

FLORIDA | Board of Optometry

DRAFT MINUTES

February 8, 2019

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, February 8, 2019, at 9:00 a.m. This meeting was held at Mission Inn Resort, 10400 County Road 48, Howey-In-The-Hills, Florida 34737 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 at 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.

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10 **Board Staff Present:**

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

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15 **Board Counsel:**

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17 Lawrence Harris, Assistant Attorney General

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19 **Prosecution Services:**

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21 Rose Garrison, Assistant General Counsel

22
23 **Court Reporter:**

24
25 American Court Reporting
26 (407)-896-1813

27
28 **Section I ended: 9:04 a.m.**

29 **Section II began: 9:04 a.m.**

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31 **II. APPROVAL OF MINUTES:**

32 **i. November 16, 2018**

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34 Dr. King requested revision to Line 125-126 by removing "exception of".

35 **Action:** Motion to approve the meeting minutes with revision made by Dr. Rouse.
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38 Second made by Dr. Kepley.

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40 **Vote:** 6 yeas/0 opposed. Motion Carried.

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42 **Section II ended: 9:05 a.m.**

43 **Section III began: 9:05 a.m.**

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45 **III. FINAL ORDER:**

46
47 **i. Settlement Agreement**

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49 **Clyde D. Reynolds, O.P., Case No.: 2016-19383**

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51 Present and represented by counsel, Thomas Gonzalez, Esq.

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53 Ms. Garrison presented case details and proposed settlement agreement as
54 follows: Require appearance before the board; letter of concern; \$2,000 fine to be
55 paid within one year of final order; reimbursement of administrative costs of
56 \$3,000 to be paid within two years of final order; and 3 hours of board approved
57 continuing education in the category of glaucoma, diagnosis, and treatment within
58 6 months of final order. Discussion ensued regarding case dismissal and the
59 difference between a letter of guidance versus a letter of concern.

60
61 **Action:** Motion to accept settlement agreement as proposed made by Mr. Griffin.
62 Second made by Dr. Kepley.

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64 **Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Spear recused.

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66 **Wesley T. Mayes, O.P., Case No.: 2016-19021**

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68 Present and represented by counsel, Kathryn Hood, Esq.

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70 Ms. Garrison presented case details and proposed settlement agreement as
71 follows: Require appearance before the board; letter of concern; \$500 fine to be
72 paid within one year; Administrative costs not to exceed \$4000 within 2 years of
73 final order; and 3 hours of board approved continuing education in the category of
74 glaucoma, diagnosis, and treatment within 6 months of final order.

75
76 Mr. Harris introduced the board's new counsel, Deborah Loucks.

77
78 **Action:** Motion to reject settlement agreement and dismiss the case made by Dr.
79 King. Second made by Dr. Rouse.

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81 **Vote:** 1 yeas/5 opposed. Motion Failed.

82
83 **Action:** Motion to accept the settlement agreement as proposed made by Mr.
84 Griffin. Second made by Dr. Rouse

85 **Vote:** 5 yeas/1 opposed. Motion Carried.

86
87 **Section III ended: 9:36 a.m.**

88 **Section IV began: 9:36 a.m.**

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90 **IV. PROSECUTION REPORT:**

91
92 Ms. Rose Garrison, Assistant General Counsel provided statistics regarding the
93 prosecutions currently open in the Department.

94
95 Total cases: 10

96 Cases resolved during this meeting: 2

97 Cases older than 1 year continued for prosecution: 4

98
99 **Action:** Motion to continue prosecution of cases older than one year made by Dr.
100 Kepley. Second made by Dr. Rouse.

101
102 **Vote:** 6 yeas/ 0 opposed. Motion carried.

103
104 **Section IV ended: 9:37 a.m.**

105 **Section V began: 9:37 a.m.**

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107 **V. PETITION FOR WAIVER/VARIANCE:**

108
109 **i. Krystle Knoepffler, OD**

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111 Not present, nor represented by counsel.

112
113 Mr. Harris presented the facts of the petition.

114
115 **Action:** Motion to grant the petition made by Dr. King. Second made by Dr.
116 Spear.

117
118 **Vote:** 6 yeas/0 opposed. Motion Carried.

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120 **Section V ended: 9:47 a.m.**

121 **Section VI began: 9:47 a.m.**

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123 **VI. JURISPRUDENCE CE VARIANCE REQUEST:**

124
125 Mr. Harris advised of the ongoing issues pertaining to the change of Rule 64B13-
126 5.001 that went into effect October 2, 2018 requiring out of state licensees to
127 complete a live course as opposed to certifying the requirement.

