

FLORIDA | Board of Optometry

OFFICIAL MINUTES

January 17, 2020

Hilton Garden Inn at Sea World
6850 Westwood Boulevard
Orlando, Florida 32821



Stuart Kaplan, O.D., *Chair*
Stephen Kepley, O.D., *Vice-Chair*
Anthony Spivey, DBA, *Executive Director*

The Florida Board of Optometry held a meeting on Friday, January 17, 2020, commencing at 9:00 a.m. This meeting was held at the Hilton Garden Inn at Sea World, 6850 Westwood Boulevard, Orlando, Florida 32821, (407) 354-1500, 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: 9:01 a.m.

I. CALL TO ORDER (Roll Call):

Stuart Kaplan, O.D., Chair
Stephen Kepley, O.D., Vice Chair
Katie Spear, O.D.
David Rouse, O.D.,
John Griffin, J.D.

Board Staff Present:

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

Board Counsel:

Deborah Loucks, Assistant Attorney General

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. September 27, 2019

Action: Motion to approve the meeting minutes made by Dr. Rouse. Second made by Dr. Spear.

Vote: 5 yeas/0 opposed. Motion Carried.

Section II ended: 9:03 a.m.

Section III began: 9:03 a.m.

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III. PROSECUTION REPORT:

Dr. Spivey presented the Department’s prosecution report.

Action: Motion to continue the prosecution of cases one year and older made by Dr. Kepley. Second made by Dr. Rouse.

Vote: 5 yeas/0 opposed. Motion Carried.

Section III ended: 9:05 a.m.
Skipped to Section XIII at 9:05 a.m.
Section IV began: 9:45 a.m.

IV. PETITION FOR WAIVER/VARIANCE:

i. Shawn Westbrook, O.D.

Action: Motion to approve the petition for variance/waiver made by Dr. Rouse. Second made by Mr. Griffin.

Vote: 5 yeas/0 opposed. Motion Carried.

Section IV ended: 10:01 a.m.
Section V began: 10:01 a.m.

V. TOPICAL OCULAR PHARMACEUTICAL AGENT:

Action: Motion to approve the addition of Oxervate 0.002% and add subsection 9 (i) to Rule 64B13-18.002 made by Dr. Kepley. Second made by Dr. Spear.

Vote: 5 yeas/0 opposed. Motion Carried.

Ms. Loucks 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. Dr. Kaplan stated there would not be adverse impact or increase of costs.

Action: Motion to approve Dr. Kaplan’s response made by Mr. Griffin. Second made by Dr. Rouse.

Vote: 5 yeas/0 opposed. Motion Carried.

Ms. Loucks 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. Dr. Kaplan stated there would not be minor violations.

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Action: Motion to approve Dr. Kaplan’s response made by Dr. Kepley. Second made by Dr. Rouse.

Vote: 5 yeas/0 opposed. Motion Carried.

Section V ended: 10:03 a.m.

Break 10:03 a.m. to 10:15 a.m.

Section VI began: 10:15 a.m.

VI. RULE HEARING

Dr. Rouse noted a correction in this section of the agenda. The rule subsection should be (6) and not (7).

- i. 64B13-3.010 ~~(7)~~ (6)**
- ii. JAPC correspondence 64B13-3.010**
- iii. Response to JAPC 3.010**

Dr. Spear recused herself from the discussion and vote. Dr. Spivey presented the rules and procedures regarding public comment.

Representative for the National Association of Optometrists and Opticians (NAOO), Wallace Lovejoy, suggested the inclusion of a pharmacologic dilated fundus exam during an annual eye exam to prevent undiscovered health issues and correct visual error. Mr. Lovejoy proposed an amendment to the rule which allows flexibility; and allows patients to make an informed refusal of being dilated.

Executive Director of the National Association of Optometrists and Opticians (NAOO), Joseph Neville, commented that the proposed rule will have a negative effect on the ability of optometrists to use telehealth to conduct comprehensive eye exams. Mr. Neville suggested that telehealth exams be conducted at the physician’s discretion after initial evaluation.

