Nova Southeastern University College of Optometry Student Government Association
132 Association. Mr. Harris indicated that all other associations participating in the petition
133 must submit a 90 day waiver within 5 days or the petition will be denied.

134
135 **Action:** Motion to table the petition for reconsideration to the March 2018 meeting made
136 by Mr. Griffin. Second by Dr. Spear.

137
138 **Vote:** 6 yeas/ 0 opposed. Motion carried.

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140 **Section V ended: 10:58 a.m.**

141 **Section VI began: 10:58 a.m.**

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VI. RATIFICATION LIST:

a. Licensure

- i. Optometrist

Action: Motion to ratify licensees made by Dr. King. Second by Mr. Griffin.
Vote: 6 yeas/ 0 opposed. Motion carried.

- ii. Optometry Ratifications Certificate

Action: Motion to ratify licensees made by Dr. Maule. Second by Dr. Kepley.
Vote: 6 yeas/ 0 opposed. Motion carried.

b. Continuing Education

- i. Providers & Courses approved by CE Chair Report

Action: Motion to ratify providers and courses made by Dr. Maule. Second by Dr. Kepley.
Vote: 6 yeas/ 0 opposed. Motion carried.

- ii. Providers & Courses approved by Board Staff Report

Action: Motion to ratify providers and courses made by Dr. Maule. Second by Dr. King.
Vote: 6 yeas/ 0 opposed. Motion carried.

Section VI ended: 11:01 a.m.
Section VII began: 11:01 a.m.

VII. CONTINUING EDUCATION

a. University of Houston College of Optometry

- i. Course #20-609946 – Common and Not So Common
- ii. Course #20-609944 – Anterior Segment Quandaries

Dr. Maule explained that the courses were not submitted for approval prior to being provided. The provider failed to comply with requirements.

Action: Motion to deny courses 20-609946 and 20-609944 made by Dr. Kepley. Second by Dr. Maule.

Vote: 6 yeas/ 0 opposed. Motion carried.

Section VII ended: 11:05 a.m.
Section VIII began: 11:05 a.m.

192 **VIII. PROSECUTION REPORT:**

193

194 Ms. Sykes presented the prosecution statistics as follows:

195

196 22 Open disciplinary cases

197 13 cases older than one year

198 10 probable cause cases (3 with probable cause found)

199 7 under legal review

200

201 **Action:** Motion to continue prosecution on cases older than one (1) year made by Dr.
202 King. Second by Dr. Maule.

203

204 **Vote:** 6 yeas/ 0 opposed. Motion carried.

205

206 **Section VIII ended: 11:08 a.m.**

207 **Section IX began: 11:08 a.m.**

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209 **IX. CHAIR/VICE CHAIR REPORT:**

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211 **i. National Board of Examiners in Optometry**

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213 Dr. Kaplan explained that the NBEO was going to be adding additional skills to part three
214 (3) of the national examination such as clinical decision making, cranial nerve
215 assessment, amsler grid testing, and undilated 90D exam.

216

217 **Section IX ended: 11:09 a.m.**

218 **Section X began: 11:09 a.m.**

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220 **X. EXECUTIVE DIRECTOR'S REPORT:**

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222 **i. Annual Delegation of Authority**

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224 Dr. Spivey referred the board to review the delegation of authority. Mr. Griffin expressed
225 concerns over category three (3) felonies and recommended that all felonies be reviewed
226 by the board.

227

228 **Action:** Motion to require board review of all felonies made by Mr. Griffin. Second by
229 Dr. Kepley.

230

231 **Vote:** 6 yeas/ 0 opposed. Motion carried.

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233 **Action:** Motion to revise the conviction record guidelines in the delegation of authority
234 made by Mr. Griffin. Second by Dr. Maule.

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236 **Vote:** 6 yeas/ 0 opposed. Motion carried.

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238 **Section X ended: 11:15 a.m.**

239 **Section XI began: 11:15 a.m.**

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XI. BOARD COUNSEL REPORT:

- i. Rules Report for September 2017**
- ii. Rules Report for October 2017**
- iii. Rules Report for November 2017**

iv. Rule 64B13-4.001

- a. Notice of Proposed Rule

Mr. Harris explained that the proposal to delete the 7 year look back provision was effective in September. Additional changes to the rule were proposed on October 24, 2017. There was a twenty-one (21) day statutory period for comments and there were none. Mr. Harris indicated the board may proceed in adopting the rule.

v. Rule 64B13-4.004

- a. Notice of Proposed Rule
- b. Copy of Form 1128
- c. Copy of JAPC correspondence
- d. Correspondence from Joseph Neville

Mr. Harris addressed the comments made on the rule and suggested revising the licensure application to include questions related to disqualification. Mr. Harris explained the purpose of a license verification form and provided interpretation of accredited optometry schools. Mr. Harris explained that the board could authorize the filing of a notice of change for the licensure application or he could request a technical change to avoid having to republish.

Action: Motion to request board counsel to formally reply to the comments and attempt to execute the technical change made by Mr. King. Second by Dr. Kepley.

Vote: 6 yeas/ 0 opposed. Motion carried.

COMMITTEE REPORTS:

a. Budget – Dr. Kepley

Nothing to report

b. Continuing Education – Dr. Maule

Nothing to report

c. Complaints, Investigation, and Enforcement Liaison – Dr. Kaplan

Nothing to report

d. Disciplinary Compliance – Dr. Kaplan

Nothing to report

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e. Examination – Dr. King

Dr. King reminded the board of their current agreement with the NBEO (National Board of Examiners of Optometry) that expires in August of 2018. Dr. Kepley plans to visit NBEO in the near future.

f. FOA – Dr. Kaplan

Nothing to report

g. Healthiest Weight – Dr. King

Nothing to report

h. Legislative – Dr. Kaplan

Nothing to report

i. Probable Cause - Dr. Spear

Nothing to report

j. Probationary – Dr. Kaplan

Nothing to report

k. Rules – Dr. Kaplan

Nothing to report

l. Unlicensed Activity – Dr. Maule

Nothing to report

Section XI ended 11:39 a.m.
Section XII began: 11:39 a.m.

XII. OLD BUSINESS:

Dr. King requested that Mr. Harris address the rulemaking for 64B13-5.001 and 64B13-5.002. Mr. Harris concluded that proposed language will be drafted and addressed at the March 2018 board meeting. Dr. Maule indicated her term as a board member will end soon.

Section XII ended: 11:40 a.m.
Section XIII began: 11:41 a.m.

XIII. NEW BUSINESS:

341 Dr. Spear sought clarification of the CE Broker reporting process. Dr. Maule explained
342 that licensees may self-submit continuing education courses, but may not self-submit
343 transcript quality courses.
344

345 **Section XIII ended: 11:46 a.m.**

346 **Section XIV began: 11:47 a.m.**

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348 **XIV. NEXT MEETING DATE:**

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a. March 9, 2018

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352 **Section XIV ended: 11:47 a.m.**

353 **Section XV began: 11:47 a.m.**

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355 **XV. PUBLIC COMMENTS**

356

a. Phillip DeSantis, OD

b. Zenfira Vincent

c. Lindsay Agro

d. Kathy Perez

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362 **Section XV ended: 11:48 a.m.**

363 **Section XVI began: 11:48 a.m.**

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365 **XVI. ADJOURNMENT**

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367 **Action:** Motion to Adjourn made by Dr. Maule. Second by Dr. Kepley

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369 **Vote:** 6 yeas/ 0 opposed. Motion carried.

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371 **Section XVI ended: 11:48 a.m.**