

**FLORIDA** | Board of Optometry

**OFFICIAL MINUTES**

September 28, 2018

Embassy Suites  
4955 Kyngs Heath Road  
Kissimmee, Florida 34746



Stuart Kaplan, O.D., *Chair*  
Christopher King, O.D., *Vice-Chair*  
Anthony Spivey, DBA, *Executive Director*

The Florida Board of Optometry held a meeting on Friday, September 28, 2018, at 9:00 a.m. This meeting was held at the Embassy Suites, 4955 Kyngs Heath Road, Kissimmee, Florida 34746 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.**

1 **I. CALL TO ORDER (Roll Call):**

- 2  
3 Stuart Kaplan, O.D., Chair  
4 Christopher King, O.D., FAAO (Vice-Chair)  
5 Katie Spear, O.D.  
6 David Rouse, O.D.,  
7 Stephen Kepley, O.D.  
8 John Griffin, J.D.  
9 Lucille Turner, J.D.

10  
11 **Board Staff Present:**

- 12  
13 Dr. Anthony Spivey, DBA, Executive Director  
14 Ms. Gail Curry, Program Operations Administrator

15  
16 **Board Counsel:**

- 17  
18 Lawrence Harris, Assistant Attorney General

19  
20 **Prosecution Services:**

- 21  
22 John Wilson, Assistant General Counsel

23  
24 **Court Reporter:**

- 25  
26 American Court Reporting  
27 (407)-896-1813

28  
29 **Section I ended: 9:02 a.m.**

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

31  
32 **II. APPROVAL OF MINUTES**

- 33  
34 **i. July 16, 2018**  
35 **ii. June 22, 2018**  
36 **iii. March 9, 2018**

37  
38 **Action:** Motion to approve the meeting minutes made by Dr. King. Second made by Ms.  
39 Turner.

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. FINAL ORDER**

46

47 **i. Voluntary Relinquishment**

48 **Sherril L. Butler, O.D. Case No.: 2018-13755**

49

50 **Action:** Motion to approve the voluntary relinquishment of the license made by Dr.  
51 King. Second made by Dr. Kepley.

52

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

54

55 **Section III ended: 9:05 a.m.**

56 **Section IV began: 9:05 a.m.**

57

58 **IV. PROSECUTION REPORT**

59

60 Mr. John Wilson, Assistant General Counsel provided statistics regarding the  
61 prosecutions currently open in the Department.

62

63 Total cases: 20

64 Under legal review: 9

65 Awaiting probable cause determination: 7

66 Probable cause found: 3

67 Cases older than 1 year continued for prosecution: 13

68

69 **Action:** Motion to continue prosecution of cases older than one year made by Dr. Kepley.  
70 Second made by Dr. Rouse.

71

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

73

74 **Section IV ended: 9:11 a.m.**

75 **Section V began: 9:11 a.m.**

76

77 **V. PETITION FOR WAIVER/VARIANCE**

78

79 **i. Carolina Betancurt, O.D.**

80

81 Dr. Betancurt was present and represented by counsel, Paul Drake, Esq. Mr. Drake  
82 presented Dr. Betancurt's credentials and petition for variance or waiver of Florida  
83 Administrative Code 64B13-4.004(2); Manner of Application; Approved Schools and  
84 Colleges. Discussion ensued amongst board members. Mr. Lawrence Harris, Assistant  
85 Attorney General provided an overview on the difference between the statutes as opposed  
86 to the rules. Florida Statute 463.006 defines accredited schools and colleges of optometry  
87 as well as FAC 64B13-4.004(2). The board discussed the requirements of the National  
88 Board of Examiners of Optometry (NBEO) which require an applicant for testing to be a  
89 student or a graduate of an accredited school or college of optometry. Mr. Harris  
90 provided clarification that the board may waive the school approval portion of the rule for

91 her to sit for the NBEO examination. This waiver would not address the issue created by  
92 FS 463.006 and therefore would not lead to applicant's licensure in Florida unless the  
93 statute is amended.

94  
95 **Action:** Motion to grant the petition solely for the purpose of determining whether Dr.  
96 Betancurt's college constitutes an approved college so that she may sit for the NBEO  
97 examination made by Dr. Spear. Second made by Dr. King.

98  
99 **Vote:** 7 yeas/ 0 opposed. Motion carried.

100  
101 **Section V ended: 9:52 a.m.**

102 **Section VI began: 9:52 a.m.**

103  
104 **VI. APPLICATIONS FOR REVIEW**

105  
106 **i. Deborah Jessurun**

107  
108 Not present, nor represented by counsel.

109  
110 **Action:** Motion to approve the application made by Mr. Griffin. Second made by Dr.  
111 Rouse.

112  
113 **Vote:** 7 yeas/ 0 opposed. Motion carried.

114  
115 **Section VI ended: 9:54 a.m.**

116 **Section VII began: 9:54 a.m.**

117  
118 **VII. REQUEST FOR ADDITIONS TO TOPA FORMULARY**

119  
120 **i. Sun Pharmaceuticals (Cequa)**

121  
122 **Action:** Motion to approve the addition of Cequa; Cyclosporine 0.09% to the Florida  
123 Administrative Code 64B13-18-.002 (subsection 9- add H) made by Dr. Rouse. Second  
124 made by Dr. Kepley.

