

STATE OF MAINE BOARD OF OSTEOPATHIC LICENSURE

In Re: Charles Sullivan, D.O.)
Denial of Application for License Renewal) **DECISION AND ORDER**

I. PROCEDURAL HISTORY

Pursuant to the authority found in 5 M.R.S. § 9051 et seq., 10 M.R.S. § 8003(5), and 32 M.R.S. § 2591-A, the State of Maine Board of Osteopathic Licensure (“Board”) met in public session at its offices in Augusta, Maine, on December 12, 2013.¹ The purpose of the meeting was to conduct an adjudicatory hearing to determine whether grounds existed to deny the application for renewal of licensure of Charles Sullivan, D.O.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Joseph deKay, D.O.; John Gaddis, D.O.; Katherine Norfleet, Public Member; Gary Palman, D.O.; Natania Piper, D.O.; Kathy Walker, LMSW; and Chair Marty W. McIntyre. Board member Scott Thomas, D.O., the case reporter, recused himself. Dr. Sullivan was present and represented by Eric Mehnert, Esq. Michael Miller, Esq., Assistant Attorney General, represented the State of Maine. Rebekah J. Smith, Esq., served as Presiding Officer. The hearing was held in accordance with the requirements of the Administrative Procedures Act, 5 M.R.S. § 9051 et seq.

State Exhibits #1 to #27 and Licensee Exhibits #1 to #10 were admitted without objection. The Board took notice of its statutes and rules and confirmed that no participating member had any conflict of interest or bias that would prevent him or her from rendering an impartial decision in this matter. Both parties presented an opening statement. The State presented four witnesses:

¹ Although the Notice of Hearing indicated that the hearing was to begin at 10:30, the hearing was delayed until Dr. Sullivan arrived at approximately 11:00. Dr. Sullivan indicated that he was delayed because he was pulled over by a police officer for failure to make a full stop. (Testimony of Sullivan.)

Susan E. Strout, Executive Secretary for the Board; Lani Graham, M.D., M.P.H., Director of the Medical Professionals Health Program; James Gioia, Detective with the Office of the Attorney General; and the Licensee. The Licensee did not present any additional witnesses. Both parties made a closing statement. The Board then deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding Dr. Sullivan's application for license renewal.

II. FINDINGS OF FACTS

1. Charles Sullivan, D.O., has been licensed by the Board as osteopathic physician for approximately 32 years. (Testimony of Licensee.)
2. On January 8, 2010, George Dreher, M.D., performed a psychological evaluation of Dr. Sullivan at the request of the Board of Osteopathic Licensure. (Licensee Exh. #1.) Dr. Dreher concluded that Dr. Sullivan's history of two prior operating under the influence convictions and his recent third such conviction were consistent with alcohol abuse and/or poor judgment. (Licensee Exh. #1.) Dr. Dreher concluded that Dr. Sullivan did not appear to be a danger to himself or others, including his patients. (Licensee Exh. #1.) Dr. Dreher concluded that Dr. Sullivan would be best served by ongoing engagement and resources to maintain and document his sobriety and to foster further emotional awareness, growth, and stability. (Licensee Exh. #1.) Dr. Dreher diagnosed Dr. Sullivan with alcohol abuse, in remission, and noted a concern with the current prescription use of a benzodiazepine; adjustment disorder with anxious features related to the current Board investigation and other stressors; Suboxone use by prescription as replacement for his apparently reduced endogenous endorphins following a period of prescribed opioid treatment; and a history of mild attentional and organizational difficulties. (Licensee Exh. #1.)

