

**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL
LICENSURE AND CERTIFICATION**

**BOARD OF LICENSING FOR ALCOHOL AND OTHER DRUG USE
PROFESSIONALS**

**In Re: Dr. W. Kieran Cunningham
MLADC License # 0331**

Docket No.: 24-ALC-005

FINAL DECISION AND ORDER – 06/13/24

I. PARTICIPANTS:

Board Members and Administrative Staff and Counsel:

Alexandra H. Hamel, Board Chair and Member
Joni O’Brien, Board Member
Thomas Deel, Board Member

Traci Weber, OPLC Board Administrator

Elizabeth Eaton, Board Counsel
Trivani Shahi, Board Counsel Legal Intern

Presiding Officer:

Nikolas K. Frye, Esq., OPLC Administrative Law Judge

Parties:

Michael Porter, Esq., Hearing Counsel
Claire Markey, General Counsel Legal Intern

Dr. W. Kiernan Cunningham, Licensee (failed to appear)

II. CASE SUMMARY/PROCEDURAL HISTORY:

In 2023 the Board of Licensing for Alcohol and Drug Use Professionals (“Board”) received information that Dr. W. Kieran Cunningham, (“Licensee”) had allegedly attested to the Board that he had

completed all continuing education requirements when it appeared from submissions received by the Board that he had not. After reviewing submissions from the Licensee that were incomplete, the Board voted on 11/09/23 to initiate a disciplinary proceeding in this matter. A final hearing was held 06/13/24 at 10:00 AM EST at which the Licensee failed to appear. This Final Decision and Order follows.

III. SUMMARY OF THE PROPOSED EVIDENCE AND EVIDENTIARY RULINGS:

The Board received the following evidence pursuant to RSA 541-A:33 and Rules 206.22 and 206.18(d):

A. Exhibits were submitted by Hearing Counsel, numbered as follows:

| | | |
|-----------|--|------------|
| Exhibit 1 | Notice of Disciplinary Adjudicative Hearing | HC 001-005 |
| Exhibit 2 | Prehearing Conference Order | HC 006-007 |
| Exhibit 3 | Exhibit 3- Audit Material Submitted along with letters or communications with Mr. C - Redacted | HC 008-056 |

B. Exhibits were submitted by the Licensee and labeled as follows:

None.

C. Sworn testimony was received from:

1. Traci Weber, OPLC Board Administrator (by offer of proof provided by Hearing Counsel)

The Presiding Officer fully admitted Hearing Counsel’s Exhibits 1-3 at the hearing.

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

The Licensee failed to appear for a disciplinary hearing held pursuant to RSA 310:10. After hearing from Hearing Counsel and reviewing the record in the matter, the Presiding Officer concluded that the Licensee received sufficient notice of the final disciplinary adjudicatory hearing under RSA 310:10, II, Plc 206.06(b), RSA 541-A:31, and the New Hampshire and Federal Constitutions. The

Presiding Officer therefore decided to proceed with the final hearing with the burden of proof, by a preponderance of the evidence, placed upon Hearing Counsel. *See* Rule 206.07(e). The issues presented were as follows:

- (1) Whether the Licensee engaged in professional misconduct as defined at RSA 330-C:27, III(a) (*see* RSA 330-C:24, I *and* Alc Rules 403.03, 406.03, 408.02, 408.03 and/or 410.01) by allegedly representing at renewal that she [sic] had completed the ongoing requirements of supervision and peer collaboration when she had not done so and/or thereafter failing to provide documentation that she [sic] had completed those requirements when requested to do so by the Board.
- (2) If a finding of misconduct is made pursuant to RSA 330-C:27, III, whether and to what extent Licensee should be subjected to one or more of the disciplinary sanctions authorized by RSA 330-C:27, IV and/or RSA 310:12.

NOH at II(c).

The Board heard evidence as generally summarized below.

HEARING COUNSEL’S CASE-IN-CHIEF:

The offer of proof explained that Exhibit 3 contains the Board’s record pertaining to an audit of the Licensee’s Alc Rule 403.03 ongoing requirements for the 2021-2023 renewal cycle. It contains correspondence between the Board/OPLC and the Licensee relating to the audit, as well as documentation provided by the Licensee in accordance with the audit. The documentation the Licensee provided in response to the audit shows he only completed 36 hours of peer collaboration hours for the 2021-2023 renewal cycle. It also shows that for each 12 month cycle of that renewal period, he only completed 18 hours of peer collaboration.

