

FLORIDA | Board of Optometry

OFFICIAL MINUTES

March 9, 2018

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



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:

American Court Reporting
(407)-896-1813

Section I ended: 9:02 a.m.

Section II began: 9:02 a.m.

II. APPROVAL OF MINUTES

i. November 17, 2017

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

Section II ended: 9:03 a.m.

Section III began: 9:03 a.m.

III. PETITION FOR VARIANCE OR WAIVER

i. Harry Snyder

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

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

Vote: 7 yeas/ 0 opposed. Motion carried.

Section III ended: 9:07 a.m.

Section IV began: 9:07 a.m.

IV. PETITION FOR REVIEW

i. Nova Southeastern University

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

Action: No action required.

ii. Valeant (Bausch & Lomb)

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

Vote: 7 yeas/ 0 opposed. Motion carried.

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

Vote: 7 yeas/ 0 opposed. Motion carried.

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

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

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

Vote: 7 yeas/ 0 opposed. Motion carried.

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

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

Vote: 7 yeas/ 0 opposed. Motion carried.

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

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

Vote: 7 yeas/ 0 opposed. Motion carried.

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

Section IV ended: 9:15 a.m.

Section V began: 9:15 a.m.

V. FINAL ORDER ACTION:

i. Settlement Agreement

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

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

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

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

ii. Voluntary Relinquishment

a. Mark Dobin, O.P.C. Case No.: 2015-21317

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

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

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

Section V ended: 9:22 a.m.
Section VI began: 9:22 a.m.

VI. RATIFICATION LIST:

a. Licensure

- i. Optometrist
- ii. Optometry Faculty

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

Vote: 7 yeas/ 0 opposed. Motion carried.

b. Continuing Education

- i. Providers & Courses approved by CE Chair Report

Action: Motion to ratify continuing education courses made by Dr. Maule. Second made by Dr. Kepley.

Vote: 7 yeas/ 0 opposed. Motion carried.

- ii. Providers & Courses approved by Board Staff Report

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

by Ms. Turner.

Vote: 7 yeas/ 0 opposed. Motion carried.

iii. Continuing Education Committee's Recommendation

Section VI ended: 9:23 a.m.

Section VII began: 9:24 a.m.

VII. PROSECUTION REPORT:

Mr. Wilson presented the prosecution statistics as follows:

18 Open disciplinary cases

11 cases older than one year

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

9 under legal review

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

Vote: 7 yeas/ 0 opposed. Motion carried.

Section VII ended: 9:25 a.m.

Section VIII began: 9:25 a.m.

VIII. CHAIR/VICE CHAIR REPORT:

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

Section VIII ended: 9:26 a.m.

Section IX began: 9:26 a.m.

IX. EXECUTIVE DIRECTOR'S REPORT:

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

Section IX ended: 9:26 a.m.

Section X began: 9:26 a.m.

X. BOARD COUNSEL REPORT:

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

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

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

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

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

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

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

Vote: 7 yeas/ 0 opposed. Motion carried.

Mr. Harris asked the board if the statutes allow them to accept online continuing

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

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

Vote: 7 yeas/ 0 opposed. Motion carried.

Break: 10:26 – 10:35 a.m.

Section X ended: 11:23 a.m.

The board postponed Section XI and addressed section XIII

Section XI began: 11:30 a.m.

XI. COMMITTEE REPORTS:

a. Budget – Dr. Kepley

Nothing to report.

b. Continuing Education – Dr. Maule

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

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

Nothing to report.

d. Disciplinary Compliance – Dr. Kaplan

Nothing to report.

e. Examination – Dr. King

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

f. FOA – Dr. Kaplan

Nothing to report.

g. Healthiest Weight – Dr. King

Nothing to report.

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.

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358 **c. 64B4-3.009**
359 **d. 64B5-7.007**
360 **e. 64B9-11.010**

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362 **Section XIII ended: 11:30 a.m.**
363 **Section XIV began: 11:41 a.m.**

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365 **XIV. NEXT MEETING DATE:**

- 366
367 a. June 1, 2018
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369 Dr. Spear informed the board of the annual ARBO (Association of Regulatory Boards
370 of Optometry) meeting June 17-19th and suggested that at least one board member
371 attend.

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373 **Section XIV ended: 11:46 a.m.**
374 **Section XV began: 11:46 a.m.**

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376 **XV. PUBLIC COMMENTS**

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378 **Section XV ended: 11:46 a.m.**
379 **Section XVI began: 11:46 a.m.**

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381 **XVI. ADJOURNMENT**

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383 Meeting adjourned at 11:47 a.m.