

**FLORIDA** | Board of Optometry

**DRAFT MINUTES**

July 17, 2019

Hilton Garden Inn  
6850 West Boulevard  
Orlando, Florida 32821



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 Wednesday, July 17, 2019, commencing at 9:00 a.m. This meeting was held at the Hilton Garden Inn, 6850 West Boulevard, Orlando, Florida 32821, (407) 354-1528, 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):**

- 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.

**Board Staff Present:**

- 11 Anthony Spivey, DBA, Executive Director
- 12 Kelly Woodard, Regulatory Supervisor

**Board Counsel:**

- 17 Rachelle Munson, Assistant Attorney General

**Prosecution Services**

- 21 Kimberly Marshall, Assistant General Counsel
- 22 Chad Dunn, Assistant General Counsel

**Court Reporter:**

- 26 American Court Reporting
- 27 407-896-1813

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

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

**II. APPROVAL OF MINUTES:**

**i. May 10, 2019**

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

38  
39 **Vote:** 6 yeas/0 opposed. Motion Carried.

40  
41 **Section II ended: 9:02 a.m.**  
42 **Section III began: 9:02 a.m.**

43  
44 **III. FINAL ORDER:**

45  
46 **i. RECOMMENDED ORDER**

47  
48 **a. Albert C. Evans, O.D.**  
49 **Case No.: 2012-15585**

50  
51 Present. Represented by counsel, Gus Belcher, Esq. Ms. Kimberly Marshall presented case  
52 details and recommended order.

53  
54 **Action:** Motion to adopt the administrative law judge's finding of fact made by Mr. Griffin.  
55 Second made by Dr. Kepley.

56  
57 **Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Spear recused.

58  
59 **Action:** Motion to adopt the conclusions of law of the administrative law judge made by Mr.  
60 Griffin. Second made by Dr. Kepley.

61  
62 **Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Spear recused.

63  
64 **Action:** Motion to find that the offense constitutes a violation of the Florida statutes as charged  
65 in the administrative complaint made by Mr. Griffin. Second made by Dr. Rouse.

66  
67 **Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Spear recused.

68  
69 **Exception 1**

70  
71 **Action:** Motion to reject the exception made by Dr. King. Second made by Dr. Kepley.

72  
73 **Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Spear recused.

74  
75 **Exception 2**

76  
77 **Action:** Motion to reject the exception made by Dr. King. Second made by Dr. Kepley.

78  
79 **Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Spear recused.

80  
81 **Exception 3**

82 **Action:** Motion to reject the exception made by Dr. King. Second made by Dr. Rouse.

83  
84 **Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Spear recused.

85  
86 **Action:** Motion to impose penalty of 2 years' probation from the date of final order; must take  
87 and pass laws and rules examination within 2 years; must submit an affidavit stating that he has  
88 reviewed provider billing manuals for all plans to which he submits claims and all claim audit  
89 results; submit copies of all advertisements which he places in any media to the department; an  
90 administrative fine of \$6,000 to be paid within 6 months of final order; and appearance before  
91 the board at the end of probationary period made by Dr. Rouse. Second made by Dr. Kepley.

92  
93 **Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Spear recused.

94  
95 **Action:** Motion assess costs in the amount of \$20,000 to be paid in equal monthly installments  
96 within 6 years of final order; failure to do so constitutes violation of the terms of his probation  
97 made by Dr. Rouse. Second made by Dr. Kepley.

98  
99 **Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Spear recused.

100  
101 **Section III ended: 10:46 a.m.**

102 **Section IV began: 10:46 a.m.**

103  
104 **IV. PROSECUTION REPORT:**

105  
106 Assistant General Counsel, Chad Dunn presented the statistics regarding prosecution cases  
107 currently open in the department.

108  
109 Cases older than 1 year continued for prosecution: 5

110  
111 **Action:** Motion to continue prosecution on cases older than one year made by Dr. Kepley.  
112 Second made by Dr. Rouse.

113  
114 **Vote:** 6 yeas/0 opposed. Motion Carried.