3. On February 11, 2010, the Board issued a Decision and Order in which it concluded that Dr. Sullivan had demonstrated habitual substance abuse by recording a blood alcohol level of .18% and then operating an automobile, made more serious by the facts that Dr. Sullivan had two previous convictions for operating under the influence, had refused in the past to follow the treatment recommendations of the Maine Medical Professionals Health Program (“MPHP”), and had not demonstrated meaningful initiative to receive substance abuse treatment. (State Exh. #2.) The Board also found that Dr. Sullivan had committed unprofessional conduct by using his medical examiner’s card in an inappropriate manner. (State Exh. #2.) Among other discipline, the Board ordered Dr. Sullivan to sign a contract with MPHP by February 18, 2010, and to pay the cost of hearing totaling \$1,483.75 by December 10, 2010. (State Exh. #2.)
4. On March 16, 2010, Paul Minot, M.D., reported to Dr. Sullivan’s legal counsel that he had been providing psychiatric care for Dr. Sullivan since April 2006 for a diagnosis of anxiety disorder NOS. (Licensee Exh. #2.) He noted that upon admission to treatment, Dr. Sullivan had reported a history of chronic insomnia that had been completely unresponsive to other medications and since July 2006 he had been taking the benzodiazepine medication Ativan.² (Licensee Exh. #2.)
5. On March 21, 2010, Paul Gosselin, D.O., Dr. Sullivan’s primary care provider, reported that Dr. Sullivan was prescribed Suboxone³ for several reasons, most notably treatment of pain as well as an apparent diminished ability to produce his own endorphins. (Licensee Exh. #3.)

² At various times in the record, Ativan is referred to by the name of the generic drug lorazepam. This Decision and Order references the prescription as “Ativan” throughout for consistency.

³ At various times in the record, Suboxone is referred to as buprenorphine. This Decision and Order references the prescription as “Suboxone” throughout for consistency.

6. In November 2010, through counsel, Dr. Sullivan reported to the Board that in March 2010, he had been diagnosed with renal cancer, which had exacerbated his already existing financial hardships, and requested that he be allowed to pay the assessed hearing costs at a rate of \$200 per month. (State Exh. #3.) Dr. Sullivan's request was granted. (State Exh. #7.)
7. On January 13, 2011, the Board issued an Interlocutory Decision and Order in which it concluded that Dr. Sullivan had a substance abuse problem and had failed to sign a contract with MPHP by February 18, 2010, as previously ordered. (State Exh. #4.) The Board ordered Dr. Sullivan to sign a contract with MPHP by February 10, 2011. (State Exh. #4.)
8. Dr. Sullivan did enter into a contract with MPHP by the deadline of February 10, 2011. (State Exh. #6.) That contract was an initial evaluation and treatment contract in which Dr. Sullivan agreed to undergo a psychosocial assessment and a neurocognitive evaluation. (Testimony of Graham.)
9. Pursuant to Dr. Sullivan's initial contract with MPHP, on February 16, 2011, Vijay Amarendran, M.D., conducted a psychosocial assessment of Dr. Sullivan. (Licensee Exh. #6.) Dr. Amarendran concluded that Dr. Sullivan did not meet criteria for inpatient hospitalization, that he was fit to practice medicine at that time, and that there was no functional impairment related to his diagnoses, although he also found that Dr. Sullivan's judgment was impaired. (Licensee Exh. #6.) Dr. Amarendran noted that the clinical rationale for Dr. Sullivan's Suboxone prescription was unclear and that Dr. Sullivan was likely dependent on Suboxone; he recommended a gradual tapering off the medication over a period of several months. (Licensee Exh. #6.) Dr. Amarendran also recommended that the prescription of Ativan, contraindicated in a patient with a history of alcohol abuse, be

tapered off gradually as well. (Licensee Exh. #6.) Dr. Amarendran suggested that the management of Dr. Sullivan's opiate dependence, anxiety, and insomnia be transferred to a psychiatrist certified in addiction medicine who would be able to closely monitor Dr. Sullivan's treatment. (Licensee Exh. #6.) Dr. Amarendran recommended that Dr. Sullivan participate in MPHP as well as undergo regular substance monitoring to ascertain continued sobriety from alcohol. (Licensee Exh. #6.) Dr. Amarendran concluded that Dr. Sullivan was not a safety risk to his patients at that time but noted that if he relapsed to alcohol abuse or started abusing his prescriptions, he would need to be monitored closely. (Licensee Exh. #6.)