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129 Mr. Harris advised that there were a few options that the board may consider as
130 follows: 1) Direct board staff to allow renewal of out of state licensees if they are
131 missing the jurisprudence only; 2) Consider Dr. Sterling's request for a one-time

132 exception for those affected; 3) Require affected licensees to file a petition and
133 conduct a special meeting. Mr. Harris explained that by statute, delinquency fees
134 may not be waived. Dr. King asked what the penalty was for licensees that falsely
135 certified compliance with reading the laws and rules. Mr. Harris explained that
136 those licensees who falsely certified should be referred to consumer services.
137

138 **Action:** Motion to direct board staff to allow renewal of out of state licensees if
139 they are missing *only* the jurisprudence *for this biennium only* and refer licensees
140 to consumer services if they falsely certified reading the laws and rules after
141 October 2, 2018 by submitting certification for the purposes of complying with
142 the 2-hour jurisprudence CE made by Dr. King. Second made by Dr. Rouse.
143

144 **Vote:** 6 yeas/0 opposed. Motion Carried.
145 The board agreed to provide relief to those licensees affected.
146

147 **Action:** Motion to deny all petitions as they are moot made by Mr. Griffin.
148 Second made by Dr. King.
149

150 **Vote:** 6 yeas/0 opposed. Motion Carried.
151

152 **i. Jamie Hogan, OD**
153

154 **ii. Sidney A. Gottlieb, OD**
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156 **iii. Robert & Kimberly Molter, OD**
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158 Drs. Robert Molter and Kimberly Molter were present and addressed their
159 concerns with the board.
160

161 **iv. Alice Sterling, OD**
162

163 Dr. Sterling was present and addressed her concerns with the board.
164

165 **v. Jennifer Prunty, OD**
166

167 **Break 10:20-10:26 a.m.**
168 **Section VI ended: 10:55 a.m.**
169 **Section VII began: 10:55 a.m.**
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171 **VII. REQUEST FOR ADDITIONS TO TOPA FORMULARY:**
172

173 **i. Kala Pharmaceuticals**
174

175 **Action:** Motion to approve the addition of Inveltys to Florida Administrative
176 Code 64B13-18.002 (Subsection 5 - Add P.) made by Dr. Kepley. Second made
177 by Dr. Rouse.
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Vote: 6 yeas/0 opposed. Motion Carried.

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

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

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

Action: Motion to approve the board’s response made by Dr. King. Second made by Dr. Rouse.

Vote: 6 yeas/0 opposed. Motion Carried.

Section VII ended: 10:59 a.m.
Section VIII began: 10:59 a.m.

VIII. RATIFICATION LIST:

a. Licensure

i. Optometrist

Action: Motion to approve the ratification of licensees made by Mr. Griffin. Second made by Dr. Kepley.

Vote: 6 yeas/0 opposed. Motion Carried.

b. Continuing Education

i. Report of Continuing Education Providers & Courses approved by Board Staff

ii. Report of Continuing Education Providers & Courses approved by CE Committee

Action: Nothing to report.

Section VIII ended: 11:00 a.m.

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Section IX began: 11:00 a.m.

IX. CHAIR/VICE CHAIR REPORT:

Dr. Kaplan reminded the board to send in their annual ethics documentation.

Section IX ended: 11:01 a.m.

Section X began: 11:01 a.m.

X. EXECUTIVE DIRECTOR'S REPORT:

Dr. Spivey advised that the Chair/Vice Chair meeting will be held on May 31, 2019 in Tallahassee.

Dr. Spivey presented tentative board meeting dates for the year 2020 as follows: January 17th, April 3rd, June 26th, and September 11, 2020. Dr. Kaplan advised that the board usually schedules their summer meetings associated with the Florida Optometric Association meeting which will be held July 15, 2020.

**i. Confidential and Exempt from Public Records Disclosure
December 6, 2018 BOM Minutes**

Dr. Spivey explained that the department determined that some of the health history questions appear to be too invasive and most boards are replacing the history questions with alternate questions to allow applicants to answer accurately.

Action: Motion to accept the revision made by Dr. Kepley. Second made by Dr. King.

Vote: 6 yeas/0 opposed. Motion Carried.

**ii. Optometry Contract
iii. Memorandum of Agreement**

Dr. Spivey presented the finalized contract and memorandum of agreement. Dr. King advised that NBEO is increasing the fee of the examination and recommended execution of the contract.