LICENSEE’S CASE-IN-CHIEF:

None.

V. DISCUSSION, FINDINGS OF FACTS, AND CONCLUSIONS OF LAW:

After reviewing all the evidence and considering the presentation and demeanor of the witness, the Board makes the following findings of facts:

1. The LADC Board adopts Hearing Counsel's proposed findings of fact numbers 1-3:
 - 1) Dr. W. Kieran Cunningham is a Master Licensed Alcohol and Drug Counselor, ("MLADC") Lic. No. 0331.
 - 2) Dr. Cunningham has held licensure as an MLADC since 3/31/1995.
 - 3) Dr. Cunningham renewed his licensure as an MLADC on 6/15/2023.
2. When selected for audit post renewal, Dr. Cunningham failed to provide verification of either sufficient Supervision hours required for renewal pursuant to N.H. Code Admin. R. Alc 406.03 and/or sufficient Peer Collaboration hours required for renewal pursuant to N.H. Code Admin. R. Alc 408.02.
3. The LADC Board adopts Hearing Counsel's proposed findings of fact numbers 5-8:
 - 5) N.H. Code Admin. R. Alc 406.03 requires 26 hours of clinical supervision per 12 months or;
 - 6) N.H. Code Admin. R. Alc 408.02 requires 26 hours of peer collaboration per 12 months.
 - 7) Dr. Cunningham's previous renewal of licensure was 5/30/2021.
 - 8) Pursuant to N.H. Code Admin. R. Alc 406.03 and 408.02, Dr. Cunningham was required to document a total of 52 hours of supervision or peer collaboration for the time period of 5/30/2021 to the date of his most recent renewal 6/15/2023.
4. The documentation provided by Dr. Cunningham as a result of the audit is as follows:
 - a. Between 7/12/2021 and 6/13/2022, Dr. Cunningham provided documentation that he engaged in 18 hours of peer collaboration, 8 hours short of the required 26 hours.
 - b. Between 7/11/2022 and 6/13/2023, Dr. Cunningham provided documentation that he engaged in 18 hours of peer collaboration, 8 hours short of the required 26.
5. The LADC Board adopts Hearing Counsel's proposed finding of fact number 10:
 - 10) Dr. Cunningham provided verification of 36 hours of peer collaboration for the 24-month time period between last renewal (5/30/2021) and his current renewal, 6/15/2023, out of a required 52 hours, leaving Dr. Cunningham 16 hours short for renewal when he renewed on 6/15/2023.

Based upon the findings of fact made by the Board, the Presiding Officer makes the following conclusions of law:¹

- (1) Hearing Counsel established, by a preponderance of the evidence, that the Licensee engaged in professional misconduct as defined at RSA 330-C:27, III(a) (*see* Alc Rule 403.03) when he failed to fully comply with either the supervision requirements described in Alc 406 or the peer collaboration requirements described in Alc Rule 408.
- (2) Hearing Counsel established, by a preponderance of the evidence, that the Licensee engaged in professional misconduct as defined at RSA 330-C:27, III(a) when he failed to fully comply with the audit procedure set forth in Alc Rule 410.01(c)

Upon a finding of professional misconduct made pursuant to RSA 330-C:10, I, and pursuant to RSA 310:10, VII and RSA 310:12, the Board imposes the following sanctions based upon the specific circumstances of the Licensee’s situation and this case:

1. Pursuant to RSA 310:12, I(a), the Licensee is **REPRIMANDED**.
2. Pursuant to RSA 310:12, I(e), the Licensee shall pay an **ADMINISTRATIVE FINE** in the amount of \$250.00 payable to the State of New Hampshire through the Office of Professional Licensure and Certification.

VI. CONCLUSION AND DECISION:

Pursuant to RSA 310:10 and RSA 330-C, the Board makes the findings of fact and the Presiding Officer draws the conclusions of law made herein, and the Board imposes the noted sanctions.

DATED: 6/20/2024

_____/s/ Nikolas K. Frye, Presiding Officer_____
Administrative Law Judge
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301

¹ The Presiding Officer recognizes that findings of fact 2., 3. 8), 4, and 5 partially contain conclusions of law. The Presiding Officer did not consider those conclusions of law when determining what conclusions of law to draw based upon the Board’s findings of fact.