

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

**WEST VIRGINIA BOARD OF
DENTISTRY,**

Complainant,

v.

Case No. 2021-DB-0006D

**JONATHAN RAY PYLE, DDS,
License No. 3872 and
MOUNTAINEER DENTAL COMPANY,
Corporation No. C-360,**

Respondents.

FINAL ORDER FOLLOWING HEARING

This matter came for consideration before the West Virginia Board of Dentistry (hereinafter referred to as “the Board”) at a properly noticed board meeting on the 16th day of December, 2021, following hearing before the Board’s duly appointed hearing examiner on August 16, 2021. Since that time, the Board has received a full transcript of the hearing and the Hearing Examiner’s “Recommended Decision” entered on November 8, 2021, which includes the Hearing Examiner’s findings of fact, analysis, conclusions of law, and recommended penalty.

In consideration of these materials, the Board **MODIFIES** the penalty recommended by the Hearing Examiner as it pertains to the time for Respondents to bring the Dental Corporation into compliance with the Board. The Board additionally **MODIFIES** the penalty recommended to provide a date certain by which Respondents must pay the \$10,000.00 penalty and the Board’s incurred costs.

Accordingly, the Board hereby **MODIFIES** Paragraph 2 of the Recommended Penalty to provide “[t]hat the Respondents Dr. Pyle and Mountaineer Dental have thirty (30) calendar days

from the date of entry of the Board's decision in this matter to submit all materials necessary to process Mountaineer Dental's Annual Registration for Dental Corporation." The Board further **MODIFIES** Paragraph 3 of the Recommended Penalty to provide that "[s]hould the Respondents fail to comply with submitting all of the above-delineated materials within thirty (30) days from the entry of the Board's decision in this matter, the Respondents shall immediately cease and desist providing services to the public as Mountaineer Dental..." Paragraph 4 of the Recommended Penalty is **MODIFIED** to provide "[t]hat the Respondents be collectively fined \$10,000.00 to be paid in full by July 1, 2022." Paragraph 5 of the Recommended Penalty is **MODIFIED** to provide "[t]hat the Respondents shall reimburse by July 1, 2022 the Dental Board in the amount of \$3,399.43 for its costs in prosecuting this matter."

The Board **ADOPTS** the entirety of the remaining findings of fact, analysis, conclusions of law, and recommended penalty issued by the Hearing Examiner and, as such, the Hearing Examiner's Recommended Decision is hereby incorporated into this Final Order.

The Board having **ADOPTED** the Hearing Examiner's Recommended Decision, except as modified above, hereby **ORDERS** the following:

1. That Respondent Dr. Pyle be reprimanded for his willful and extended non-compliance;
2. That the Respondents Dr. Pyle and Mountaineer Dental have thirty (30) calendar days from the date of entry of the Board's decision in this matter to submit all materials necessary to process Mountaineer Dental's Annual Registration for Dental Corporation. This should include the following:
 - a. The proper and complete submission of the Annual Registration for Dental Corporation form;

- b. The payment of \$150.00 registration fees for delinquent filings due on June 30, 2019, June 30, 2020, and June 30, 2021, (totaling \$450.00);
 - c. The payment of \$150.00 late fees for delinquent filings due on June 30, 2019, June 30, 2020, and June 30, 2021, (totaling \$450.00); and
 - d. The provision to the Board of Mountaineer Dental's annual reports filed with the WVSOS for 2019, 2020 and 2021.
3. Should the Respondents fail to comply with submitting all of the above-delineated materials within thirty (30) days from the entry of the Board's decision in this matter, the Respondents shall immediately cease and desist providing services to the public as Mountaineer Dental;
 4. That the Respondents be collectively fined \$10,000.00 to be paid in full by July 1, 2022; and
 5. That the Respondents shall reimburse by July 1, 2022 the Dental Board in the amount of \$3,399.43 for its costs in prosecuting this matter.

