

**FLORIDA BOARD OF OPTICIANRY
GENERAL BOARD MEETING
MEETING MINUTES**

March 3, 2023, at 2:00 P.M. EST



**Paul Wilford, Chair
Jeffrey Taylor, ABOM, Vice-Chair
Ashleigh K. Irving, Executive Director**



Please note that the meeting minutes reflect the actual order that agenda items were discussed during the meeting and may differ from the agenda outline.

I. CALL TO ORDER

The meeting was called to order by Paul Wilford, Chair at 2:06 P.M. EST.

A. Opening Remarks

Opening remarks were read by Ashleigh Irving, Executive Director.

B. Roll Call

(TS 00:02:15 Minutes) Roll call was conducted by Ms. Irving.

MEMBERS PRESENT:

Paul Wilford, Chair
Jeffrey Taylor, Vice-Chair
Yvonne Schloss

STAFF PRESENT:

Ashleigh Irving, Executive Director
Eric Pottschmidt, Program Operations
Administrator

MEMBERS ABSENT:

Irene Stavros, RDH

DEPARTMENT OF HEALTH COUNSEL:

Cynthia NashEarly, Assistant General
Counsel
Mary Kitts, Staff Attorney
Christina Shideler, Chief Legal Counsel

BOARD COUNSEL:

Ronald "Tom" Jones, Assistant Attorney
General

COURT REPORTER:

For the Record – 850-222-5491

II. REVIEW AND APPROVAL OF MINUTES – October 4, 2022, General Business Meeting

(TS 00:03:39 Minutes) After discussion, the Board took the following action:

Motion: by Mr. Taylor to approve the October 4, 2022, meeting minutes.
Second: by Ms. Schloss.
Vote: passed unanimously.



III. PROSECUTOR’S REPORT

| <u>Case Status</u> | <u>Report</u> Date 9/26/2022 | <u>Report</u> Date 11/7/2022 | <u>Report</u> Date 2/6/2023 |
|---|---------------------------------|---------------------------------|--------------------------------|
| Total cases open/active in Prosecution Services: | 3 | 3 | 4 |
| Cases in Emergency Action Unit: | 0 | 0 | 0 |
| Cases under legal review: | 2 | 1 | 2 |
| Cases awaiting supplemental investigation/expert opinion: | 0 | 0 | 0 |
| Cases with PCP recommendation: | 1 | 1 | 1 |
| Cases where probable cause has been found: | 0 | 1 | 1 |
| Cases where DOAH has been requested: | 0 | 0 | 0 |
| Cases pending before DOAH: | 0 | 0 | 0 |
| Cases on Board meeting agendas: | 0 | 0 | 0 |
| Cases on appeal: | 0 | 0 | 0 |
| Cases older than one year: * | 0 | 0 | 0 |

* Does not include cases already agendaed for final action by the Board.

(TS 00:04:30 Minutes) Ms. NashEarly presented the Prosecutor’s Report for review. The Department requested that the Board authorize the continued prosecution of the year and older cases.

- Motion:** by Mr. Taylor to approve the continued prosecution of cases one year and older.
- Second:** by Mr. Wilford.
- Vote:** passed unanimously.

IV. PETITION FOR VARIANCE OR WAIVER

A. Joseph Pratt - Rule 64B12-16.008, F.A.C.

(TS 00:05:50 Minutes) Joseph Pratt was present and was not represented by legal counsel. Mr. Pratt was before the Board for review of a Petition for Variance or Waiver of Rule 64B12-16.008, F.A.C., which states, in part, ... “The completed Apprenticeship Sponsor Attestation form must be provided within six months of the apprentice’s completion of the program or credits will not be counted.” Mr. Pratt completed his apprenticeship December 22, 2017; his final Sponsor Report Form was dated December 22, 2022.

(TS 00:08:50 Minutes) Mr. Taylor noted that the five-year period between the date of completion of supervision and the date of the final Sponsor Report Form was substantial, and stressed the importance of opticians being mindful of the laws and rules for Florida. Additional discussion took place between Mr. Pratt, Mr. Taylor, and Mr. Wilford.

(TS 00:11:49 Minutes) After discussion, the Board took the following action:

- Motion:** by Mr. Taylor to deny the Petition for Variance or Waiver.



