

1 The Florida Board of Optometry meeting was held on Friday, October 14, 2016, commencing at
2 9:00 a.m., or shortly thereafter. This meeting was held at Orlando Airport Marriott, 7499
3 Augusta National Drive, Orlando, Florida 32822, (407) 851-9000, to which all persons were
4 invited to attend

5
6 **AGENDA**
7

8 **General Board Business started: 9:13 a.m.**
9

10
11 **I. CALL TO ORDER (Roll Call):**

12 Dr. Stuart Kaplan called the meeting to order at 9:13.
13 Gail Curry called roll. All Board members are present.
14

15 **MEMBERS PRESENT:**

16 Stuart Kaplan, O.D., Chair
17 Tamara Maule, O.D., Vice-Chair
18 Stephen Kepley, O.D.
19 Christopher King, O.D., F.A.A.O.
20 Carl Spear, O.D.
21 John Griffin, J.D.
22

STAFF PRESENT:

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

23 **BOARD COUNSEL:**

24 Diane Guillemette, Assistant Attorney General
25 Office of Attorney General
26

27 **PROSECUTION COUNSEL:**

28 Chris Dierlam, Assistant General Counsel
29 Department of Health, Office of the General Counsel
30

31 **COURT REPORTER:**

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

35 *Please note the minutes reflect the actual order agenda items were discussed and may differ from*
36 *the agenda outline. AUDIO from this meeting can be found online: <http://floridasoptometry.gov/>*
37

38 **Section I concluded: 9:14 a.m.**

39 **Section II began: 9:14 a.m.**
40

41 **II. FINAL ORDER ACTION**
42

43 **Settlement Agreement**
44

- 45 1. Gregory M. Laskerr, O.D.
46 Petitioner was present and was represented by counsel, Heather Stuart.
47 SA-01, Case#2014-10356
48 Dr. Spears is recused for participation on Probable Cause Panel.
49

1 Diane Guillemette, Board Council, gave the terms of the settlement agreement. Dr.
2 Laskerr is required to appear before the Board, pay \$2,250 within 30 days plus costs.

3
4 Christopher Dierlam presented the case for violation of F.S. 463.016(1) (t). Probable
5 cause was found. Settlement is \$2,250 payable within 30 days of the filing date of the
6 final order, reimbursement of the costs of \$3,044.14 also payable within 30 days of the
7 filing date of the final order. Discipline guidelines allow for \$1,000 to \$5,000 per count
8 and if appropriate probation for no less than 12 months or more than 18 months. He is
9 asking the Board to accept the settlement agreement as presented.

10
11 Dr. Laskerr explained to the Board that he is changing what they do on the visual
12 acuity. He used a non-accepted form of documenting visual acuity that was greater
13 than 20/400 for the unaided visual acuity. They are changing this to a Feinbloom chart
14 for patients that are greater than 20/400. Dr. Laskerr will also change the reporting to
15 each visit instead of the last visit.

16
17 **Discussion:** A recommendation was made to be sure that his receipts show that it
18 is documented as his receipt, not the commercial establishment. This could be a
19 violation of Rule 64B13.3008(15) (a). No further discussion ensued.

20
21 **Action:** Motion to accept the settlement agreement was made by Chris King, seconded
22 by Stephen Kepley.

23 5 years/ 0 opposed, motion carried

24 Dr. Spear was recused due to being in the Probable Cause Panel

25
26 Diane Guillemette asked what the cost was at this time. Cost is capped at \$3,044.14
27 pursuant to settlement agreement.

28
29 2. Jack Mazlin, O.D.

30 Petitioner was present and was not represented by counsel.

31 SA-02, Case# 2015-12084

32
33 Dr. Spear is recused due to being on the Probable Cause Panel.

34 Dr. Mazlin said he understands the charges and agrees to the settlement.

35
36 Chris Dierlam, Prosecuting Counsel, gave the terms of the settlement agreement and
37 violations. A complaint was filed against Dr. Mazlin for numerous deficiencies in the
38 care that the respondent provided to the patient. Settlement agreement includes a fine
39 of \$4,250 within 30 days of the filing of the order. Costs are capped at \$882.55
40 payable within 30 days of filing of settlement agreement.