President of Digital Optometrics, Dr. Howard Fried, provided information on the digital optometric technology and resources such as OCT and white file retinal imaging used to conduct digital comprehensive exams.

Optometric Advisor of the 20/20 Vision Center, Dr. Chad Overman, commented that there was a demand for optometric services and stressed the importance of annual exams. Dr. Overman advised that there is a lack of access, shortage of optometric physicians, and that the proposed regulation would reduce or eliminate use of telehealth.

President of the Florida Optometric Association (FOA), Dr. Bryan Stam commented that physicians should be able to use professional discretion on the necessity to dilate and that stereoscopic dilation should remain a required part of an

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initial exam. Dr. Kepley asked Dr. Stam about the advantages of having binocular stereopsis. Dr. Stam advised that binocular indirect ophthalmoscope allows a physician to look into the vitreous, observe elevation of the retina, or presence of fluid.

Legislative Chair for the Florida Optometric Association (FOA), Dr. Kenneth Lawson, commented that the telehealth bill does not create a lesser experience or standard and that dilation exam services should be evaluated. Dr. Lawson conducted statistical research in which he determined that several Ophthalmologists will not conduct initial exams without dilation.

Ms. Loucks presented correspondence from the Joint Administrative Procedure Committee (JAPC) commenting on Rule 64B13-3.010 and expressing concern that the Board lacked rulemaking authority to permit the delegation of diagnosis or testing to optometric students.

General Counsel for the Florida Optometric Association (FOA), Leonard Carson commented that he reviewed the letter from JAPC. Mr. Carson advised that adjunct professors delegate tasks in order to teach their students; and that students may not

learn practical skill unless taught in that manner. Mr. Carson was in favor of the amendment. Dr. Kepley commented that a faculty member should be providing direction and repeating procedures to show the student how it is done.

General Counsel for Nova Southeastern University (NSU), Virginia Dailey, agreed with Mr. Carson's comments. Ms. Dailey commented that current rule is consistent with statute, and that no diagnosis or testing may be done by students. Otherwise, diagnosis and testing must be under the direct supervision of a licensed practitioner.

Ms. Loucks presented additional correspondence from JAPC regarding disciplinary guidelines. Dr. Kaplan requested draft language. Ms. Loucks advised that when a rule is opened for development, JAPC looks at entirety of rule and not just the changes being made.

Dr. Kaplan requested that Dr. Rouse work with Ms. Loucks to establish rule language. Dr. Kaplan suggested language regarding adjunct teaching procedures. Dean of Nova Southeastern University (NSU), David Loshin, advised that the students only collect data; and provided clarification on the teaching procedures.

Ms. Loucks asked for clarification of the distinction between delegating the responsibility as opposed to it being part of the training. Mr. Carson suggested changing the word 'delegate' as a resolution. Ms. Loucks advised that she would work with Mr. Carson and Ms. Dailey on the language. Mr. Griffin suggested deletion of the first sentence of the rule and restructuring of the second sentence. Ms. Loucks advised that new language would be presented at the next meeting.

178 **Action:** Motion to ask that revisions in subsection (7) remain intact as originally
179 proposed made by Mr. Griffin. Second made by Dr. Kepley.

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181 **Vote:** 5 yeas/0 opposed. Motion Carried.

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183 **Section VI ended: 11:09 a.m.**
184 **Section VII began: 11:09 a.m.**

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186 **VII. RATIFICATION LIST:**

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188 **a. Licensure**

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190 **i. Optometrist**

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

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195 **Vote:** 5 yeas/0 opposed. Motion Carried.

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197 **b. Continuing Education**

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199 Dr. Rouse presented the ratification reports.

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

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

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207 **Section VII ended: 11:11 a.m.**
208 **Section VIII began: 11:11 a.m.**

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210 **VIII. CHAIR/VICE CHAIR REPORT:**

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212 Dr. Kaplan announced the appointment of a new board member (Dr. Denise
213 Burns-Legros).