(TS 00:12:15 Minutes) Additional discussion took place between Board members, Board staff, and Board counsel regarding whether Mr. Pratt’s supervision could be considered to have been direct.

(TS 00:15:55 Minutes) Mr. Jones stated that Rule 64B12-16.008, F.A.C., is clear on the requirements, and acknowledged that while the Board may waive this rule, this would be at the discretion of the Board.

(TS 00:18:43 Minutes) Ms. Irving pointed out that Section 120.542(2), F.S., states, in part, ... “Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.” Mr. Wilford stated that he did not find this to be demonstrated in the present Petition.

(TS 00:19:50 Minutes) After additional discussion, the Board took the following action:

Second: by Mr. Wilford.
Vote: 2/1—Ms. Schloss opposed. Motion passed.

Mr. Pratt and Mr. Wilford discussed possible options on how Mr. Pratt can proceed in meeting requirements for licensure. Mr. Wilford suggested Mr. Pratt communicate with Board staff to receive additional information about his options moving forward.

B. Amber Dempsey – Rule 64B12-16.008, F.A.C.

(TS 00:23:10 Minutes) Amber Dempsey was present, however her line was initially muted. Ms. Dempsey was not represented by legal counsel. Ms. Dempsey was before the Board for review of a Petition for Variance or Waiver of Rule 64B12-16.008, F.A.C., which states, in part, ... “The completed Apprenticeship Sponsor Attestation form must be provided within six months of the apprentice’s completion of the program or credits will not be counted.” Ms. Dempsey completed her apprenticeship March 18, 2022; her final Sponsor Report Form was dated December 9, 2022.

(TS 00:25:45 Minutes) Mr. Taylor asked Ms. Dempsey to clarify the hardship cited in her Petition, and to explain how Hurricane Ian impeded her from submitting the final Sponsor Report Form within the required timeframe. Ms. Dempsey described how she was impacted by Hurricane Ian and how it prevented her from being able to submit the required form in a timely manner.

(TS 00:30:40 Minutes) After discussion, the Board took the following action:

Motion: by Mr. Taylor to approve the Petition for Variance or Waiver.
Second: by Ms. Schloss.
Vote: passed unanimously.



V. RULES REVIEW

A. Rule 64B12-9.0016, F.A.C.

(TS 00:31:28 Minutes) Mr. Jones presented the letter received from the Joint Administrative Procedures Committee (JAPC) regarding the proposed Rule 64B12-9.0016, F.A.C., which brought into question the rulemaking authorities and implementing law provided by Section 484.002(6), F.S., Section 484.005, F.S., and Section 456.017(6), F.S.

(TS 00:37:40 Minutes) Discussion took place between Board members and Board counsel regarding the legality of the proposed Rule 64B12-9.0016, F.A.C.

(TS 00:40:15 Minutes) After discussion, the Board took the following action:

Motion: by Mr. Taylor to repeal Rule 64B12-9.0016, F.A.C.
Second: by Ms. Schloss.
Vote: passed unanimously.

SERC Questions

- Will the proposed rule repeal have adverse impact on small business?
- Will the proposed rule repeal be likely to directly or indirectly increase regulatory costs to any entity including government in excess of \$200,000 in the aggregate in Florida within one year after implementation?
- Should a violation of this rule or any part of this rule be designated a minor violation?
- Should this rule include a sunset provision?

Mr. Jones noted that the third and fourth questions would not be applicable in this case, as this is a rule repeal.

Motion: by Mr. Taylor to answer “No” to both of the first questions.
Second: by Ms. Schloss.
Vote: passed unanimously.

(TS 00:43:15 Minutes) Additional discussion took place between Board members, Board staff, and Board counsel regarding the circumstances that lead to rules review.

(TS 00:57:04 Minutes) Mr. Jones offered clarification, stating that as the Board had just voted to repeal Rule 64B12-9.0016, F.A.C., once the rule becomes administratively repealed, the laws and rules course would no longer be required for initial licensure, but would still be required for license renewal.