NOTICE OF RIGHT TO APPEAL

If you are adversely affected by this Final Order, you have a right to appeal it to the Circuit Court of the County in which you reside within thirty (30) days from the date you receive the Final Order. The petition for review must name the WEST VIRGINIA BOARD OF DENTISTRY as the respondent. Before presenting your petition to the court, you must mail copies of your petition to the President and to the Executive Director of the West Virginia Board of Dentistry at 1319 Robert C. Byrd Drive, Crab Orchard, West Virginia, 25827. The filing of an appeal as described above does not stay or supersede the Board's Final Order; therefore, you must comply with the terms of the Board's Final Order until such time as your

appeal is decided. Reference may be made to West Virginia Code § 30-1-9 for a more complete description of the appeal process.

DATE ENTERED: 12-17-2021

WEST VIRGINIA BOARD OF DENTISTRY

By:  DDS

SAMUEL V. VELTRI, DDS
President

BLAYDES LAW, PLLC
ATTORNEY AT LAW
2442 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25311

JEFFREY G. BLAYDES
304-342-3651 FAX
wvjustice@aol.com

304-342-3650 PHONE

November 8, 2021

Susan Combs, Executive Director
West Virginia Board of Dentistry
P. O. Box 1447
Crab Orchard, WV 25827

Re: West Virginia Board of Dentistry v. Jonathan Ray Pyle, DDS and
Mountaineer Dental Company
Case No. 2021-DB-0006D

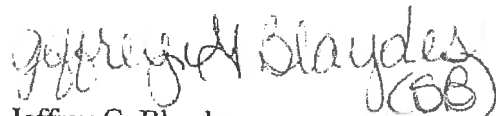
Dear Ms. Combs:

Enclosed please find the "Recommended Decision" in the above referenced matter.

Please feel free to contact me should you have any questions or require additional information. Thank you for your attention to this matter.

Sincerely,

BLAYDES LAW, PLLC


Jeffrey G. Blaydes

JGB/sb
Enclosure

REC'D NOV 10 2021



BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

Complainant,

v.

CASE NO. 2021-DB-0006D

**JONATHAN RAY PYLE, DDS,
License No. 3872 and
MOUNTAINEER DENTAL COMPANY
Corporation No. C-360,**

Respondent.

RECOMMENDED DECISION

This matter was heard on August 16, 2021, by the West Virginia Board of Dentistry's ("Board") designated Hearing Examiner, Jeffrey G. Blaydes, Esquire. The hearing convened at the Legal Library - West Virginia Office of the Attorney General State Capitol Complex, Charleston, West Virginia, pursuant to notice timely issued by the Board regarding a complaint filed against Jonathan Ray Pyle, D.D.S., and Mountaineer Dental Company (collectively "respondents").

The Board was represented by Assistant Attorney General Cassandra Means. Jonathan Ray Pyle, D.D.S. ("Dr. Pyle"), appeared *pro se*, by GoToMeeting video. Also present was Susan M. Combs, Executive Director of the Board and Elise Guise, the Attorney General's investigator, by GoToMeeting video. Based on a thorough review of the entire record, the undersigned makes the following recommended Findings of Fact, Analysis, and Conclusions of Law.

PROCEDURAL HISTORY

1. On February 16, 2021, after multiple attempts to obtain Respondents' compliance in renewing Mountaineer Dental Company's Certificate of Authorization, Executive Director Combs filed a Complaint against the Respondents. (Board Exs. 2, 3, 4, 5 and 7)
2. The Complaint was issued to the Respondents via certified mail on February 17,

2021, and received by the Respondents on February 19, 2021. The Complaint outlined in detail the Respondents' noncompliance and notified the Respondents to cease and desist rendering dental services in this State. In the cover letter to the Complaint, Respondents were informed that they had thirty (30) days to file a written response to the Complaint, or else they waived the right to do so. Respondents failed to file a response. (Board Ex. 7)

3. On April 9, 2021, having investigated the Complaint, the Board found probable cause to pursue disciplinary action against the Respondents. (Statement of Charges at Para. 26)

4. On June 7, 2021, the Board issued a Notice of Hearing for July 19, 2021, and a Statement of Charges. The Notice of Hearing and Statement of Charges were issued to the Respondents via certified United States mail. Because the Board was unable to confirm receipt by the Respondents, the hearing was continued to a later date.

5. On July 7, 2021, the Respondents were personally served with an Amended Notice of Hearing and Statement of Charges by West Virginia Office of the Attorney General Investigator Ms. Guice.