10. Also pursuant to Dr. Sullivan's initial contract with MPHP, on February 16, 2011, James Iannazzi, M.D., conducted a neurological evaluation of Dr. Sullivan. (Licensee Exh. #7.) Dr. Iannazzi opined that Dr. Sullivan was not impaired by piece of alcohol or any other substance at that time. (Licensee Exh. #7.) Dr. Iannazzi did not find Dr. Sullivan to be neurologically impaired. (Licensee Exh. #7.) Dr. Iannazzi had no therapeutic recommendations other than ongoing monitoring to ensure compliance with abstinence from alcohol. (Licensee Exh. #7.)
11. On March 10, 2011, the Board issued a Final Decision and Order. (State Exh. #6.) The Board reiterated that the outstanding sanctions ordered in the February 11, 2010, Board Decision and Order remained in full force and effect, and added the assessment of additional costs arising from the December 9, 2010, and March 10, 2011, hearing dates, a total of \$1665.55, payable by December 10, 2011. (State Exh. #6.) The Board reminded Dr. Sullivan to contact it prior to December 10, 2011, if he found that he was unable to timely pay the costs. (State Exh. #6.)

12. Pursuant to a five-year monitoring contract entered into with MPHP on April 19, 2011, Dr. Sullivan agreed, among other things, to undergo a psychological evaluation; undergo twice monthly urine testing; obtain quarterly treatment from his primary care physician; attend a structured recovery group weekly; provide quarterly reports from his primary care provider and psychiatrist; and submit monthly self-reports to his MPHP case manager. (State Exh. #22.) Dr. Graham reported that Dr. Sullivan's contract was considerably more flexible than most contracts, allowing him to take part in a more flexible group support environment and maintaining a low frequency of urine testing due to financial issues and a confirmed history of sustained abstinence from alcohol. (Testimony of Graham.) Dr. Graham also noted that although she encouraged Dr. Sullivan to seek therapy on numerous occasions, Dr. Sullivan did not feel that he was financially capable of obtaining therapy and Dr. Graham did not mandate it. (Testimony of Graham.) Under the contract, Dr. Sullivan met with Dr. Graham on an annual basis and submitted monthly self-reports, which were often quite late. (Testimony of Graham.) Dr. Graham did not receive reports from Dr. Sullivan's primary care provider or his psychiatrist, although they were required by the contract. (Testimony of Graham.) She also noted that although workplace monitoring was frequently a requirement of MPHP contracts, in this case Dr. Sullivan did not have someone who could function as a workplace monitor and so it was not a requirement of his contract. (Testimony of Graham.)
13. By letter dated June 15, 2011, the Board reminded Dr. Sullivan that pursuant to the February 11, 2010, Board Decision and Order, he had been assessed \$1,483.75 for the cost of the December 10, 2009, hearing, but that a balance of \$883.75 towards that total remained due, requesting a good faith effort to pay some amount each month. (State Exh.

#7.) The letter does not reference the additional costs of \$1665.55 that has been assessed by the March 10, 2011, Final Decision and Order. (State Exh. #7.)

14. On December 3, 2011, Mark Publicker, M.S., FASAM, an addictionologist, reported that he had evaluated Dr. Sullivan upon referral by MPHP regarding Dr. Sullivan's use of Suboxone and Ativan. (State Exh. #27.) Dr. Publicker noted that it was difficult to construct an accurate timeline regarding Dr. Sullivan's medical history given that Dr. Sullivan was unable to recall the years in which significant events occurred. (State Exh. #27.) During the evaluation, Dr. Sullivan disputed his 2010 diagnosis of alcohol abuse although he had had two prior operating under the influence convictions and suggested that he periodically got drunk enough to have a substantial hangover. (State Exh. #27.) Dr. Sullivan reported to Dr. Publicker that he had been prescribed 5 mg of Ativan for sleep for years. (State Exh. #27.)⁴ Dr. Sullivan initially reported to Dr. Publicker that he had been taking 16 mg of Suboxone for two to three years for shoulder pain, but later indicated it was prescribed for withdrawal from methadone following pancreatitis in 2005, after which he was prescribed opioids, then methodone, from which he experienced withdrawal. (State Exh. #27.) Dr. Publicker observed that Suboxone was a weak analgesic and inappropriate treatment for pain. (State Exh. #27.) He noted that Dr. Sullivan's pain was not described as severe and it was unlikely that Suboxone had an analgesic effect. (State Exh. #27.) Dr. Publicker concluded that there was no good indicator for Dr. Sullivan's use of Suboxone. (State Exh. #27.) Dr. Publicker expressed concern that benzodiazepines, such as Ativan, lose their efficacy and could worsen sleep problems if used for more than 3 to 4 weeks; he