(TS 01:03:55 Minutes) Additional discussion took place regarding whether the Board has the statutory authority to implement a laws and rules examination required for licensure. Mr. Jones cited Section 456.017(6), F.S., which states, in part, ... “an applicant may be required by a board, or the department when there is no board, to certify competency in state laws and rules relating to the applicable practice act. All laws and rules examinations shall be administered electronically unless the laws and rules examination is administered concurrently with another written examination for that profession or unless the electronic administration would be substantially more expensive.”



(TS 01:12:25 Minutes) Ms. Irving stated that Board staff and Board counsel would research this further so that additional information can be available for the Board's next general business meeting.

VI. REPORTS

A. Chair's Report – Paul Wilford

(TS 01:12:50 Minutes) Mr. Wilford recounted his experience of attending the Long-Range Planning Meeting in Tallahassee, FL on January 13, 2023, noting that topics of discussion included ELI, the Department's AI live-chat feature available on the board websites, process improvements with renewal, and the Unlicensed Activity division of the Department.

B. Vice-Chair's Report – Jeffrey Taylor

(TS 01:14:25 Minutes) Mr. Taylor also recounted his experience of attending the Long-Range Planning Meeting.

C. Executive Director's Report – Ashleigh Irving

i. Electronic Licensing

(TS 01:14:55 Minutes) Ms. Irving stated that the Department was moving towards implementing electronic licensing, which will allow flexibility for practitioners to access their license in a very secure online portal at any time. Ms. Irving noted that the licenses will maintain their current appearance with the addition of a QR code that will be linked to the Department's website where the license status and information will be available. Ms. Irving added that the anticipated implementation start date is July 1, 2023.

ii. Financial Report

(TS 01:17:05 Minutes) Ms. Irving presented the financial report included in the materials for review.

D. Board Counsel's Report – Ronald "Tom" Jones

i. Rules Report

(TS 01:17:25 Minutes) Mr. Jones presented the Rules Report for March 2023 including Rule 64B12-16.003, F.A.C., and Rule 64B12-16.004, F.A.C., both of which have gone into effect in recent months, and noted that Rule 64B12-9.0016, F.A.C., has just been voted on by the Board during the present meeting to be repealed.

VII. OTHER BUSINESS

A. Ratifications

i. License Numbers Issued

(TS 01:18:15 Minutes) The MQA Reports included in the materials showed the following licenses issued between September 27, 2022, and February 20, 2023: 55 optician licenses and 117 apprentice optician licenses.



Motion: by Mr. Taylor to accept the ratification lists as presented.
Second: by Ms. Schloss.
Vote: passed unanimously.

ii. Approved Continuing Education Courses

(TS 01:18:15 Minutes) The report included in the materials showed 189 CE Broker Courses approved between September 27, 2022, and March 2, 2023.

Motion: by Mr. Wilford to approve the continuing education courses listed.
Second: by Mr. Taylor.
Vote: passed unanimously.

iii. Volunteer for Second CE Committee Member

Mr. Taylor volunteered to act as the second CE Committee member to assist with review of incoming CE Broker course applications.

B. CE Broker Courses Requiring Board Review

i. Pentavision - Florida Jurisprudence Laws and Rules Practice – Course 20-958200

(TS 01:21:25 Minutes) Mr. Wilford stated that this course was before the Board for review of relevance as it was directed primarily towards optometry continuing education as opposed to opticianry.

Motion: by Mr. Taylor to deny the continuing education course.
Second: by Ms. Schloss.
Vote: passed unanimously.

VIII. NEW BUSINESS

A. Optical Training Institute – Optician Development Program

(TS 01:22:40 Minutes) Brian Diener, representation from Optical Training Institute, presented an overview of the Optician Development Program before the Board.

(TS 01:32:05 Minutes) Discussion took place between Mr. Diener and Board members regarding the content of the program and whether the Board could consider approving this program similarly to the NAO's program in terms of allowing it to count for hours as supplemental training for the apprenticeship program. Mr. Pottschmidt stated that additional research would be done by Board staff and Board counsel regarding this.

IX. PUBLIC COMMENTS

Mr. Wilford opened the floor for public comment. No public comment was made.

X. NEXT MEETING DATE – June 2, 2023, at 2:00 P.M. – GoToMeeting



XI. ADJOURNMENT @ approximately 3:42 P.M. EST

Motion: by Mr. Taylor to adjourn.
Second: by Ms. Schloss.
Vote: passed unanimously.