125  
126 **Vote:** 7 yeas/ 0 opposed. Motion carried.

127  
128 Mr. Harris asked whether the proposed rules would have adverse impacts on small  
129 business and whether regulatory costs would exceed two hundred thousand dollars within  
130 one year of implementation. The board agreed there would be no adverse impact or  
131 increase of costs.

132  
133 Mr. Harris asked whether the proposed rules would have adverse impacts on small  
134 business and whether regulatory costs would exceed one million dollars within five years  
135 of implementation. The board agreed there would be no adverse impact or increase of  
136 costs.

137  
138 Mr. Harris asked whether the proposed rules would be subject to a minor violation. Minor  
139 violation means that it will not directly affect the public health, safety, or welfare and is  
140 able to be resolved with citation or notice of non-compliance. The board agreed there  
141 would be no minor violations.

142 **Action:** Motion to approve the board’s response made by Dr. Kepley. Second made by  
143 Dr. Spear.

144  
145 **Vote:** 7 yeas/ 0 opposed. Motion carried.

146  
147 Mr. Harris explained the process of changing the rule and advised he would research the  
148 most efficient options for the change.

149  
150 **Action:** Motion to authorize Mr. Harris to file a notice of change made by Dr. Kepley.  
151 Second made by Ms. Turner.

152  
153 **Vote:** 7 yeas/ 0 opposed. Motion carried.

154  
155 **ii. Sun Pharmaceuticals (Xelpros)**

156  
157 **Action:** No action required. Xelpros is already in the formulary and there are no  
158 differences in ingredients or dosage.

159  
160 **Section VII ended: 10:05 a.m.**  
161 **Section VIII began: 10:05 a.m.**

162  
163 **VIII. RATIFICATION LIST:**

164  
165 **a. Licensure**

166  
167 **i. Optometrist**

168  
169 **Action:** Motion to ratify the approval of licensees made by Ms. Turner. Second  
170 made by Dr. Spear.

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

173  
174 **b. Continuing Education**

175  
176 **i. Report of Continuing Education Providers & Courses approved by Board**  
177 **Staff**

178  
179 **Action:** Motion to ratify the approval of courses made by Dr. Rouse. Second made by  
180 Ms. Turner.

181  
182 **Vote:** 7 yeas/ 0 opposed. Motion carried.

183  
184 **ii. Report of Continuing Education Providers & Courses approved by CE**  
185 **Committee**

186  
187 **Action:** Motion to ratify the approval of courses made by Dr. Spear. Second made by Mr.  
188 Griffin.

189  
190 **Vote:** 7 yeas/ 0 opposed. Motion carried.

191  
192 **Section VIII ended: 10:06 a.m.**

193 **Section IX began: 10:06 a.m.**

194

195 **IX. CHAIR/VICE CHAIR REPORT:**

196

197 Nothing to Report

198

199 **Section IX ended: 10:07 a.m.**

199

200 **Section X began: 10:07 a.m.**

200

201

202 **X. EXECUTIVE DIRECTOR'S REPORT:**

203

204 Dr. Spivey provided information of the upcoming annual meeting and advised that the  
205 meeting will be more interactive for Chairs and Vice Chair participation. The licensure  
206 application was addressed as well as the health history questionnaire in the application.

207

208 **i. Spotlight on ULA**

209

210 Dr. Spivey advised of the quarterly publications made by the department to combat  
211 unlicensed activity. Mr. Sidronio Casas, Department Liaison for unlicensed activity  
212 presented information about the current statewide operations.

213

214 **Section X ended: 10:12 a.m.**

214

215 **Section XI began: 10:12 a.m.**

215

216

217 **XI. BOARD COUNSEL REPORT:**

218

219 **i. September Rules Report**

220 **ii. Application Fees/Non-refundable**

220

221

222 The board agreed that all application fees are non-refundable.

223

224 **iii. 64B13-5.001 – Discussion and Possible Action**

224

225

226 Mr. Harris discussed House Bill 21 and standardized language drafted by the Joint  
227 Administrative Procedure Committee.

228

229 **Action:** Motion to approve draft language as written made by Dr. King. Second made by  
230 Dr. Kepley.

231

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

233

234 Mr. Harris asked whether the proposed rules would have adverse impacts on small  
235 business and whether regulatory costs would exceed two hundred thousand dollars within  
236 one year of implementation. The board agreed there would be no adverse impact or  
237 increase of costs.

238

239 **Action:** Motion to approve the board's response made by Dr. King. Second made by Dr.  
240 Rouse.

241

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

243

244 Mr. Harris asked whether the proposed rules would have adverse impacts on small  
245 business and whether regulatory costs would exceed one million dollars within five years  
246 of implementation. The board agreed there would be no adverse impact or increase of  
247 costs.

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249 **Action:** Motion to approve the board’s response made by Dr. Rouse. Second made by  
250 Mr. Griffin.