⁴ At hearing, Dr. Sullivan testified that he had initially been prescribed Suboxone somewhere between 2003 and 2008 for pain and also because after he weaned off methadone following opiates given during hospital stay for pancreatitis, he did not feel right. (Testimony of Sullivan.) He also testified that he had been taking Ativan for quite a few years and that it had initially been prescribed for anxiety and insomnia. (Testimony of Sullivan.)

also could see no reason why it should be prescribed for Dr. Sullivan. (State Exh. #27.)

Finally, Dr. Publicker noted concern that Dr. Sullivan's prescription history could not be viewed through the Prescription Monitoring Profile. (State Exh. #27.)⁵

15. After receiving Dr. Publicker's report, Dr. Graham met with Dr. Sullivan and reviewed Dr. Publicker's conclusions. (Testimony of Graham.)

16. On February 2, 2012, Dr. Sullivan's contract with MPHP was modified to reduce the frequency of urine testing to monthly. (State Exh. #23.) Throughout his time in the program, Dr. Sullivan underwent 28 urine tests which showed no signs of alcohol use. (Testimony of Graham.) Dr. Graham did not test Dr. Sullivan for the use of benzodiazapenes. (Testimony of Graham.) The contract revision also called for Dr. Sullivan to work with his psychiatrist to develop a plan for tapering off Suboxone and Ativan. (State Exh. #23.) Dr. Graham followed up with Dr. Sullivan multiple times but he did not submit a plan for tapering. (Testimony of Graham.) At Dr. Graham's third presentation to the MPHP Advisory Board regarding Dr. Sullivan's non-compliance, the Advisory Board concluded that his tapering should be overseen by an addictionologist rather than his primary care physician or a psychiatrist. (Testimony of Graham.) The basis for the Advisory Board's decision was that Dr. Sullivan had been on the medication for such a long time that discontinuance required a higher level of expertise. (Testimony of Graham.)

17. On February 3, 2012, Susan E. Strout, Executive Secretary of the Board, notified Dr. Sullivan through his counsel that the Board had discussed his request to resume making

⁵ At hearing, Detective Gioia confirmed that he was not able to locate Dr. Sullivan's prescription through the Prescription Monitoring Profile for the period of April through December 2011. (Testimony of Gioia.)

installment payments in April 2012 following a period of non-payment and was requesting additional information. (State Exh. #5.)

18. By letter dated January 9, 2013, Lani Graham, M.D., M.P.H., Director of MPHP, informed the Board that Dr. Sullivan's participation in MPHP was at risk due to his inability to fully comply with the terms of his contract. (State Exh. #8.) Dr. Graham opined that Dr. Sullivan was in sustained recovery from abuse of alcohol and noted that he had logged all negative tests for alcohol during the time MPHP had followed him. (State Exh. #8.) Dr. Graham explained that Dr. Sullivan's risk of discharge from MPHP stemmed from his continued use of two addictive medications: Suboxone, prescribed by his primary care physician, and Ativan, prescribed by his psychiatrist. (State Exh. #8.) Dr. Graham explained that due to Dr. Sullivan's challenging economic circumstances, MPHP's Advisory Committee had suggested that Dr. Sullivan been given a year to taper off the medications, as recommended by Dr. Publicker. (State Exh. #8.) Dr. Graham noted that despite repeated requests on her part beginning in January 2012, Dr. Sullivan never submitted a plan for tapering off the medications and MPHP never received any reports from the treating physicians as requested. (State Exh. #8.) Dr. Graham expressed concern that the impact from the combination of medications could have long-term effects on Dr. Sullivan's cognitive abilities and reported that his ability to treat patients was unknown. (State Exh. #8.) Dr. Graham noted that she had given Dr. Sullivan until the end of 2012 to submit a plan for tapering off the medications of concern. (State Exh. #8.) Dr. Graham reported that several weeks prior, Dr. Sullivan sent her an email indicating that he was interested in tapering off the medications and had begun that process, although he did not submit a plan for completion of the process as Dr. Graham requested. (State Exh. #8.) Dr. Graham

concluded that MPHP had not been very successful in motivating change in Dr. Sullivan's behavior. (State Exh. #8.)

