FLORIDA | Board of Optometry

OFFICIAL 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):

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.

Board Staff Present:

Anthony Spivey, DBA, Executive Director
Kelly Woodard, Regulatory Supervisor

Board Counsel:

Rachelle Munson, Assistant Attorney General

Prosecution Services

Kimberly Marshall, Assistant General Counsel
Chad Dunn, 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.

II. APPROVAL OF MINUTES:

i. May 10, 2019
Action: Motion to approve the meeting minutes made by Dr. King. Second made by Dr. Rouse.

Vote: 6 yeas/0 opposed. Motion Carried.

Section II ended: 9:02 a.m.
Section III began: 9:02 a.m.

III. FINAL ORDER:

i. RECOMMENDED ORDER

a. Albert C. Evans, O.D.
   Case No.: 2012-15585


Action: Motion to adopt the administrative law judge’s finding of fact made by Mr. Griffin. Second made by Dr. Kepley.

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

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

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

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

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

Exception 1

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

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

Exception 2

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

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

Exception 3
Action: Motion to reject the exception made by Dr. King. Second made by Dr. Rouse.

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

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

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

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

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

Section III ended: 10:46 a.m.
Section IV began: 10:46 a.m.

IV. PROSECUTION REPORT:

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

Cases older than 1 year continued for prosecution: 5

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

Vote: 6 yeas/0 opposed. Motion Carried.

Section IV ended: 10:48 a.m.
Section V began: 10:48 a.m.

V. PETITION FOR WAIVER/VARIANCE:

i. Ayana Pierre

Present. Not represented by counsel.

Action: Motion to deny the petition for variance/waiver for failure to show she had met the purpose of the underlying statute made by Dr. King. Second made by Dr. Kepley.
Vote: 6 yeas/0 opposed. Motion Carried.

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

ii. Jon Scott Walker, OD

Not present, nor represented by counsel.

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

Vote: 6 yeas/0 opposed. Motion Carried.

Section V ended: 11:12 a.m.
Section VI began: 11:12 a.m.

VI. APPLICATIONS PRESENTED FOR BOARD REVIEW:

i. Amy Ruzicka, OD

Not present, nor represented by counsel.

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

Vote: 6 yeas/0 opposed. Motion Carried.

Section VI ended: 11:13 a.m.
Section VII began: 11:13 a.m.

VII. RATIFICATION LIST:

a. Licensure

i. Optometrist

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

Vote: 6 yeas/0 opposed. Motion Carried.

b. Continuing Education

i. Report of Continuing Education Providers & Courses approved by Board Staff
**Action:** Motion to ratify the approval of providers and courses made by Mr. Griffin. Second made by Dr. Kepley.

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

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

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

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

**Section VII ended: 11:16 a.m.**

**Section VIII began: 11:16 a.m.**

**VIII. SUSPENDED LICENSES/DEA RESPONSE**

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

**Section VIII ended: 11:17 a.m.**

**Section IX began: 11:17 a.m.**

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

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

**Section IX ended: 11:19 a.m.**

**Section X began: 11:19 a.m.**

**X. EXECUTIVE DIRECTOR’S REPORT:**

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

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

Dr. Spivey advised that legislation passed on 7/1/19 related to Telehealth and that the Department is developing documents for out of state providers to practice.
Dr. Spivey advised that legislation passed on 7/1/19 requiring licensees to advise patients of non-opioid alternatives for treatment.

Section X ended: 11:25 a.m.
Section XI began: 11:25 a.m.

XI. BOARD COUNSEL REPORT:

i. July Rules Report
ii. Application for Licensure as Certified Optometrist
iii. Initial Optometry Faculty Certificate Application
iv. 64B13-18.002
v. 64B13-4.004
vi. 64B13-4.007
vii. 64B13-10.001
viii. 64B13-3.010

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

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

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. King. Second made by Dr. Kepley.

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. Rouse. Second made by Dr. King.

Vote: 6 yeas/0 opposed. Motion Carried.

Break 11:43 - 11:46

Rule 64B13-4.004 and Rule 64B13-10.001
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.

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
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
l. 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.