

**FLORIDA** | Board of Optometry

**DRAFT MINUTES**

March 9, 2018

Omni Orlando Resort at Championsgate  
1500 Masters Boulevard  
Championsgate, Florida 33896

DRAFT



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, March 9, 2018, commencing at 9:00 a.m. This meeting was held at the Omni Orlando Resort at Championsgate, 1500 Masters Boulevard, Championsgate, Florida 33896 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

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

### I. CALL TO ORDER (Roll Call):

Stuart Kaplan, O.D., Chair  
Carl Spear, O.D., Vice Chair  
Tamara Maule, O.D.,  
Stephen Kepley, O.D.  
Christopher King, O.D., F.A.A.O.  
John Griffin, J.D.  
Lucille Turner, J.D.

#### **Board Staff Present:**

Dr. Anthony Spivey, DBA, Executive Director  
Gail Curry, Program Operations Administrator

#### **Board Counsel:**

Lawrence Harris, Assistant Attorney General

#### **Prosecution Services:**

Rose Garrison, Assistant General Counsel  
John Wilson, Assistant General Counsel

#### **Court Reporter:**

For the Record  
(850) 222-5491

**Section I ended: 9:02 a.m.**

**Section II began: 9:02 a.m.**

### II. APPROVAL OF MINUTES

i. November 17, 2017

39 **Action:** Motion to approve minutes made by Dr. King. Second made by Dr. Spear.  
40 **Vote:** 7 yeas/ 0 opposed. Motion carried.

41  
42 **Section II ended: 9:03 a.m.**  
43 **Section III began: 9:03 a.m.**  
44

45 **III. PETITION FOR VARIANCE OR WAIVER**

46  
47 **i. Harry Snyder**

48  
49 Neither present, nor represented by counsel. Dr. Snyder sought reconsideration of his  
50 petition to waive the TMOD exam to become a certified licensee. The board  
51 determined that he had not demonstrated he met the criteria outlined in the final order  
52 made by the board on February 17, 2017.

53  
54 **Action:** Motion to deny the reconsideration of the petition made by Mr. Griffin. Second  
55 made by Dr. Kepley.

56  
57 **Vote:** 7 yeas/ 0 opposed. Motion carried.

58  
59 **Section III ended: 9:07 a.m.**  
60 **Section IV began: 9:07 a.m.**  
61

62 **IV. PETITION FOR REVIEW**

63  
64 **i. Nova Southeastern University**

65  
66 Ms. Virginia Dailey, attorney for Nova Southeastern, requested that the board defer the  
67 petition due to current legislation awaiting approval by the governor.

68  
69 **Action:** No action required.

70  
71 **ii. Valeant (Bausch & Lomb)**

72  
73 **Action:** Motion to approve the petition requesting that Vyzulta be added to the  
74 formulary made by Dr. Spear. Second made by Dr. Kepley.

75  
76 **Vote:** 7 yeas/ 0 opposed. Motion carried.

77  
78 **Action:** Motion to open rule making for development of Chapter 64B13-18.002 to add  
79 proposed petition's language made by Dr. Spear. Second made by Dr. Kepley.

80  
81 **Vote:** 7 yeas/ 0 opposed. Motion carried.

82  
83 Board counsel asked a series of questions regarding adverse impacts on small business  
84 and whether regulatory costs would exceed two hundred thousand dollars within 1 year

85 of implementation. Dr. Kaplan indicated there would be no adverse impact or increase  
86 of costs.

87  
88 **Action:** Motion stating there would be no adverse impacts or costs made by Dr. Spear.  
89 Second made by Dr. Kepley.

90  
91 **Vote:** 7 yeas/ 0 opposed. Motion carried.

92  
93 Board counsel asked a series of questions regarding net impacts and whether regulatory  
94 costs would exceed one million dollars within 5 years of implementation. Dr. Kaplan  
95 indicated there would be no adverse impact or increase of costs.

96  
97 **Action:** Motion stating there would be no adverse impacts or costs made by Dr. Spear.  
98 Second made by Dr. Kepley.

99  
100 **Vote:** 7 yeas/ 0 opposed. Motion carried.

101  
102 Board counsel asked whether the rule would be subject to a minor violation. Minor  
103 violation means that it will not directly affect the public health, safety, or welfare and is  
104 able to be resolved with citation or notice of non-compliance. Dr. Kaplan indicated  
105 there would be no minor violations.

106  
107 **Action:** Motion stating it would not be subject to a minor violation made by Ms.  
108 Turner. Second made by Dr. Maule.

109  
110 **Vote:** 7 yeas/ 0 opposed. Motion carried.

111  
112 Board counsel advised that by statute, board staff should notify all licensees of the rule  
113 change via mail and also post an update to the board's website.