251  
252 **Vote:** 7 yeas/ 0 opposed. Motion carried.

253  
254 Mr. Harris asked whether the proposed rules would be subject to a minor violation. Minor  
255 violation means that it will not directly affect the public health, safety, or welfare and is  
256 able to be resolved with citation or notice of non-compliance. The board agreed there  
257 would be no minor violations.

258  
259 **Action:** Motion to approve the board’s response made by Dr. King. Second made by Mr.  
260 Griffin.

261  
262 **Vote:** 7 yeas/ 0 opposed. Motion carried.

263  
264 Mr. Harris advised that he will create language dealing with necessary changes to 64B13-  
265 15 resulting from the proposed changes in 64B13-5.001 and address it at the next board  
266 meeting.

267  
268 **iv. Optometrists OPA and NDEA**

269  
270 Dr. Kaplan suggested that all licensees become educated on the prescribing of controlled  
271 substances regardless of whether they have a DEA (Drug Enforcement Administration)  
272 registration. Discussion ensued regarding CE reporting and estimate of costs the board  
273 may incur. Dr. Kaplan further suggested that licensees receive credit for the course even  
274 if they do not hold a DEA registration. Dr. Peter Santisi of the Florida Optometric  
275 Association provided feedback. Mr. Harris proposed rule language for the purposes of  
276 receiving optional credit for the course. The board agreed that licensees who are DEA  
277 registered are required to take the course. Whereas, those who are not DEA registered  
278 may take the course to receive credit within their 30 hour requirement.

279  
280 **Action:** Motion to accept the proposed language made by Dr. Rouse. Second made by  
281 Dr. King.

282  
283 **Vote:** 7 yeas/ 0 opposed. Motion carried.

284  
285 **Action:** Motion to initiate rulemaking to clarify the intent of the rule language made by  
286 Ms. Turner. Second made by Dr. Rouse.

287  
288 **Vote:** 7 yeas/ 0 opposed. Motion carried.

289  
290 **v. 64B13-3.100 – Review and Decision Acute Pain**  
291 **vi. 463.0055(1)(b)/64B13-4.001/4.004/10.001 – Discussion of Requirement of Oral**  
292 **pharmaceutical certification for all licenses**

293  
294 Discussion tabled until the next board meeting.

295 **vii. JAPC response letter dated August 8, 2018**  
296  
297 Addressed with tab ii. Application Fees/Non-refundable  
298

299 **Break: 11:02 a.m. to 11:19 a.m.**  
300 **Section XI ended: 11:21 a.m.**  
301 **Section XII began: 11:21 a.m.**  
302

303 **XII. COMMITTEE REPORTS:**

304 **a. Budget – Dr. Kepley**

305  
306 Nothing to Report  
307

308  
309 **b. Continuing Education – Dr. Rouse**

310  
311 Nothing to Report  
312

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

314  
315 Nothing to Report  
316

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

318  
319 Nothing to Report  
320

321 **e. Examination – Dr. King**

322  
323 Nothing to Report  
324

325 **f. FOA – Dr. Kaplan**

326  
327 Nothing to Report  
328

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

330  
331 Nothing to Report  
332

333 **h. Legislative – Dr. Kaplan**

334  
335 Nothing to Report  
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337 **i. Probable Cause - Dr. Spear**

338  
339 Nothing to Report  
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341 **j. Probationary – Dr. Kaplan**

342  
343 Nothing to Report

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**k. Rules – Dr. Kaplan**

Nothing to Report

**l. Unlicensed Activity – Dr. Rouse**

**i. Appointment of Probable Cause Member (Spear)**

Dr. Spear requested that Mr. Griffin be appointed to the probable cause panel. Mr. Griffin explained that his term would be ending soon. Dr. Spivey advised that it is likely that there may not be any appointments at this time as the state will be transitioning to a new governor.

**Section XII ended: 11:27 a.m.**  
**Section XIII began: 11:27 a.m.**

**XIII. OLD BUSINESS:**

Dr. Kepley addressed the Memorandum of Agreement in place with the National Board of Examiners and advised that NBEO was awaiting direction from the department. The board expressed concern over whether the contract has been renewed.

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

**XIV. NEW BUSINESS:**

**i. Online Continuing Education**

Letter from Dr. Vu addressed at the last meeting.

**Section XIV ended: 11:38 a.m.**  
**Section XV began: 11:38 a.m.**

**XV. NEXT MEETING DATE:**

**a. November 16, 2018**

**Section XV ended: 11:40 a.m.**  
**Section XVI began: 11:40 a.m.**

**XVI. PROPOSED 2019 BOARD MEETING DATES**

February 8, 2019; May 10, 2019; July 19, 2019 changed to July 17, 2019; October 18, 2019.

**Section XVI ended: 11:44 a.m.**  
**Section XVII began: 11:44 a.m.**

**XVII. PUBLIC COMMENTS**

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395  
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**Section XVII ended: 11:44 a.m.**  
**Section XVIII began: 11:44 a.m.**

**XVIII. ADJOURNMENT**

Motion to adjourn made by Ms. Turner. Second made Dr. Kepley.