41
42 **Discussion:** After hearing the case, the board had no further questions.

43
44 **Action:** Motion to accept the settlement agreement was made by Chris King, seconded
45 by Tamara Maule.

46 5 years/ 0 opposed, motion carried

47
48 Mr. Griffin has some concerns, going forward, that the doctors should not be given a

1 way to buy themselves out of the offenses. Something the Board has done in the past
2 might need to be looked at; maybe something better than a fine for
3 patient care and record keeping violations.
4

5 Dr. Kaplan explained that the Board will work with Prosecution Services to address the
6 need for not allowing a doctor to pay out in the future.
7

8 **Section II concluded: 9:30 a.m.**
9 **Section VII began: 9:30 a.m.**

10
11 **VII. PROSECUTION REPORT: (Taken out of order)**

12 Chris Dierlam gave the prosecution report.
13 There are 22 open cases.
14 13 cases are under legal review.
15 3 cases have Probable Cause recommendations.
16 4 cases have had Probable Cause found. That will now be down to 2 with the resolution of
17 the 2 cases today.
18 15 cases are older than a year, with that number being reduced by 2 with the resolution of
19 the 2 cases today.
20

21 Mr. Griffin asked the prosecutor to describe the process followed by the Department in
22 referring an administrative complaint to the Division of Administrative Hearings (DOAH)
23 for a hearing. Prosecutor Chris Dierlam described the process.
24

25 **Section VII concluded: 9:50 a.m.**
26 **Section III began: 9:50 a.m.**

27
28 **III. MINUTES – August 19, 2016 (Draft Minutes)**
29 **May 13, 2016 (Draft Minutes)**

30
31 Minutes of the August 19, 2016 General Business Meeting were reviewed.
32 The following corrections were noted:
33
34 John Griffin - Page 2, line 35, should reflect “from participating and voting.”
35 John Griffin - Page 2, line 41, should reflect “from participating and voting.”
36 John Griffin - Page 3, line 29, should reflect Part 4 of Florida Licensure exam, not
37 NBEO.
38 John Griffin - Page 3, line 39-40 should reflect the statutory reference
39 John Griffin - Page 4, line 12-14, should reflect the statutory reference
40 John Griffin - Page 4, line 19 should reflect Rule 64B13-3.007
41 Dr. Maule - Page 5, line 19 should reflect REED
42 John Griffin - Page 5, line 20-21, should reflect “of the information” only 1 time.
43 Dr. Spear - Page 3, line 40, should reflect Spear not Spears.
44

45 Dr. Spear wanted to have the point made that when denying a waiver we should be sure
46 to document in the minutes that the applicant was licensed in another state. There is
47 Statutory Authority for Reciprocity but no agreement.
48

49 **Action:** Motion to accept the minutes as amended was made by Dr. Spear. Second by

1 Mr. Griffin.
2 6 yeas/ 0 opposed, motion carried

3
4 Minutes of the May 13, 2016 General Business Meeting were reviewed.
5 The following corrections to the minutes:

6
7 Page 3, line 4-12, should reflect “ He failed to show a hardship or unfairness to take part
8 1 and 3 of NBEO but did demonstrate that it would be unfair of the Board to ask him to
9 re-take part 2.”

10
11 **Action:** Motion to accept the minutes as amended was made by Dr. Kepley. Second by
12 Dr. Maule.
13 6 yeas/ 0 opposed, motion carried

14
15 **Section III concluded: 9:50 a.m.**

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

17
18
19 **IV. PETITIONS:**

20
21 **Application with Petition**

22
23 **1. William Monaco, O.D.**

24 Petitioner was not present and was not represented by counsel.

25
26 Asking for waiver/variance of Rule 64B13-4.001, F.A.C.

27
28 **Discussion:** He has not made a case for unfairness or hardship. There is some
29 concern about what the type of work Dr. Monaco will be performing in Florida. Dr.
30 Monaco hasn't given enough information to make that determination. Can the
31 application be tolled until the next meeting? The application can be tolled but not
32 the petition.

