

FLORIDA | Board of Optometry

DRAFT MINUTES

September 28, 2018

Embassy Suites
4955 Kyngs Heath Road
Kissimmee, Florida 34746

DRAFT



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.
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32 II.
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CALL TO ORDER (Roll Call):

Stuart Kaplan, O.D., Chair
Christopher King, O.D., FAAO (Vice-Chair)
Katie Spear, O.D.
David Rouse, O.D.,
Stephen Kepley, O.D.
John Griffin, J.D.
Lucille Turner, J.D.

Board Staff Present:

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

Board Counsel:

Lawrence Harris, Assistant Attorney General

Prosecution Services:

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.

APPROVAL OF MINUTES

- i. July 16, 2018**
- ii. June 22, 2018**
- iii. March 9, 2018**

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

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

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Section II ended: 9:03 a.m.

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Section III began: 9:03 a.m.

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III. FINAL ORDER

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i. Voluntary Relinquishment

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

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

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Vote: 7 yeas/ 0 opposed. Motion carried.

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Section III ended: 9:05 a.m.

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Section IV began: 9:05 a.m.

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IV. PROSECUTION REPORT

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

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Total cases: 20

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Under legal review: 9

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Awaiting probable cause determination: 7

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Probable cause found: 3

57

Cases older than 1 year continued for prosecution: 13

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

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Vote: 7 yeas/ 0 opposed. Motion carried.

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Section IV ended: 9:11 a.m.

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Section V began: 9:11 a.m.

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V. PETITION FOR WAIVER/VARIANCE

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i. Carolina Betancurt, O.D.

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

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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.

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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.

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

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101 **Section V ended: 9:52 a.m.**
102 **Section VI began: 9:52 a.m.**

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104 **VI. APPLICATIONS FOR REVIEW**

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106 **i. Deborah Jessurun**

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108 Not present, nor represented by counsel.

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

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

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115 **Section VI ended: 9:54 a.m.**
116 **Section VII began: 9:54 a.m.**

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

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

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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.

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

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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.

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

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

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

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163 **VIII. RATIFICATION LIST:**

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165 **a. Licensure**

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167 **i. Optometrist**

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

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

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174 **b. Continuing Education**

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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.

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

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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.

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

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

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

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

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197 Nothing to Report

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

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

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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.

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

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

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217 **XI. BOARD COUNSEL REPORT:**

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219 **i. September Rules Report**

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

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

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

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225
226 Mr. Harris discussed House Bill 21 and standardized language drafted by the Joint
227 Administrative Procedure Committee.

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

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

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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.

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240 Rouse.

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250 Mr. Griffin.

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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.

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

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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.

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268 **iv. Optometrists OPA and NDEA**

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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.

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

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

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

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

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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**

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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
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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.**
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303 **XII. COMMITTEE REPORTS:**

304 **a. Budget – Dr. Kepley**

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306 Nothing to Report
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308 **b. Continuing Education – Dr. Rouse**

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310 Nothing to Report
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312 **c. Complaints, Investigation, and Enforcement Liaison – Dr. Kaplan**

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314 Nothing to Report
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316 **d. Disciplinary Compliance – Dr. Kaplan**

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318 Nothing to Report
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320 **e. Examination – Dr. King**

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322 Nothing to Report
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324 **f. FOA – Dr. Kaplan**

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326 Nothing to Report
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328 **g. Healthiest Weight – Dr. King**

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330 Nothing to Report
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332 **h. Legislative – Dr. Kaplan**

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

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338 Nothing to Report
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340 **j. Probationary – Dr. Kaplan**

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342 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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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.

DRAFT