

**BOARD OF OPTOMETRY
FORMAL HEARING**

TIME AND PLACE: The meeting of the Board was called to order at 9:05 a.m. on Wednesday, August 6, 2008, at the Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Room 3, Richmond, Virginia.

PRESIDING OFFICER: David H. Hettler, O.D.

MEMBERS PRESENT: Paula H. Boone, O.D.
Gregory P. Jellenek, O.D.
Jonathan R. Noble, O.D.
W. Ernest Schlabach, Jr., O.D.
Jacquelyn S. Thomas

STAFF PRESENT: Elizabeth A. Carter, Ph.D., Executive Director
Eric Gregory, Assistant Attorney General, Board Counsel
Carol Stamey, Operations Manager

PARTIES ON BEHALF OF THE COMMONWEALTH: Wayne Halbleib, Assistant Attorney General
Mykl Egan, Adjudication Analyst

WITNESSES: Commonwealth
Bert Graham, M.S., L.P.C.
Conrad H. Daum, Consulting Psychiatrist
Kimberly H. Whittemore, R.N., Senior Investigator

COURT REPORTER: Lisa Mattson, Cavalier Reporting

OTHERS PRESENT: Karen Godbey

QUORUM: With six members of the Board present, a quorum was established.

FORMAL HEARING: A formal hearing was held in the matter of **JEFFREY C. SHELTON, O.D., License No. 0618-000777**, following the summary suspension of his license to practice optometry on May 16, 2008. David H. Hettler, O.D. presided. Dr. Shelton appeared before the Board in accordance with a Notice and Statement of Particulars dated May 16,

2008. Dr. Shelton was represented by Counsel, Murray J. Janus. The Notice and Statement of Particulars is incorporated into the minutes as Attachment 1.

CLOSED MEETING:

Upon a motion by Dr. Boone and duly seconded by Dr. Jellenek, the Board moved to convene in a closed meeting pursuant to § 2.2-3711.A.15 of the Code of Virginia for the purpose of consideration and discussion of medical/mental health records of Jeffrey C. Shelton, O.D. that are excluded from the Freedom of Information Act by Virginia Code Section 2.2-3705. Additionally, it was moved that Elizabeth Carter, Executive Director for the Board, Wayne Halbleib, Assistant Attorney General, Eric A. Gregory, Board Counsel, Carol Stamey, all Board members, witnesses by phone, court reporter and Karen Godbey attend the closed meeting because their presence in the closed meeting was deemed necessary to aid the Board in its deliberations.

DISCUSSION:

The Board received evidence and sworn testimony regarding the allegations in the Notice and Statement of Particulars from witnesses called to testify. Additionally, the Board reviewed the written letters of recommendation submitted by Murray A. Janus.

Deliberation

Upon a motion by Dr. Boone and duly seconded by Dr. Jellenek, the Board voted unanimously that Ms. Whittemore, Ms. Godbey, Dr. Shelton, Mykl Egan, Mr. Halbleib and the court reporter exit the room so that the Board could discuss and reach its decision in the matter of Jeffrey C. Shelton, O.D.

OPEN MEETING AND ACTION:

Upon a motion by Dr. Boone and duly seconded by Dr. Schlabach, the Board certified that only public business matters lawfully exempted from open meeting requirements and only such business matters as were identified in the motion for the closed meeting were heard, discussed or considered during the closed meeting just concluded.

Action

Upon a motion by Dr. Schlabach and duly seconded by Dr. Jellenek, the Board voted unanimously to accept Findings of Fact and Conclusions of Law, as read by Eric Gregory, and REINSTATED Dr. Shelton's license to practice Optometry. Further, Dr. Shelton was issued an Order with certain terms and conditions and the Order is incorporated into the minutes as Attachment 2.

ADJOURNMENT:

The meeting adjourned at 12:45 p.m.

David H. Hettler, O.D., Chair

Elizabeth A. Carter, Ph.D., Executive Director

VIRGINIA:

BEFORE THE BOARD OF OPTOMETRY

IN RE: JEFFREY C. SHELTON, O.D.
License No.: 0618-000777

NOTICE OF HEARING

Pursuant to §§ 2.2-4020 and 2.2-4021, § 54.1-110 and § 54.1-2400(11) of the Code of Virginia (1950), as amended ("Code"), Jeffrey C. Shelton, O.D., is hereby given notice that, pursuant to § 2.2-4024(F), a formal administrative hearing will be held in the presence of a quorum of the Board of Optometry ("Board") with the President of the Board presiding. The hearing will be held at 10:00 a.m. on June 11, 2008 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, Virginia, in Conference Room 1, at which time Dr. Shelton will be afforded the opportunity to be heard in person or by counsel.

At the hearing Dr. Shelton has the following rights, among others: the right to representation by counsel; the right to have witnesses subpoenaed and to present witnesses on his behalf; the right to present documentary evidence; and the right to cross-examine witnesses. If Dr. Shelton desires any witnesses to appear on his behalf, he shall notify the Director of the Administrative Proceedings Division, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia, 23233, giving the names and addresses of the witnesses, in writing in accordance with the enclosed Instructions for Requesting Subpoenas.