115  
116 **Section IV ended: 10:48 a.m.**

117 **Section V began: 10:48 a.m.**

118  
119 **V. PETITION FOR WAIVER/VARIANCE:**

120  
121 **i. Ayana Pierre**

122  
123 Present. Not represented by counsel.

124  
125 **Action:** Motion to deny the petition for variance/waiver for failure to show she had met the  
126 purpose of the underlying statute made by Dr. King. Second made by Dr. Kepley.

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

129

130 **Break 11:00-11:11 a.m.**

131

132 **ii. Jon Scott Walker, OD**

133

134 Not present, nor represented by counsel.

135

136 **Action:** Motion to dismiss the petition as the drug is already on the formulary by virtue of its  
137 two components having been previously approved for addition made by Dr. Rouse. Second  
138 made by Dr. Kepley.

139

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

141

142 **Section V ended: 11:12 a.m.**

143 **Section VI began: 11:12 a.m.**

144

145 **VI. APPLICATIONS PRESENTED FOR BOARD REVIEW:**

146

147 **i. Amy Ruzicka, OD**

148

149 Not present, nor represented by counsel.

150

151 **Action:** Motion to approve the application for licensure made by Dr. King. Second made by  
152 Dr. Rouse.

153

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

155

156 **Section VI ended: 11:13 a.m.**

157 **Section VII began: 11:13 a.m.**

158

159 **VII. RATIFICATION LIST:**

160

161 **a. Licensure**

162

163 **i. Optometrist**

164

165 **Action:** Motion to ratify the approval of licensees made by Dr. Rouse. Second made by Dr.  
166 Spear.

167

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

169

170 **b. Continuing Education**

171

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

174 **Action:** Motion to ratify the approval of providers and courses made by Mr. Griffin. Second  
175 made by Dr. Kepley.

176  
177 **Vote:** 6 yeas/0 opposed. Motion Carried.

178  
179 **ii. Report of Continuing Education Providers & Courses approved by**  
180 **CE Committee Chair**

181  
182 **Action:** Motion to ratify the approval of providers and courses made by Dr. King. Second  
183 made by Dr. Spear.

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

186  
187 **Section VII ended: 11:16 a.m.**  
188 **Section VIII began: 11:16 a.m.**

189  
190 **VIII. SUSPENDED LICENSES/DEA RESPONSE**

191  
192 Dr. Kaplan asked that board staff contact Enforcement regarding the  
193 non-compliance of licensees whom have not reported.

194  
195 **Section VIII ended: 11:17 a.m.**  
196 **Section IX began: 11:17 a.m.**

197  
198 **IX. CHAIR/VICE CHAIR REPORT:**

199  
200 Dr. Kaplan advised the board of the annual oral medication course recertification they must  
201 complete pursuant to Chapter 463.0055, Florida Statutes. Dr. King announced that his term  
202 would be ending on October 31, 2019.

203  
204 **Section IX ended: 11:19 a.m.**  
205 **Section X began: 11:19 a.m.**

206  
207 **X. EXECUTIVE DIRECTOR'S REPORT:**

208  
209 Dr. Spivey announced that the Chair/Vice Chair meeting will be held on October 18, 2019 in  
210 Tallahassee. Dr. Spivey advised that the next board meeting was scheduled on the same day  
211 and asked the board to consider an alternate date to hold the meeting.

212  
213 Dr. Spivey advised that legislation passed on 7/1/19 requiring licensees to complete continuing  
214 education in Human Trafficking and that licensees must post sign in their offices educating  
215 patients.

216  
217 Dr. Spivey advised that legislation passed on 7/1/19 related to Telehealth and that the  
218 Department is developing documents for out of state providers to practice.

219

220 Dr. Spivey advised that legislation passed on 7/1/19 requiring licensees to advise patients of  
221 non-opioid alternatives for treatment.