114  
115 **Section IV ended: 9:15 a.m.**  
116 **Section V began: 9:15 a.m.**

117  
118 **V. FINAL ORDER ACTION:**

119  
120 **i. Settlement Agreement**

121  
122 **a. Marc Aaron Gordon, O.P.C.**  
123 **Case No.: 2016-24136**

124  
125 Present and not represented by counsel. Ms. Garrison presented the facts of the  
126 settlement Agreement. Dr. Gordon was sworn in by the board and declined to make  
127 comment. Mr. Griffin initiated discussion with Dr. Gordon related to his offenses. Per  
128 the settlement agreement, the board imposed a \$1,000 fine to be paid within 1 year,  
129 investigative costs of 2,540.51 to be paid within 2 years of the filing of the order,  
130 and a 2 hour continuing education course in Laws/Rules within 1 year.

131 **Action:** Motion to accept the settlement agreement made by Dr. King. Second made by  
132 Dr. Maule.

133  
134 **Vote:** Dr. Kaplan-Yea; Dr. King –Yea; Dr. Kepley-Yea; Dr. Maule-Yea; Mr. Griffin-  
135 Yea; Ms. Turner-Yea; Dr. Spear - Recused

136  
137 **ii. Voluntary Relinquishment**

138  
139 **a. Mark Dobin, O.P.C.**  
140 **Case No.: 2015-21317**

141  
142 Neither present, nor represented by counsel. Mr. Wilson presented the facts of the  
143 voluntary relinquishment.

144  
145 **Action:** Motion to accept the settlement agreement of a voluntary relinquishment of his  
146 optometry license made by Dr. King. Second made by Ms. Turner.

147  
148 **Vote:** Dr. Kaplan-Yea; Dr. King –Yea; Dr. Kepley-Yea; Dr. Maule-Yea; Mr. Griffin-  
149 Yea; Ms. Turner-Yea; Dr. Spear - Recused

150  
151 **Section V ended: 9:22 a.m.**  
152 **Section VI began: 9:22 a.m.**

153  
154 **VI. RATIFICATION LIST:**

155  
156 **a. Licensure**

- 157  
158 i. Optometrist  
159 ii. Optometry Faculty

160  
161 **Action:** Motion to ratify licensees made by Mr. Griffin. Second made by Ms. Turner.

162  
163 **Vote:** 7 yeas/ 0 opposed. Motion carried.

164  
165 **b. Continuing Education**

- 166  
167 i. Providers & Courses approved by CE Chair Report

168  
169 **Action:** Motion to ratify continuing education courses made by Dr. Maule. Second made  
170 by Dr. Kepley.

171  
172 **Vote:** 7 yeas/ 0 opposed. Motion carried.

- 173  
174 ii. Providers & Courses approved by Board Staff Report

175  
176 **Action:** Motion to ratify continuing education courses made by Dr. Maule. Second made

177 by Ms. Turner.

178

179 **Vote:** 7 yeas/ 0 opposed. Motion carried.

180

181 iii. Continuing Education Committee's Recommendation

182 **Section VI ended: 9:23 a.m.**

183 **Section VII began: 9:24 a.m.**

184

185 **VII. PROSECUTION REPORT:**

186

187 Mr. Wilson presented the prosecution statistics as follows:

188

189 18 Open disciplinary cases

190 11 cases older than one year

191 5 total probable cause cases (2 of the cases mentioned in this meeting) (3 with probable  
192 cause found)

193 9 under legal review

194

195 **Action:** Motion to continue prosecution on cases older than one (1) year made by Dr.  
196 Kepley. Second by Dr. Maule.

197

198 **Vote:** 7 yeas/ 0 opposed. Motion carried.

199

200 **Section VII ended: 9:25 a.m.**

201 **Section VIII began: 9:25 a.m.**

202

203 **VIII. CHAIR/VICE CHAIR REPORT:**

204

205 Dr. Kaplan had nothing to report. Dr. Spear thanked prosecution services and welcomed  
206 new prosecuting counsel.

207

208 **Section VIII ended: 9:26 a.m.**

209 **Section IX began: 9:26 a.m.**

210

211 **IX. EXECUTIVE DIRECTOR'S REPORT:**

212

213 Dr. Spivey reminded the board of the chair/vice chair meeting that will be held on  
214 April 23, 2018.

215

216 **Section IX ended: 9:26 a.m.**

217 **Section X began: 9:26 a.m.**

218

219 **X. BOARD COUNSEL REPORT:**

220 **i. Rules Report for December 2017**

- 221           ii.     **Rules Report for January 2018**
- 222           iii.    **JAPC letter dated October 19, 2017**
- 223           iv.     **Larry response to JAPC dated December 18, 2017**
- 224           v.      **Rule 64B13-4.001**
- 225           vi.     **Rule 64B13-4.002**
- 226           vii.    **Rule 64B13-4.004**
- 227           viii.   **Rules 64B13-5.001**
- 228           ix.     **Rule conflict**
- 229           x.      **Certified Optometrist Application**

230  
231           Mr. Lawrence Harris, board counsel, indicated there were no open rules and confirmed  
232           that Chapters 64B13-4.001 and 64B13-4.004 have been modified.

233  
234           Mr. Harris informed the board of the proposed change in legislation under Chapter  
235           463.006 Florida Statutes. (House Bill 7059). A copy of the house bill was provided to the  
236           board for review. Mr. Harris requested guidance from the board related to amending and  
237           implementing the rules that are subject to the change. Mr. Harris mentioned that if  
238           legislation is signed by the governor, it will be effective immediately regardless of the  
239           rules that are currently in place. A meeting will take place shortly after the bill is signed  
240           into law to ensure more expeditious rule revisions.