33
34 **Action:** Motion to deny the petition because the Board had no statutory authority
35 to grant licensure by endorsement and the petitioner has not shown substantial
36 hardship or that it violates the principles of fairness was made by Stephen
37 Kepley. Second by Tamara Maule

38 Dr. Spears was recused due to his personal relationship and historical working
39 relationship with the petitioner.

40
41 5 yeas/ 0 opposed, motion carried

42
43 **Application:** Should be denied for failure to provide NBEO exam.
44 Carl Spear was recused due to his personal relationship and historical working
45 relationship with the petitioner.

46
47 **Action:** Motion to deny for failure to provide NBEO score that were taken
48 within 7 years was made by Dr. King. Second by Dr. Kepley.
49 5 yeas/ 0 opposed, motion carried

1 **Section IV concluded: 10:08 a.m.**

2 **Section V began: 10:08 a.m.**

3
4 **V. CONTINUING EDUCATION**
5 **Dr. Maule**

- 6
7 i. Continuing Education Courses approved by CE Committee Chair.

8
9 **Action:** Motion to approve Continuing Education Courses was made by Dr. Spear.
10 Second by Dr. Kepley.
11 6 yeas/ 0 opposed, motion carried

- 12
13 ii. Continuing Education Committee's Recommendation

14
15 **Discussion:** There is some discussion to see if the doctor is approved to present the
16 course. This has come up before. In February the course was approved based on the
17 primary lecturer having demonstrated competence in Florida law. That course is now
18 seeking approval with a different, less qualified lecturer. Dr. King asked what
19 demonstrates competence? Ms. Gullimette gave the board rule that covers the
20 competencies. Rule 64B13.5002(7)F.A.C. Dr. Maule said that the presenter has to have
21 a level of knowledge of Florida Laws and Rules and what goes on in a Board meeting.

22
23 **Action:** Motion to deny this course was based on the instructor's failure to demonstrate
24 competency in Florida Law based on credentials, education and experience presented in
25 her CD, was made by Dr.Maule. Second by Dr. Kepley.
26 6 yeas/ 0 opposed, motion carried

27
28 Dr. Kepley would like to see some rulemaking in this area.
29 Ms. Guillemette will put this under Rules for the next agenda.

- 30
31 iii. Report of Continuing Education Providers & Courses approved by Board Staff

32
33 **Action:** Motion to approve Continuing Education Courses was made by Dr. Spear.
34 Second by Dr. Kepley.
35 6 yeas/ 0 opposed, motion carried

36
37 **Section V concluded: 10:30: a.m.**

38
39 **BREAK**

40
41 **Section VI began: 10:40 a.m.**

42
43
44 **VI. RATIFICATION LIST:**

- 45
46 a. Licensure

47 **Action:** Motion to approve all licenses based on the applicants having meant all
48 requirements for licensure was made by Dr.Spear.
49 Second by Dr. Kepley.

1 b. Faculty Ratification List
2

3 **Action:** Motion to approve all Faculty licensure based on the applicants having
4 met all requirements for Facility Licensure was made by Dr.King.

5 Second by Mr. Griffin.

6 6 yeas/ 0 opposed, motion carried
7

8 **Section VI concluded: 10:45 a.m.**

9 **Section VIII began: 10:45 a.m.**
10

11 **VIII. CHAIR/VICE CHAIR REPORT:**
12

13 a. Healthy Weight – Dr. Kaplan

14 Discussion: Dr.Kaplan wanted to know if the Board wanted to add Healthy Weight for
15 CE. Think about this and it will be discussed at the next meeting.
16

17 b. License Fee – Dr. Kaplan

18 Some Boards are collecting more fees than they are using. If there is more money in
19 the account then there can be a cash sweep to use it in other areas. Dr. Spivey will
20 work with Budget to get more information.
21

22 Dr. Maule gave some interesting things she learned in the Chair/Vice Chair meeting in
23 Tallahassee. Medical Errors and HIV are no longer a requirement for initial licensure
24 because you get the education in school. You do need to have Medical Errors as part
25 of your renewal.
26