222

223 **Section X ended: 11:25 a.m.**

224 **Section XI began: 11:25 a.m.**

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226 **XI. BOARD COUNSEL REPORT:**

227

228 **i. July Rules Report**

229 **ii. Application for Licensure as Certified Optometrist**

230 **iii. Initial Optometry Faculty Certificate Application**

231 **iv. 64B13-18.002**

232 **v. 64B13-4.004**

233 **vi. 64B13-4.007**

234 **vii. 64B13-10.001**

235 **viii. 64B13-3.010**

236

237 Ms. Munson advised that she was filling in for Ms. Loucks. Ms. Munson presented proposed  
238 language for Rule 64B13-3.010 per Dr. Kaplan's request for clarification.

239

240 **Action:** Motion to accept the proposed language made by Dr. Rouse. Second made by Dr.  
241 Kepley.

242

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

244

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

248

249 **Action:** Motion to accept the board's response made by Dr. King. Second made  
250 by Dr. Kepley.

251

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

253

254 Ms. Munson 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 able to  
256 be resolved with citation or notice of non-compliance. The board agreed there would be no  
257 minor violation.

258

259 **Action:** Motion to accept the board's response made by Dr. Rouse. Second made by Dr. King.

260

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

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263 **Break 11:43 - 11:46**

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265 **Rule 64B13-4.004 and Rule 64B13-10.001**

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Dr. Spivey presented new licensure applications on behalf of the Department. Dr. Spivey explained that the department is making attempt to standardize licensure applications across all boards.

Dr. King advised the board of a typo on page 7 (a) of the application.

**Action:** Motion to approve the process of replacing the old application with the new application to include correction made by Dr. King. Second made by Dr. Rouse.

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

**Action:** Motion to approve the process of replacing the old application with the new application made by Dr. King. Second made by Dr. Rouse.

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

Ms. Munson 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.

**Action:** Motion to accept the board’s response made by Dr. Kepley. Second made by Dr. Rouse.

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

Ms. Munson 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 violation.

**Action:** Motion to accept the board’s response made by Dr. Kepley. Second made by Dr. Rouse.

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

Dr. King asked for clarification of whether Rule 64B13-5.001 was revised. Dr. King also asked about the status of discussion of Rule 64B13-5.002 as it relates to the timeframe for the submission of continuing education course applications.

**Section XI ended: 11:58 a.m.**  
**Section XII began: 11:58 a.m.**

**XII. COMMITTEE REPORTS:**

**a. Budget – Dr. Kepley**



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None to report

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

None to report

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

None to report

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

None to report

**e. Examination – Dr. King**

If there is any change in rules, Dr. King communicates with NBEO so that they may update their exam questions. Dr. King asked the board to consider another board member to take over the committee at the end of his term.

**f. FOA – Dr. Kaplan**

None to report

**g. Healthiest Weight – Dr. King**

None to report

**h. Legislative – Dr. Kaplan**

Dr. Spivey already addressed.

**i. Probable Cause - Dr. Spear**

None to report

**j. Probationary – Dr. Kaplan**

None to report

**k. Rules – Dr. Kaplan**

None to report

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**I. Unlicensed Activity – Dr. Rouse**

None to report

**Section XII ended: 12:01 p.m.**  
**Section XIII began: 12:01 p.m.**

**XIII. OLD BUSINESS:**

None

**Section XIII ended: 12:01 p.m.**  
**Section XIV began: 12:01 p.m.**

**XIV. NEW BUSINESS:**

Dr. Kepley directed the board to review Florida Statute 463.0055 (3) (a) (6) in regard to the medication, Keflex. Dr. Kepley advised that Keflex was a trade name brand for Cephalexin and asked the board whether it could create an issue for a prescribing physician. The board concluded that it should not create an issue.

**Section XIV ended: 12:03 p.m.**  
**Section XV began: 12:03 p.m.**

**XV. NEXT MEETING DATE:**

**i. October 18, 2019**

**Section XV ended: 12:03 p.m.**  
**Section XVI began: 12:03 p.m.**

**XVI. PUBLIC COMMENTS**

None

**Section XVI ended: 12:04 p.m.**  
**Section XVII began: 12:04 p.m.**

**XVII. ADJOURNMENT**

Motion to adjourn at 12:04 p.m. made by Dr. Kaplan. Second made by Dr. Kepley.