Action: Motion to approve signature made by Dr. King. Second made by Dr. Kepley.

Vote: 6 yeas/0 opposed. Motion Carried.

Section X ended: 11:15 a.m.

Section XI began: 11:15 a.m.

XI. BOARD COUNSEL REPORT:

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i. January Rules Report

Mr. Harris presented the rules report.

ii. 64B13-5.001

Mr. Harris addressed concerns with the rule related to obtaining credit for Florida jurisprudence by attending a disciplinary board meeting. Mr. Harris suggested revising the language to variate from the 4-hour attendance requirement as the meetings do not typically last a duration of 4 hours. Mr. Harris proposed the following revised language: “for no less than 4 continuous hours -or the duration of the meeting”.

Action: Motion to amend language in Rule 64B13-5.001, Florida Administrative Code as proposed made by Dr. King. Second made by Dr. Spear.

Vote: 6 yeas/0 opposed. Motion Carried.

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

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

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

Action: Motion to approve the board’s response made by Mr. Griffin. Second made by Dr. Kepley.

Vote: 6 yeas/0 opposed. Motion Carried.

Section XI ended: 11:29 a.m.
Section XII began: 11:29 a.m.

XII. COMMITTEE REPORTS:

a. Budget – Dr. Kepley

Dr. Kepley reported that the board is in a healthy financial position.

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b. Continuing Education – Dr. Rouse

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

Dr. King reported that NBEO is updating certain aspects of the practical examination but that it should not have any affect on the Florida practical examination.

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

365 Nothing to report

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367 **Section XII ended: 11:30 a.m.**

368 **Section XIII began: 11:30 a.m.**

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370 **XIII. OLD BUSINESS:**

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372 None

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374 **Section XIII ended: 11:30 a.m.**

375 **Section XIV began: 11:30 a.m.**

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377 **XIV. NEW BUSINESS:**

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379 Dr. Michelle Rountree was in attendance for the purposes of satisfying the 2-hour
380 Florida Jurisprudence requirement. However, Dr. Rountree was unaware that she
381 would need to file a formal petition if the meeting did not last the required amount
382 of hours by per Rule 64B13-5.001(6) (b). The board found that Dr. Rountree met
383 the purposes of the underlying statute.

384

385 **Action:** Motion to propose the submission of a formal petition and approve
386 petition upon receipt made by Dr. Rouse. Second made by Mr. Griffin.

387

388 **Vote:** 6 yeas/0 opposed. Motion Carried.

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390 Dr. Spear advised that it is difficult locating information of when a drug's
391 addition to the formulary has become effective. Dr. Spear requested that each
392 notice be placed on the website banner when the addition becomes effective as
393 opposed to when the board proposes the addition. Dr. Kepley agreed that he
394 would rather see notice that licensees are allowed to write the prescriptions.

395

396 Dr. Rouse addressed the topic of standard of care and equipment used in practice.
397 Dr. Rouse advised that the rules for minimum equipment (64B13-3.004) are
398 outdated. Dr. Rouse advised that there was some inconsistency with the standards
399 expected via Florida practical examination versus the minimum requirements. Dr.
400 Rouse requested historical perspective as to why the rule does not include
401 binocular indirect ophthalmoscopy and non-contact fundus lens as a minimum
402 requirement.

403

404 **Action:** Motion to open rule Chapter 64B13-3.004, FAC for development made
405 by Dr. Kepley. Second made by Dr. Rouse.

406

407 **Vote:** 6 yeas/0 opposed. Motion Carried.

408

409 The board scheduled a rule workshop for the July 2019 meeting.

410

411 Dr. King announced that it would be Mr. Harris' last meeting as board counsel

412 and extended his appreciation to Mr. Harris.

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414 **Section XIV ended: 11:42 a.m.**

415 **Section XV began: 11:42 a.m.**

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417 **XV. NEXT MEETING DATE:**

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i. May 10, 2019

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421 **Section XV ended: 11:42 a.m.**

422 **Section XVI began: 11:42 a.m.**

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424 **XVI. PUBLIC COMMENTS:**

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None

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428 **Section XVI ended: 11:42 a.m.**

429 **Section XVII began: 11:42 a.m.**

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431 **XVII. ADJOURNMENT:**

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433 Motion to adjourn at 11:43 made by Dr. Kepley. Second made by Mr. Griffin.

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435 **Vote:** 6 yeas/0 opposed. Motion Carried.

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