27 Dr. Kaplan added that possibly looking at rule development for the amount of CE
28 required for renewal. Maybe adding 2 hours of TQ or Webinars and adding some
29 other things that have been discussed in the past. Diane Guillemette referenced statute
30 463.07 which would allow up to 30 hours. So you could reference how those would be
31 done but not change the number of hours.
32

33 Dr. Maule continued her discussion on the Chair/Vice Chair meeting and talked about
34 the section that Ed Tellechea gave on Quasi-Judicial and Quasi Legislative. See if this
35 can be provided to all new Board Members. Maybe use a power point. Diane
36 Guillemette will get a copy of this information for the next Board meeting.
37

38 There was also some discussion that all Boards need to have a rule to address theFair
39 time limit for everyone to speak. Our Board has a rule in place already. It is 3 minutes.
40

41 **Section VIII concluded: 10:52 a.m.**

42 **Section IX began: 10:52 a.m.**
43

44 **IX. EXECUTIVE DIRECTOR'S REPORT**
45

46 Dr. Spivey addressed the use of Skype for a Board meeting as it was suggested by Dr.
47 Kaplan. Dr. Spivey explained that the meeting must be able to give access to everyone.
48 This could be hundreds of thousands of people because it is a public meeting. The use of
49 skype would not possible.
50

51 **Section IX concluded: 10:53 a.m.**

1 **Section X began: 10:53 a.m.**

2
3 **X. BOARD COUNSEL REPORT**

4
5 a. Rules Report September 2016

6
7 b. Rules Report October 2016

8 Applications are still outstanding, 64B13-4.004, F.A.C. and 64B13-10.001, F.A.C.
9 JAPC letter was addressed at the last meeting. JAPC letter regarding rule 64B13-
10 10.00, F.A.C. sets the examination fees at \$250.00, this was when the Department
11 gave the exam. Latest application doesn't require a fee since they now pay the NEBO
12 directly. JAPC says that the rule says that have to pay a fee and it isn't on the
13 application now. Ms. Guillemette will address the language being changed in the
14 Legislative package. Ms. Guillemette has sent the letter to JAPC. There might be a
15 letter of objection filed by JAPC concerning the fee. Should be able to file Notice of
16 Change to the application and get this moving again.

17
18 Formulary rule – Should be adopted November 7. The rule should go into effect
19 January 6, 2017.

20
21 c. Memo (bates 333)

22 New 456.072 possible violations have been added. Board should look at their
23 disciplinary guideline and see if this needs to be added. Disciplinary guidelines might
24 need to be made into a matrix. OFAR is asking that the Boards reduce the Rules again.
25 We could reduce the Rules by doing this. Diane will give examples of matrixes used
26 in other Board offices. Dr. King will assist Ms. Guillemette with the matrix.

27
28 **Section X concluded: 11:06 a.m.**

29 **Section XI began: 11:06 a.m.**

30
31 **XI. LITIGATION REPORT**

32 Ms. Guillemette talked about DOAH hearing for Whittman and Yontz cases. She
33 believes the petitioner must challenge an existing rule. She also believes that both of
34 these cases meet that requirement. Looking at these two cases she thinks they need to be
35 consolidated into one. Ms. Guillemette would like to call Dr. Kaplan and Mr. Griffin as
36 witnesses. This would then allow only one day for testimony. Mr. Griffin asked if this
37 was an "In the Shade Meeting." Could this be published as an In The Shade Meeting? It
38 could be but this would slow down the process. The request for a DOAH hearing from
39 Yontz requests attorney fees. Mr. Griffin has concerns to the two Board members that
40 would be witnesses would have to recuse themselves. Diane gave statute for the
41 provision. There would still be a quorum to vote. This could be a Recommended Order
42 not a Final Order on its findings on this rule. Mr. Griffin asked whether the subjects
43 being raised by Board Counsel should be more properly discussed by the Board in a
44 litigation shade meeting. He would not agree to consolidate. Ms. Guillemette suggested
45 that if this is what the Board wants to do it needs to be as soon as possible. Board was in
46 agreement. Dr. Spivey will set up the In The Shade Meeting as soon as possible.

