

FLORIDA | Board of Optometry

OFFICIAL MINUTES

November 16, 2018

Rosen Plaza
9700 International Drive
Orlando, Florida 32819



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 **Section V ended: 9:15 a.m.**

93 **Section VI began: 9:15 a.m.**

94
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 the
126 revision to Section 11 made by Mr. Griffin. Second made by Dr. King.

127
128 **Vote:** 6 yeas/ 0 opposed. Motion carried.

129
130 **Section VII ended: 9:41 a.m.**

131 **Section VIII began: 9:41 a.m.**

132
133 **VIII. REQUEST FOR ADDITIONS TO TOPA FORMULARY**

134
135 **i. Kala Pharmaceuticals**

136
137 **Action:** Motion to table action to the February meeting made by Dr. Rouse.
138 Second made by Dr. Kepley.

139
140 **Vote:** 6 yeas/ 0 opposed. Motion carried.

141
142 Dr. Kaplan asked the board if they would consider future additions to the
143 formulary at every other meeting to avoid extensive delays in the rulemaking
144 process. Mr. Harris explained the statutory timeframes and stages of adopting a
145 rule. Mr. Harris advised that it could take up to 4-5 months for a rule to become
146 effective. Dr. Kaplan asked Dr. Spivey if he could have a banner posted to the
147 website to notify companies of when to submit their requested additions to the
148 formulary. Mr. Harris asked what the deadline was for receipt of agenda
149 materials. Mrs. Curry replied that materials must be submitted at least 2 weeks in
150 advance of the meeting and that the deadline for the February 9, 2019 meeting
151 would be January 11, 2019.

152
153 **Section VIII ended: 9:52 a.m.**

154 **Section IX began: 9:52 a.m.**

155
156 **IX. RATIFICATION LIST:**

157
158 **a. Licensure**

159
160 **i. Optometrist**

161
162 **Action:** Motion to approve the ratification of licensees made by Mr. Griffin.
163 Second made by Ms. Turner.

164
165 **Vote:** 6 yeas/ 0 opposed. Motion carried.

166
167 **b. Continuing Education**

168
169 **i. Report of Continuing Education Providers & Courses approved by**
170 **Board Staff**

171
172 **ii. Report of Continuing Education Providers & Courses approved by**
173 **CE Committee**

174
175 Dr. Rouse discussed issues relating to some licensees who took a partial portion
176 of a continuing education course under the assumption they would receive credit
177 for that portion of the course. Dr. Rouse explained that the board does not accept

178 partial hours. Dr. Rouse advised that the licensees must have attended the full
179 course to receive credit for the full amount of hours unless the provider indicates
180 a breakdown of the credits.

181
182 **Action:** Motion to approve the ratification of continuing education courses made
183 by Dr. King. Second made by Dr. Kepley.

184
185 **Vote:** 6 yeas/ 0 opposed. Motion carried.

186
187 **Section IX ended: 10:07 a.m.**
188 **Section X began: 10:07 a.m.**

189
190 **X. CHAIR/VICE CHAIR REPORT:**

191
192 None

193
194 **Section X ended: 10:08 a.m.**
195 **Section XI began: 10:08 a.m.**

196
197 **XI. EXECUTIVE DIRECTOR'S REPORT:**

198
199 **Annual Delegation of Authority**

200
201 **Action:** Motion to approve the annual delegation of authority made by Dr. King.
202 Second made by Ms. Turner.

203
204 **Vote:** 6 yeas/ 0 opposed. Motion carried.

205
206 **Section XI ended: 10:09 a.m.**
207 **Section XII began: 10:09 a.m.**

208
209 **XII. BOARD COUNSEL REPORT:**

- 210
211 **i. October Rules Report**
212 **ii. Rule 64B13-3.100 Standards for Prescribing Controlled Substances**
213 **iii. Rule 64B13-15.006 Disciplinary Rules**

214
215 Mr. Harris recommended creating a disciplinary rule for prosecution to move
216 forward with patient care violations related to the prescribing of controlled
217 substances.

218
219 **Action:** Motion to allow Mr. Harris to draft language for rulemaking to
220 incorporate his recommendations made by Mr. Griffin. Second made by Dr.
221 Kepley.

222
223 **Vote:** 6 yeas/ 0 opposed. Motion carried.

224 Mr. Harris asked whether the proposed rules would have adverse impacts on

225 small business and whether regulatory costs would exceed two hundred thousand
226 dollars within one year of implementation. The board agreed there would be no
227 adverse impact or increase of costs.

228
229 Mr. Harris asked whether the proposed rules would have adverse impacts on
230 small business and whether regulatory costs would exceed one million dollars
231 within five years of implementation. The board agreed there would be no adverse
232 impact or increase of costs.

233
234 Mr. Harris asked whether the proposed rules would be subject to a minor
235 violation. Minor violation means that it will not directly affect the public health,
236 safety, or welfare and is able to be resolved with citation or notice of non-
237 compliance. The board agreed there would be no minor violations.

238
239 **Action:** Motion to approve the board’s response made by Dr. Kepley. Second
240 made by Ms. Turner.

241
242 **Vote:** 6 yeas/ 0 opposed. Motion carried.

243
244 Dr. Kaplan advised that questions are arising of whether a licensee has a
245 DEA number and requested an update. Dr. Spivey advised that the licensure
246 application now includes a section to enter DEA information. Dr. Spivey
247 explained that anyone who does not have a DEA number must still indicate that
248 information in their online account to prevent being required to take the course.
249 Dr. Spivey advised that there is a notice on the board’s website banner relating to
250 the course and that if you click the link, it will direct you to approved courses.

251
252 **iv. 463.0055(1)(b)/64B13-4.001/4.004/10.001 – Discussion of Requirement of**
253 **Oral Prescriptive Authority Course**

254
255 Mr. Harris explained that there was discussion at the last meeting regarding
256 whether the board would like to amend the licensure rules to require the Oral
257 Prescriptive Authority course. Dr. Kaplan advised that 60% of licensees
258 do not prescribe oral medication and that there is no clear statutory authority to
259 implement the course as a licensure requirement.

260
261 **Section XII ended: 10:23 a.m.**
262 **Section XIII began: 10:23 a.m.**

263
264 **XIII. COMMITTEE REPORTS:**

265
266 **a. Budget – Dr. Kepley**

267
268 Nothing to Report

269
270 **b. Continuing Education – Dr. Rouse**

271 Nothing to Report

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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:

Dr. Rouse asked if the new rule related to out of state licensees certifying they have

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

327
328 **Section XIV ended: 10:24 a.m.**
329 **Section XV began: 10:24 a.m.**

330
331 **XV. NEW BUSINESS:**

332
333 None

334
335 **Section XV ended: 10:25 a.m.**
336 **Section XVI began: 10:25 a.m.**

337
338 **XVI. NEXT MEETING DATE:**

339
340 **i. February 8, 2019**

341
342 Mrs. Curry provided confirmation that the proposed meeting for July 19, 2019 was
343 officially changed to July 17, 2019 at the Hilton Garden Inn.

344
345 **Section XVI ended: 10:41 a.m.**
346 **Section XVII began: 10:41 a.m.**

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348 **XVII. PUBLIC COMMENTS**

349
350 **Section XVII ended: 10:41 a.m.**
351 **Section XVIII began: 10:41 a.m.**

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353 **XVIII. ADJOURNMENT**

354
355 **Action:** Motion to adjourn at 10:41 a.m. made by Dr. Rouse. Second made by Dr.
356 Kepley.

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