

FLORIDA | Board of Optometry

DRAFT MINUTES

November 16, 2018

Rosen Plaza
9700 International Drive
Orlando, Florida 32819

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, November 16, 2018, at 9:00 a.m. This meeting was held at Rosen Plaza, 9700 International Drive, Orlando, Florida 32819 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
Christopher King, O.D., FAAO (Vice-Chair)
Katie Spear, O.D. (**Absence Excused**)
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
Gail Curry, Program Operations Administrator

Board Counsel:

Lawrence Harris, Assistant Attorney General

Prosecution Services:

Rose Garrison, Assistant General Counsel

Court Reporter:

Southern Court Reporters
(407)-599-4972

Section I ended: 9:01 a.m.

Section II began: 9:01 a.m.

II. APPROVAL OF MINUTES

i. September 28, 2018

Dr. King requested revision to Line 223 to add the term “fees”

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

39
40 **Vote:** 6 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
49 **Max Friedman, O.D. Case No.: 2018-08733**

50
51 Ms. Garrison explained these types of cases are still considered discipline, but that
52 most practitioners choose to take this action in lieu of further discipline.

53
54 Dr. King asked if it is a routine to conduct a review of any possible violations for
55 co-defendants involved in the case.

56
57 **Action:** Motion to grant the relinquishment of Dr. Friedman’s license made by
58 Dr. Kepley. Second made by Ms. Turner.

59
60 **Vote:** 6 yeas/ 0 opposed. Motion carried.

61
62 **Section III ended: 9:06 a.m.**
63 **Section IV began: 9:06 a.m.**

64
65 **IV. PROSECUTION REPORT**

66
67 Ms. Rose Garrison, Assistant General Counsel provided statistics regarding the
68 prosecutions currently open in the Department.

69
70 Total cases: 14

71 Probable cause found: 3

72 Cases older than 1 year continued for prosecution: 1

73
74 **Action:** Motion to continue prosecution of cases older than one year made by Dr.
75 Rouse. Second made by Dr. Kepley.

76
77 **Vote:** 6 yeas/ 0 opposed. Motion carried.

78
79 **Section IV ended: 9:07 a.m.**
80 **Section V began: 9:07 a.m.**

81
82 **V. PETITION FOR WAIVER/VARIANCE**

83

84 **i. Bo Yung King, O.D.**

85
86 Not present, nor represented by counsel.

87
88 **Action:** Motion to deny the petition made by Mr. Griffin. Second made by Dr.
89 Rouse.

90
91 **Vote:** 6 yeas/ 0 opposed. Motion carried.

92
93 **Section V ended: 9:15 a.m.**
94 **Section VI began: 9:15 a.m.**

95
96 **VI. APPLICATIONS FOR REVIEW**

97
98 **i. Abed Awad, O.D.**

99
100 Present. Not represented by counsel. Dr. Awad sought reconsideration of the
101 board's decision from June 2018 relating to the department's administrative
102 notifications, procedures, and applicable statutes at the time he applied for
103 licensure.

104
105 **Action:** Motion to reconsider and approve the application made by Dr. Rouse.
106 Second made by Ms. Turner

107
108 **Vote:** 6 yeas/ 0 opposed. Motion carried.

109
110 **Section VI ended: 9:29 a.m.**
111 **Section VII began: 9:29 a.m.**

112
113 **VII. BOARD'S PROPOSED COMMENTS TO NBEO CONTRACT**

114
115 **i. NBEO CONTRACT**

116
117 Dr. Spivey presented the changes to the contract suggested by Dr. King and Dr.
118 Kepley. Dr. King advised that there was a typo on page 2; Section 11; First word
119 in the second paragraph "by" should be removed. Dr. King suggested further
120 revision to Section 10. Mr. Harris advised that the language in Section 10 comes
121 directly from the statutes and should not be changed. Discussion ensued. Dr. King
122 wanted to recognize the department staff involved in taking the necessary actions
123 to have the contract renewed.

124
125 **Action:** Motion to ratify the approval of the memorandum of agreement with
126 exception of the revision to Section 11 made by Mr. Griffin. Second made by Dr.
127 King.