47
48 **Section XI concluded: 11:26 a.m.**

49 **Section XII began: 11:26 a.m.**

50

1 **XII. COMMITTEE REPORTS**

- 2
- 3 a. Budget – Dr. Kepley
4 No report at this time.
5
- 6 b. Continuing Education – Dr. Maule
7 Dr. Spear wants to know what their relationship is with ARBO. What is our policy on
8 attendance at their meetings? Dr. King said there is a lot going on and he does receive
9 the Newsletter. Dr. Spear asked Dr. Spivey if he can send someone to the ARBO
10 meetings. Dr. Maule will attend the ARBO meetings.
11
- 12 c. Complaints, Investigation, and Enforcement Liaison – Dr. Kaplan
13 No report at this time.
14
- 15 d. Disciplinary Compliance – Dr. Kaplan
16 No report at this time.
17
- 18 e. Examination – Dr. King
19 NBEO is requesting to see if there is some way to help students view the rules better?
20 Ms. Guillemette understands the concern but stated that there is no way the Florida
21 Administrative Registry is going to change their website.
22
- 23 f. FOA – Dr. Kaplan
24 Dr. Kaplan went to the RBD meeting and brought up the lifitegrast and that
25 optometrists are not writing prescriptions until it goes into effect. He showed diagram
26 to show why it takes so long.
27
- 28 g. Healthiest Weight – Dr. King
29 Dr, King talked about the Florida Park Service Jr. Ranger Activity Program and
30 started this great program. You can contact Robert Barret at
31 Robert.Barrett@DEP.state.fl.us for further information.
32
- 33 h. Legislative – Dr. Kaplan
34 No report at this time.
35
- 36 i. Probable Cause - Dr. Spear
37 Nothing further from what was presented this morning.
38
- 39 j. Probationary – Dr. Kaplan
40 No report at this time.
41
- 42 k. Rules – Dr. Kaplan
43 No report at this time.
44
- 45 l. Unlicensed Activity – Dr. Maule
46 Dr. Maule said they are really starting to work harder to get reports for ULA.
47 Increasing the number of investigators by 50% over last years. The number of
48 complaints and cease and deacease has increased dramatically over the last few years.
49 They do want additional eyes and ears in the communities. There are local regions for

1 reporting. Dr. Maule will share with the Board and FOA when she gets all the
2 information together. A new portal is set up that will be easier to file complaints.

3
4 Dr. Kaplan gave a reminder that if you do not renew on time and go to work the day
5 after the deadline you will be working without a license and this is a misdemeanor
6 charge.

7
8 **Section XII concluded: 11:40 a.m.**

9 **Section XIII began: 11:40 a.m.**

10
11 **XIII. OLD BUSINESS**

12 Dr. King followed up from the last meeting where it was discussed that the NBEO was
13 giving misinformation on the state licensing procedures. Dr. King did contact Jack Terry
14 at the NBEO. Dr. Terry said that NBEO doesn't give that kind of information and he
15 assured Dr. King that he would follow up with his staff to be sure that isn't happening.

16
17 **Section IV concluded: 11:41 a.m.**

18 **Section XIV began: 11:41 a.m.**

19
20 **XIV. NEW BUSINESS**

21
22 a. Board Meeting via Skype
23 Was already discussed in the Executive Director's report.

24
25 Voting on Chair/Vice Chair for next year should be voted on. This will be put on the
26 next agenda.

27
28 **Section XIV concluded: 11:42 a.m.**

29 **Section XV began: 11:42 a.m.**

30
31 **XV. NEXT MEETING DATE**

32
33 February 17, 2017 Orlando

34
35 **Section XIV concluded: 11:43 a.m.**

36 **Section XV began: 11:43 a.m.**

37
38 **XVI. ADJOURNMENT**

39
40 **Action:** Motion to adjourn the Board meeting was made by Dr. Kaplan.
41 Second by Dr. Maule.
42 6 yeas/ 0 opposed, motion carried

43
44 **Meeting was adjourned at 11:44 a.m.**