241  
242           Mr. Harris provided a brief summary of what should be discussed and considered in each  
243           agenda topic. Mr. Harris explained that Rule 64B13-4.001 and Rule 64B13-4.004, F.A.C.  
244           conflict with each other based on the difference between time frames. Dr. King expressed  
245           his concerns with the re-examination requirements being opposed to the statute. Dr. Spear  
246           suggested revising the re-examination rule to limit applicants to one (1) year instead of  
247           eighteen (18) months which would match the statutory requirement for maintaining open  
248           applications. It was further addressed that the board does not have any standards in place  
249           to accept online continuing education. Mr. Harris presented drafted rule language relating  
250           to applications for online continuing education.

251  
252           Mr. Harris asked that the board review the revised application and explain the purpose of  
253           relaying foreign credentialing information. The board determined that they did not have  
254           statutory authority to request undergraduate education and did not intend to misinform  
255           those that were foreign educated.

256  
257           Mr. Harris requested that the board make a motion to open rule development in  
258           lieu of the current legislative changes.

259  
260           **Action:** Motion to open rule development for Chapters 64B13-4.001, 64B13- 4.002,  
261           64B13-4.004, F.A.C. and for creation of a universal licensure application made by Dr.  
262           Spear. Second made by Dr. Maule.

263  
264           **Vote:** 7 yeas/ 0 opposed. Motion carried.  
265           Mr. Harris asked the board if the statutes allow them to accept online continuing  
266           education courses and if so, would the board like to revise the rules to allow online credit.

267 Mr. Harris explained that most boards will only allow a certain amount of live, online  
268 credits and provided examples of the criteria for approval. Discussion ensued with all  
269 board members as they expressed their opinions and concerns related to how many live,  
270 online credit hours they would allow.

271  
272 **Action:** Motion to open rule development for Chapters 64B13-5.001 and 64B13-5.002,  
273 F.A.C. made by Ms. Turner. Second made by Dr. Kepley.

274  
275 **Vote:** 7 yeas/ 0 opposed. Motion carried.

276  
277 **Break: 10:26 – 10:35 a.m.**

278 **Section X ended: 11:23 a.m.**

279 **The board postponed Section XI and addressed section XIII**

280 **Section XI began: 11:30 a.m.**

281

282 **XI. COMMITTEE REPORTS:**

283

284 **a. Budget – Dr. Kepley**

285

286 Nothing to report.

287

288 **b. Continuing Education – Dr. Maule**

289

290 Nothing to report. Dr. Kaplan made the board aware of Dr. Maule’s end of term.

291

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

293

294 Nothing to report.

295

296 **d. Disciplinary Compliance – Dr. Kaplan**

297

298 Nothing to report.

299

300 **e. Examination – Dr. King**

301

302 Dr. King advised that our contract with NBEO is scheduled for renewal in August  
303 2018 and he is awaiting further correspondence from NBEO.

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305 **f. FOA – Dr. Kaplan**

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307 Nothing to report.

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309 **g. Healthiest Weight – Dr. King**

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311 Nothing to report.



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**h. Legislative – Dr. Kaplan**

HB7059 is in legislation.

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

Nothing to report.

**j. Probationary – Dr. Kaplan**

Nothing to report.

**k. Rules – Dr. Kaplan**

Already reported.

**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:**

Mr. Harris asked the board whether they would consider placing the applications on the next meeting agenda. Mr. Harris will be working with Dr. Spivey to determine how many (if any) limited licenses there are available. Dr. King requested research of the statutes regarding liability issues for volunteer services.

**Section XII ended: 11:41 a.m.**  
**Section XIII began: 11:23 a.m.**

**XIII. NEW BUSINESS:**

- a. Rule 456.015**
- b. Foucher 456.015**

Mr. Harris explained that Florida Statute allows for the use of retired licensees to provide services to underserved and critical need facilities. Only three other professions allow volunteer services without having to be in a retired status. Dr. Marston-Foucher addressed the board regarding her concerns related to limited licensure and the demand for volunteer services.

357 c. 64B4-3.009  
358 d. 64B5-7.007  
359 e. 64B9-11.010  
360 **Section XIII ended: 11:30 a.m.**  
361 **Section XIV began: 11:41 a.m.**

362  
363 **XIV. NEXT MEETING DATE:**

364  
365 a. June 1, 2018  
366

367 Dr. Spear informed the board of the annual ARBO (Association of Regulatory Boards  
368 of Optometry) meeting June 17-19<sup>th</sup> and suggested that at least one board member  
369 attend.

370  
371 **Section XIV ended: 11:46 a.m.**  
372 **Section XV began: 11:46 a.m.**

373  
374 **XV. PUBLIC COMMENTS**

375  
376 **Section XV ended: 11:46 a.m.**  
377 **Section XVI began: 11:46 a.m.**

378  
379 **XVI. ADJOURNMENT**

380 Meeting adjourned at 11:47 a.m.  
381