19. By letter dated February 13, 2013, Dr. Graham informed the Board that Dr. Sullivan's ongoing participation in MPHP continued to be at risk due to his inability to fully comply with the terms of his contract. (State Exh. #9.) Dr. Graham reported that although she had advised Dr. Sullivan that the Advisory Committee had made clear that a primary care physician was not appropriate to supervise his tapering off of the medications, he had not obtained the services of an addictionologist to oversee the process. (State Exh. #9.) She noted that she had heard from Dr. Gosselin, Dr. Sullivan's primary care physician, for the first time in Dr. Sullivan's tenure with MPHP and that he reported that Dr. Sullivan had cut back on his "opioid replacement" but that Dr. Graham should never contact Dr. Gosselin. (State Exh. #9.) Dr. Graham reported that she informed Dr. Sullivan that she did not believe it was safe or satisfactory for Dr. Gosselin to oversee the tapering and provided him until March 11, 2013, to set up a relationship with an addictionologist. (State Exh. #9.) She concluded that if he was unable or unwilling to do this she would reluctantly discharge him from the program. (State Exh. #9.)
20. By letter dated February 19, 2013, the Board informed Dr. Sullivan that it noted that a balance of \$865.55 remained due, apparently in reference to the \$1,483.75 in costs assessed by the February 11, 2010, Order, and that no payment has been received for several months. (State Exh. #10.) The letter did not reference the \$1,665.55 in costs assessed by the March 10, 2011, Order. (State Exh. #10.) The Board informed Dr. Sullivan that a complaint could be filed on the Board's motion if costs had not been paid by the close of business on March 13, 2013. (State Exh. #10.)

21. By letter dated March 13, 2013, Dr. Graham informed the Board that Dr. Sullivan had been discharged from MPHP for non-compliance. (State Exh. #11.) She noted that his participation had been tenuous for some time due to his failure to comply with program requirements. (State Exh. #11.) Dr. Graham indicated that although she had informed Dr. Sullivan of the recommendation that he present himself to an addictionologist to help taper off the medications of concern, he had not followed through. (State Exh. #11.) Although Dr. Sullivan had contacted one addictionologist, that physician had been unwilling to accept him as a patient, and the Advisory Board had concluded that having Dr. Gosselin assist Dr. Sullivan with the taper was not appropriate. (State Exh. #11; Testimony of Graham.) Dr. Graham noted that the Advisory Committee was concerned about the integrity of the program having given Dr. Sullivan so many opportunities for health improvement without compliance and the Committee did not believe that MPHP had an adequate ability to assess Dr. Sullivan's health status. (State Exh. #11.) She reported that the Advisory Committee was concerned that Dr. Sullivan's health be managed by someone with a high level of expertise given the length of time he had been on these medications. (State Exh. #11.) Dr. Graham concluded that she believed that Dr. Sullivan was now committed to the concept of discontinuing the medications of concern and that his alcohol use appeared to be in sustained remission. (State Exh. #11.)
22. On March 18, 2013, Dr. Sullivan submitted his application for licensure as an osteopathic physician. (State Exh. #12.)
23. By letter dated April 2, 2013, the Board notified Dr. Sullivan that it had placed his renewal application on administrative hold, allowing his license to remain valid pending a final decision. (State Exh. #13.)