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215 **Section VIII ended: 11:11 a.m.**
216 **Section IX began: 11:11 a.m.**

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218 **IX. EXECUTIVE DIRECTOR'S REPORT:**

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220 Dr. Spivey announced an increase in exam fees set by the National Board of
221 Examiners of Optometry (NBEO).

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223 **Section IX ended: 11:12 a.m.**
224 **Section X began: 11:12 a.m.**

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X. BOARD COUNSEL REPORT:

December Rules Report

Ms. Loucks presented the rules report and advised that Rule 64B13-18.002 is scheduled to take effect on March 13, 2020.

OFARR letter

Ms. Loucks explained the new “sunset” provision. The sunset provision in a rule or statute is a provision states that a rule will “become of no effect” on a specified date.

JAPC response to 64B13-2.008 and .009

JAPC had concerns that the language was too vague and may include things that are precluded. Ms. Loucks asked for direction by the board on concerns about the definitions of other board business and made suggestions as to the language.

Section X ended: 11:23 a.m.

Section XI began: 11:23 a.m.

XI. COMMITTEE REPORTS:

a. Budget – Dr. Kepley

Nothing to report

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. Kaplan asked for volunteers to serve on the committee. Dr. Kepley agreed to serve on the committee.

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f. FOA – Dr. Kaplan

Nothing to report

g. Healthiest Weight –

Dr. Kaplan delegated Mr. Griffin to serve on the committee.

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

Dr. Rouse discussed an unlicensed activity campaign held in Broward, Dade, and Duval counties. Dr. Rouse presented 2019 results of the campaign. The Department’s Enforcement Liaison, Sidronio (Chilo) Casas provided additional information on unlicensed activity.

Section XI ended: 11:26 a.m.

Section XII began: 11:26 a.m.

XII. OLD BUSINESS:

None

Section XII ended: 11:26 a.m.

Section XIII began: 9:05 a.m.

XIII. NEW BUSINESS:

Dr. Kepley addressed issues regarding the National Board of Examiners of Optometry (NBEO) Part III examination. Dr. Kepley stated that variances were

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being given on the critical skills assessments; and that he did not believe that NBEO had fulfilled their contract with the Department. The contract states that the NBEO should provide a Florida Practical Examination, but that the board is entitled to determine the cutoff score. Dr. Kepley also stated that the NBEO was applying their own reference-based criteria which is not statistically valid.

Discussion ensued amongst members of the board regarding the examination criteria; and potential resolutions as it relates to the board rule.

Dean of Nova Southeastern University (NSU), David Loshin provided clarification of the re-evaluation or regrading of scores. Dr. Loshin advised that NBEO will not allow candidates to request regrading when a candidate has achieved an overall passing score.

Action: Motion to accept NBEO passing scores only for candidates having taken Part III in calendar year 2019 and forward until alternative testing methods can be devised to achieve the desired demonstration of minimum competency made by Dr. Kepley. Second made by Dr. Rouse.

Vote: None

Action: The board concluded that staff should advise applicants to file a petition for the board to consider their scores; and that they would be reviewed on a case by-case basis.

Section XIII ended: 9:45 a.m.
Referred back to Section IV at 9:45 a.m.
Section XIV began: 11:26 a.m.

XIV. NEXT MEETING DATE:

i. April 3, 2020

Dr. Kaplan asked that the June 26, 2020 meeting be rescheduled. Ms. Curry advised that she is working to have the meeting rescheduled to correlate with the annual FOA meeting in Aventura, FL.

Section XIV ended: 11:28 a.m.
Section XV began: 11:28 a.m.

XV. PUBLIC COMMENTS:

None

362 **Section XV ended: 11:28 a.m.**
363 **Section XVI began: 11:28 a.m.**

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365 **XVI. ADJOURNMENT:**

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367 **Action:** Motion to adjourn at 11:28 a.m. made by Dr. Kepley. Second made by Dr.
368 Rouse.

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370 **Vote:** 5 yeas/0 opposed. Motion Carried.