128
129 **Vote:** 6 yeas/ 0 opposed. Motion carried.

130

131 **Section VII ended: 9:41 a.m.**
132 **Section VIII began: 9:41 a.m.**

133
134 **VIII. REQUEST FOR ADDITIONS TO TOPA FORMULARY**

135
136 **i. Kala Pharmaceuticals**

137
138 **Action:** Motion to table action to the February meeting made by Dr. Rouse.
139 Second made by Dr. Kepley.

140
141 **Vote:** 6 yeas/ 0 opposed. Motion carried.

142
143 Dr. Kaplan asked the board if they would consider future additions to the
144 formulary at every other meeting to avoid extensive delays in the rulemaking
145 process. Mr. Harris explained the statutory timeframes and stages of adopting a
146 rule. Mr. Harris advised that it could take up to 4-5 months for a rule to become
147 effective. Dr. Kaplan asked Dr. Spivey if he could have a banner posted to the
148 website to notify companies of when to submit their requested additions to the
149 formulary. Mr. Harris asked what the deadline was for receipt of agenda
150 materials. Mrs. Curry replied that materials must be submitted at least 2 weeks in
151 advance of the meeting and that the deadline for the February 9, 2019 meeting
152 would be January 11, 2019.

153
154 **Section VIII ended: 9:52 a.m.**
155 **Section IX began: 9:52 a.m.**

156
157 **IX. RATIFICATION LIST:**

158
159 **a. Licensure**

160
161 **i. Optometrist**

162
163 **Action:** Motion to approve the ratification of licensees made by Mr. Griffin.
164 Second made by Ms. Turner.

165
166 **Vote:** 6 yeas/ 0 opposed. Motion carried.

167
168 **b. Continuing Education**

169
170 **i. Report of Continuing Education Providers & Courses approved by**
171 **Board Staff**

172
173 **ii. Report of Continuing Education Providers & Courses approved by**
174 **CE Committee**

175
176 Dr. Rouse discussed issues relating to some licensees who took a partial portion
177 of a continuing education course under the assumption they would receive credit

178 for that portion of the course. Dr. Rouse explained that the board does not accept
179 partial hours. Dr. Rouse advised that the licensees must have attended the full
180 course to receive credit for the full amount of hours unless the provider indicates
181 a breakdown of the credits.

182
183 **Action:** Motion to approve the ratification of continuing education courses made
184 by Dr. King. Second made by Dr. Kepley.

185
186 **Vote:** 6 yeas/ 0 opposed. Motion carried.

187
188 **Section IX ended: 10:07 a.m.**
189 **Section X began: 10:07 a.m.**

190
191 **X. CHAIR/VICE CHAIR REPORT:**

192
193 None

194
195 **Section X ended: 10:08 a.m.**
196 **Section XI began: 10:08 a.m.**

197
198 **XI. EXECUTIVE DIRECTOR'S REPORT:**

199
200 **Annual Delegation of Authority**

201
202 **Action:** Motion to approve the annual delegation of authority made by Dr. King.
203 Second made by Ms. Turner.

204
205 **Vote:** 6 yeas/ 0 opposed. Motion carried.

206
207 **Section XI ended: 10:09 a.m.**
208 **Section XII began: 10:09 a.m.**

209
210 **XII. BOARD COUNSEL REPORT:**

- 211
212 **i. October Rules Report**
213 **ii. Rule 64B13-3.100 Standards for Prescribing Controlled Substances**
214 **iii. Rule 64B13-15.006 Disciplinary Rules**

215
216 Mr. Harris recommended creating a disciplinary rule for prosecution to move
217 forward with patient care violations related to the prescribing of controlled
218 substances.

219
220 **Action:** Motion to allow Mr. Harris to draft language for rulemaking to
221 incorporate his recommendations made by Mr. Griffin. Second made by Dr.
222 Kepley.

223
224 **Vote:** 6 yeas/ 0 opposed. Motion carried.

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

229
230 Mr. Harris asked whether the proposed rules would have adverse impacts on
231 small business and whether regulatory costs would exceed one million dollars
232 within five years of implementation. The board agreed there would be no adverse
233 impact or increase of costs.