The purpose of the hearing is to receive and act upon evidence that Dr. Shelton may have violated certain laws and regulations governing the practice of optometry in Virginia, as more fully set forth in the Statement of Particulars below.

STATEMENT OF PARTICULARS

The Board alleges that Jeffrey C. Shelton, O.D., may be subject to disciplinary action in that:

1. Dr. Shelton may have violated § 54.1-3215(4) of the Code, as more fully set out in Attachment A.
2. Dr. Shelton may have violated § 54.1-3215(4) of the Code, in that he may be suffering from a mental illness and/or impairment due to substance abuse that renders him unsafe to practice optometry. Specifically, in a November 20, 2007, interview conducted with a Department of Health Professions' investigator, Dr. Shelton stated that he was admitted to the Southwestern Virginia Mental Health Institute, Marion, Virginia, on September 24, 2006, by his parents because they thought he was a harm to himself due to his emotional state. While hospitalized, he stated that he was diagnosed with Bipolar Disorder. Moreover, during outpatient

treatment, Dr. Shelton has not taken his medications as prescribed and has not been compliant with his treatment plan.

FOR THE BOARD

Elizabeth A. Carter, Ph.D.
Executive Director
Virginia Board of Optometry

DATE: _____

Jeffrey C. Shelton, O.D.
License Number: 0618000777

Findings of Fact:

- Jeffrey C. Shelton, O.D., holds license No. 0618-000777 to practice Optometry in the Commonwealth of Virginia.
- Said license was summarily suspended by Order of the Board of Optometry entered May 16, 2008. (See Attachment A.)
- In a November 20, 2007, interview conducted with a Department of Health Professions' investigator, Dr. Shelton stated that he was admitted to the Southwestern Virginia Mental Health Institute, Marion, Virginia, on September 24, 2006, on request by his parents because they thought he was a harm to himself due to his emotional state.
- Dr. Shelton was diagnosed with bipolar disorder.
- On October 10, 2006, Dr. Shelton was released from hospitalization after undergoing treatment and required to continue with outpatient treatment per his diagnosis.

Conclusions of Law:

- Dr. Shelton's diagnosis of bipolar disorder, coupled with his episodic alcohol abuse, constitute clear and convincing evidence to support a finding that he has been rendered, at times, unsafe to practice optometry under § 54.1-3215(4) of the *Code of Virginia*.
- Dr. Shelton's diagnosis of bipolar disorder, if not consistently treated pursuant to the treatment plan prescribed by his treating physician and counselor, renders him unsafe to practice optometry under § 54.1-3215(4) of the *Code of Virginia*.

Order and Penalties Imposed:

- Dr. Shelton shall enter into a Participation Contract with the Health Practitioners' Intervention Program ("HPIP") pursuant to Chapter 25.1 of Title 54.1 of the Code of Virginia (1950), as amended, and 18 VAC 76-10-10 et seq. of the Regulations Governing the Health Practitioners' Intervention Program and shall submit a copy of such contract to the Board. In not more than 90 days after the date of the Participation Contract, Dr. Shelton shall enter into a Recovery Contract with HPIP, and shall submit a copy of such contract to the Board.
- All reports required by this Order shall be submitted in writing to the Board office with the first report being received no later than thirty (30) days following the date that this Order is entered. Subsequent reports must be received quarterly by the last day of the months of February, May, August, and November until otherwise directed by the Board. Dr. Shelton is fully responsible for ensuring that required reports are properly submitted and received by the Board in a timely manner.

- Dr. Shelton shall comply with the terms of his contract with HPIP, and all addenda thereto. Dr. Shelton shall successfully complete his contract, and shall cause progress reports from HPIP to be submitted to the Board on a calendar quarterly basis as set forth in term number 2 including, but not limited to monthly screenings of Dr. Shelton's lithium level in his blood. The blood screenings shall be conducted for one (1) year from the date of entry into HPIP;
- Dr. Shelton shall notify the Board immediately upon his receipt of notification from HPIP that he is out of compliance with his contract with HPIP, or has been dismissed from HPIP;
- Dr. Shelton shall sign an authorization providing for unrestricted communication between and among the Board and HPIP and Dr. Shelton's current or former treating or evaluating practitioners during the course of his HPIP participation (*including, but not limited to, substance abuse evaluations or treatment records from substance abuse treatment facilities*);
- Dr. Shelton shall maintain compliance with his prescribed medications and treatment plan;
- Dr. Shelton shall provide immediately the name and address of his current employer or any change in employer within ten (10) days of any change in employment to the Board;
- Dr. Shelton shall inform each future employer of the Board's Order and shall provide each employer with a complete copy of the Board's Order. Within ten (10) of days of notifying his employer, Dr. Shelton shall forward to the Board a copy of the written notification he provided to his employer;
- Dr. Shelton's practice shall be subject to an unannounced inspection within six (6) months of the date of the entry of this Order, and shall permit the inspection of ten (10) patient records selected by the inspector;
- Dr. Shelton shall cooperate with the Virginia Board of Optometry and the Virginia Department of Health Professions in any investigation and inspection to verify that he is in compliance with the Board's Order.