

FLORIDA | Board of Optometry

DRAFT 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

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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**

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

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

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

185

186 **VII. PROSECUTION REPORT:**

187

188 Mr. Wilson presented the prosecution statistics as follows:

189

190 18 Open disciplinary cases

191 11 cases older than one year

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

194 9 under legal review

195

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

198

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

200

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

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

203

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

205

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

208

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

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

211

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

213

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

216

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

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

219

220 **X. BOARD COUNSEL REPORT:**

- 221 i. **Rules Report for December 2017**
- 222 ii. **Rules Report for January 2018**
- 223 iii. **JAPC letter dated October 19, 2017**
- 224 iv. **Larry response to JAPC dated December 18, 2017**
- 225 v. **Rule 64B13-4.001**
- 226 vi. **Rule 64B13-4.002**
- 227 vii. **Rule 64B13-4.004**
- 228 viii. **Rules 64B13-5.001**
- 229 ix. **Rule conflict**
- 230 x. **Certified Optometrist Application**
- 231

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

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

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

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

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

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

264
265 **Vote:** 7 yeas/ 0 opposed. Motion carried.

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

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

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

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

277
278 **Break: 10:26 – 10:35 a.m.**
279 **Section X ended: 11:23 a.m.**
280 **The board postponed Section XI and addressed section XIII**
281 **Section XI began: 11:30 a.m.**

282
283 **XI. COMMITTEE REPORTS:**

284
285 **a. Budget – Dr. Kepley**

286
287 Nothing to report.

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

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

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

294
295 Nothing to report.

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

298
299 Nothing to report.

300
301 **e. Examination – Dr. King**

302
303 Dr. King advised that our contract with NBEO is scheduled for renewal in August
304 2018 and he is awaiting further correspondence from NBEO.

305
306 **f. FOA – Dr. Kaplan**

307
308 Nothing to report.

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

311

312 Nothing to report.

313

314 **h. Legislative – Dr. Kaplan**

315

316 HB7059 is in legislation.

317

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

319

320 Nothing to report.

321

322 **j. Probationary – Dr. Kaplan**

323

324 Nothing to report.

325

326 **k. Rules – Dr. Kaplan**

327

328 Already reported.

329

330 **l. Unlicensed Activity – Dr. Maule**

331

332 Nothing to report.

333

334 **Section XI ended 11:39 a.m.**

335 **Section XII began: 11:39 a.m.**

336

337 **XII. OLD BUSINESS:**

338

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

343

344 **Section XII ended: 11:41 a.m.**

345 **Section XIII began: 11:23 a.m.**

346

347 **XIII. NEW BUSINESS:**

348

349 **a. Rule 456.015**

350 **b. Foucher 456.015**

351

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

357
358 **c. 64B4-3.009**
359 **d. 64B5-7.007**
360 **e. 64B9-11.010**

361
362 **Section XIII ended: 11:30 a.m.**
363 **Section XIV began: 11:41 a.m.**

364
365 **XIV. NEXT MEETING DATE:**

366 a. June 1, 2018

367
368
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.

372
373 **Section XIV ended: 11:46 a.m.**
374 **Section XV began: 11:46 a.m.**

375
376 **XV. PUBLIC COMMENTS**

377
378 **Section XV ended: 11:46 a.m.**
379 **Section XVI began: 11:46 a.m.**

380
381 **XVI. ADJOURNMENT**

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383 Meeting adjourned at 11:47 a.m.