234
235 Mr. Harris asked whether the proposed rules would be subject to a minor
236 violation. Minor violation means that it will not directly affect the public health,
237 safety, or welfare and is able to be resolved with citation or notice of non-
238 compliance. The board agreed there would be no minor violations.

239
240 **Action:** Motion to approve the board's response made by Dr. Kepley. Second
241 made by Ms. Turner.

242
243 **Vote:** 6 yeas/ 0 opposed. Motion carried.

244
245 Dr. Kaplan advised that questions are arising of whether a licensee has a
246 DEA number and requested an update. Dr. Spivey advised that the licensure
247 application now includes a section to enter DEA information. Dr. Spivey
248 explained that anyone who does not have a DEA number must still indicate that
249 information in their online account to prevent being required to take the course.
250 Dr. Spivey advised that there is a notice on the board's website banner relating to
251 the course and that if you click the link, it will direct you to approved courses.

252
253 **iv. 463.0055(1)(b)/64B13-4.001/4.004/10.001 – Discussion of Requirement of**
254 **Oral Prescriptive Authority Course**

255
256 Mr. Harris explained that there was discussion at the last meeting regarding
257 whether the board would like to amend the licensure rules to require the Oral
258 Prescriptive Authority course. Dr. Kaplan advised that 60% of licensees
259 do not prescribe oral medication and that there is no clear statutory authority to
260 implement the course as a licensure requirement.

261
262 **Section XII ended: 10:23 a.m.**
263 **Section XIII began: 10:23 a.m.**

264
265 **XIII. COMMITTEE REPORTS:**

266
267 **a. Budget – Dr. Kepley**

268
269 Nothing to Report

270
271 **b. Continuing Education – Dr. Rouse**

272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316

Nothing to Report

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

Nothing to Report

d. Disciplinary Compliance – Dr. Kaplan

Nothing to Report

e. Examination – Dr. King

Nothing to Report

f. FOA – Dr. Kaplan

Nothing to Report

g. Healthiest Weight – Dr. King

Nothing to Report

h. Legislative – Dr. Kaplan

Nothing to Report

i. Probable Cause - Dr. Spear

Nothing to Report

j. Probationary – Dr. Kaplan

Nothing to Report

k. Rules – Dr. Kaplan

Nothing to Report

l. Unlicensed Activity – Dr. Rouse

Section XIII ended: 10:24 a.m.

Section XIV began: 10:24 a.m.

XIV. OLD BUSINESS:

317 Dr. Rouse asked if the new rule related to out of state licensees certifying they have
318 read the Florida Laws and Rules relating to Optometry would apply to the current
319 biennium or the next biennium. Mr. Harris advised that if a licensee certified that
320 they have read the laws and rules before the new rule went into effect, that his
321 recommendation to the board would be to allow the licensee to receive credit. Dr.
322 King asked if there was a mechanism for properly notifying licensees of a rule
323 change. The board agreed that it is the responsibility of the licensee to stay abreast
324 of the laws and rules which would alert them to any changes. Mr. Harris suggested
325 that if an issue should arise with licensees who sent in their certification after the
326 effective date of the rule, that the licensee should file a petition for variance or
327 waiver.

328

329 **Section XIV ended: 10:24 a.m.**

330 **Section XV began: 10:24 a.m.**

331

332 **XV. NEW BUSINESS:**

333

334 None

335

336 **Section XV ended: 10:25 a.m.**

337 **Section XVI began: 10:25 a.m.**

338

339 **XVI. NEXT MEETING DATE:**

340

341 **i. February 8, 2019**

342

343 Mrs. Curry provided confirmation that the proposed meeting for July 19, 2019 was
344 officially changed to July 17, 2019 at the Hilton Garden Inn.

345

346 **Section XVI ended: 10:41 a.m.**

347 **Section XVII began: 10:41 a.m.**

348

349 **XVII. PUBLIC COMMENTS**

350

351 **Section XVII ended: 10:41 a.m.**

352 **Section XVIII began: 10:41 a.m.**

353

354 **XVIII. ADJOURNMENT**

355

356 **Action:** Motion to adjourn at 10:41 a.m. made by Dr. Rouse. Second made by Dr.
357 Kepley.

358

359

360