24. By letter dated June 20, 2013, and sent by certified mail, the Board informed Dr. Sullivan that on April 11, 2013, the Board had voted to preliminarily deny his application for licensure renewal based on noncompliance with Board Orders. (State Exh. #14.) The Board also informed Dr. Sullivan that on June 13, 2013, it voted to issue a complaint on its own motion regarding his failure to comply with Board Orders, demonstrating unprofessional conduct; his discharge from MPHP for non-compliance; and his failure to pay all the costs assessed in the March 10, 2011, Final Decision and Order, which were due on December 10, 2011. (State Exh. #14.)
25. Dr. Sullivan responded to the Board Notice, indicating that he had complied with the MPHP contract to the best of his ability. (State Exh. #15.) He noted that to the best of his knowledge he had not caused harm to a single patient in 30 years nor had there been a complaint against him. (State Exh. #15.) He reported that he had cut his dose of Suboxone in half to 8 milligrams and that at his July meeting with his psychiatrist he would be starting a supervised gradual withdrawal from Ativan. (State Exh. #15.)⁶ He stated that he was tired of being dependent on substances but felt he was not impaired by them nor had he abused them. (State Exh. #15.)
26. On October 25, 2013, the Board provided Dr. Sullivan with a list of payments totaling \$945 that had been paid toward assessed costs of \$1,483.75 and \$1,665.55 in the prior Board Orders. (State Exh. #18.)⁷ Three payments of \$200 had been made in December 2010, January 2011, and February 2011, and sporadic \$25 and \$50 payments had been made

⁶ At hearing, Dr. Sullivan testified that he was taking 8 mg of Ativan, although he had previously been prescribed 16 mg. (Testimony of Sullivan.) He also testified that although he had been taking 5 mg of Suboxone previously, he was taking 3 mg at the time of hearing. (Testimony of Sullivan.)

⁷ The email indicated that a total of \$720.55 remained due, apparently applying all of Dr. Sullivan's payments to the March 10, 2011, Order assessing him \$1665.55. Applying all of his payments to that Order, Dr. Sullivan owed \$720.55 toward it, plus the totality of the February 11, 2010, assessment of \$1483.75, a total of \$2204.30. (State Exh. #18; Testimony of Strout.)

between June 2011 and October 2013. (State Exh. #18.) Dr. Sullivan's income in 2012 was low enough that he was not required to pay income taxes, but he had outstanding medical bills of over \$50,000 and an outstanding debt to the IRS of between \$35,000 and \$40,000. (Testimony of Sullivan.)

27. On December 11, 2013, Dr. Minot, who continued to provide psychiatric care to Dr. Sullivan, reported that his dosage of Ativan had been reduced over the prior five months from 5 mg daily to 3 mg daily, with a plan of eventual discontinuation. (Licensee Exh. #10.)

III. GOVERNING STATUTES AND RULES

1. The Board may refuse to renew the license of a licensee it finds has engaged in unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which the licensee is licensed. 32 M.R.S. § 2591-A(2)(F).
2. The Board may refuse to renew the license of a licensee it finds is in noncompliance with a Board Order. 10 M.R.S. § 8003(5)(C)(3).

IV. CONCLUSIONS OF LAW

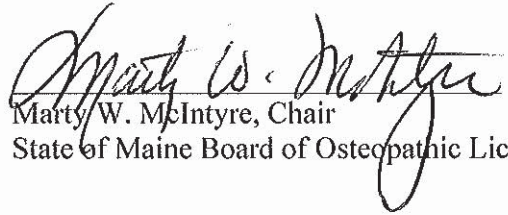
The Board, considering the above facts and those alluded to in the record but not referred to herein, determined as follows:

1. By a vote of 7 to 0, found that Dr. Charles Sullivan had committed unprofessional conduct and was in noncompliance with Board Orders by failing to comply with Board Orders of February 11, 2010; January 13, 2011; and March 10, 2011, by (a) failing to comply with the terms of his contract with Maine Professional Health Partners and (b) failing to pay assessed costs.

2. By a vote of 6 to 1, denied the reapplication of Dr. Charles Sullivan to be licensed as an osteopathic physician in the State of Maine.

So Ordered.

Dated: January 28, 2014


Marty W. McIntyre, Chair
State of Maine Board of Osteopathic Licensure

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. § 8003(5) and 5 M.R.S. § 11002(3), any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by certified mail, return receipt requested, upon the State of Maine Board of Osteopathic Licensure, all parties to the agency proceedings, and the Attorney General.