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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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45  
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 Mr. 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 I am asking you to consider is a model whereby currently Dr.  
99 Sid Stern owns access to a network that he provides insurance process and payments  
100 to on behalf of other payers. He is looking to retire and as such he has a son who may  
101 wish to take over in his role. Would this be a violation of the Practice Act? Mr.  
102 Lawson believes a non-physician would not be in violation.

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

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 Continuing Education Committee's Recommendation 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 of the law as it relates to the Board's law and rules. This seems to be a complaint against a doctor 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 was made by Dr. Maule. Second by Mr. Griffin. 7 yeas / 0 opposed; motion carried.

**Section VIII concluded: 11:25 a.m.**

**Section IX began: 11:25a.m.**

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

279

280 a. ARBO Meeting

281

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

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

285

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

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

288

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

290

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

293

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

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

296

297 **XIII. BOARD COUNSEL REPORT:**

298

299 i. Rules Report for June 2017

300

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

307

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

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

310

311 **VI. PETITIONS**

312

313 i. **Variance/Waiver**

314

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

316

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

321

322 Mr. Harris explained that if the Board were to grant the Petition for Waiver of  
323 the requirement for this particular applicant, with her particular facts and  
324 circumstances, if the Board were to waive part I, II, and III. She would have to take  
325

326 part IV. The Board has the ability to condition a Variance or Waiver or modify it.  
327 There are several ways the Board could address the Variance or Waiver. The first  
328 option would be for the Board could grant the Variance or Waiver today and give her the  
329 license finding that she has achieved the purpose of the underlying statute by other means  
330 and has a hardship. The second, the Board could grant a Variance or Waiver in part by  
331 saying you will accept Part I, III and IV, but require her to take the TMOD. The third  
332 option would be in lieu for the TOMD accept her taking the Ocular Pharmaceutical  
333 Examination, which would comply with the Statutory terms. Keep in mind this is not the  
334 certification exam. The TMOD is the certification exam. The fourth option is to deny the  
335 Variance or Waiver and the application. The fifth option would be to offer her a settlement  
336 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 pass,  
342 the 20 hour online Ocular Pharmaceutical course was made by Dr. Spear. Second by Dr.  
343 King.

344  
345 Dr. Flores will need to drop the Settlement agreement  
346

347 **ACTION:** Amend the motion to read, The Board is offering to settle all pending ligation.  
348 The settlement offer is that the Board will issue the license upon passage of part of the  
349 Ocular Pharmaceutical examination. In return Dr. Flores will withdraw the pending rule  
350 challenge and all litigation associated with that. This settlement offer is good for 20  
351 minutes from now. If the offer is rejected the Board will come back and consider the  
352 Variance and Waiver Petition indepently. Dr. Flores will bear her own attorney fees was  
353 made by Dr. Spear. Second by Dr. King. 7 yeas / 0 opposed; motion carried.  
354

355 Dr. Griffin made the comment that anyone coming before the Board seeking licensure will  
356 need to take Clinical examination and the Ocular Pharmaceutical examination  
357 subsequent licensure.  
358

359 The Board gave Dr. Flores and her attorney 35 minutes. 12:15, to make a discussion before  
360 the Board.  
361

362 **Section V concluded: 12:40 p.m.**  
363 **Section XII began: 12:40 p.m.**  
364

365 **XV. COMMITTEE REPORTS:**  
366

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

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 contract before it is executed. Ms.  
391 Rodgers has been in touch with the contract department to have Dr. King and Dr.  
392 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 violation of the Corporate Practice of the Optometry Act and the  
400 two-year contact lens prescription rule.

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  
420 **Section V concluded: 1:02 p.m.**  
421 **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  
443 **TAKEN OUT OF ORDER**

- 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.

454 Mr. Harris asked Dr. Flores if she would accept the settlement agreement set forth by the  
455 Board. Dr. Flores accepted the terms of the settlement agreement.

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

- 459  
460 **V. PROPOSED RULE DEVELOPMENT**

- 461  
462 **i. Letter from Virginia Dailey, J.D.**

- 463  
464 **ii. 64B13-4.001, FAC**

465 iii. 64B13- 4.004, FAC

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

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

474  
475 v. 64B13-4.001. FAC

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

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

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

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

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

501  
502 **V. ADJOURNMENT**

503  
504 **The meeting was adjourned at 2:55 p.m.**  
505