6. On August 16, 2021, pursuant to West Virginia Code ¶ 29A-5-1, *et seq.*, and West Virginia Code § 5-1-1, *et seq.*, an evidentiary hearing was conducted.

7. At the beginning of the hearing, Dr. Pyle moved for a continuance. He asserted that he wished to obtain counsel and had transportation issues. (Tr. 9-10)

8. The Board objected to Dr. Pye's motion to continue, arguing that Dr. Pyle had ample opportunity to secure both an attorney and transportation to the hearing. (Tr. 9-10) The Board alleged that Mountaineer Dental Company had been operating without a valid Certificate of Authorization for over two years and was continuing to provide dental care to the public. (Tr. 10)

9. A remote platform had already been set up to accommodate a virtual witness. This virtual platform allowed Dr. Pyle to fully and effectively participate remotely.

10. Dr. Pyle failed to establish good cause for his motion to continue. Moreover, Dr. Pyle was able to fully participant in the hearing via teleconference. His motion to continue was denied. (Tr. 11)

11. Dr. Pyle appeared *pro se* via the GoToMeeting platform, which featured both video and audio contact and interaction.

12. The Board was represented in person by Assistant Attorney General Means. Executive Director Combs also appeared in person in the capacity as the Board's representative.

13. At the administrative hearing, the Board introduced nine (9) exhibits and presented two (2) witnesses, including Executive Combs and Ms. Guice, the Attorney General's investigator. Dr. Pyle offered testimony in the narrative and was afforded the opportunity to cross-examine the witnesses tendered by the Board.

14. This matter became mature for decision on September 27, 2021, the deadline for the submission of the parties' proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. Respondent Dr. Pyle is a licensee of the Board, holding License No. 3872, which license is presently active until February 1, 2022. At all times relevant, Dr. Pyle held an active license with the Board. (Tr. 16, 20: Board Ex. 1)

2. Respondent Mountaineer Dental Company ("Mountaineer Dental"), located at 6 Columbia Street, Philippi, West Virginia, is owned and operated by Dr. Pyle. (Tr. 21)

3. The Board is a state entity created and governed by West Virginia Code §§ 30-4-1,

et seq., and is empowered to regulate the practice of dentistry in the State of West Virginia.

4. Respondent Mountaineer Dental, Corporation No. C-360, was previously authorized by the Board to offer dental services to the public. This Certificate of Authorization was obtained from the Board on August 27, 2018, and expired on June 30, 2019. (Tr. 22-23)

5. Mountaineer Dental failed to renew its Certificate of Authorization on or after June 30, 2019, despite numerous communications from the Board. Those communications are set forth below. (Tr. 23)

6. On July 29, 2019, the Board issued a letter to Respondent Mountaineer Dental advising that its annual registration for a corporation was not renewed. Among other things, the letter advised Respondent to promptly submit the signed renewal form, a copy of Respondent Mountaineer Dental's Annual Report, the \$150.00 renewal fee, and a \$150.00 late fee. The letter further instructed that failure to comply may result in a complaint being initiated by the Board against Respondent Dr. Pyle's dental license for failure to adhere to the Board's rules. (Tr. 23-35; Board Ex. 2)

7. The Respondents failed to submit the required renewal materials after the July 29, 2019, letter. (Tr. 23, 25)

8. On April 20, 2020, the Board emailed Dr. Pyle again advising him that the annual registration for Mountaineer Dental had expired on June 30, 2019. (Tr. 26; Board Ex. 3)

9. On April 21, 2020, Respondent Dr. Pyle indicated via email that the issue would be handled immediately. Once again, the Board did not receive any renewal materials from Dr. Pyle or anyone on his behalf. Tr. 26; Board Ex. 3)

10. On October 1, 2020, the Board issued another letter to the Respondents again advising

of the failure to renew the dental corporation certificate. The letter further advised that Respondent Mountaineer Dental's annual reports had not been filed with the West Virginia Secretary of State (hereinafter "WVSOS") for 2019 and 2020 and Mountaineer Dental was listed "not in compliance" on the WVSOS's web site. The letter further enclosed duplicate renewal forms and again advised that failure to respond may result in a complaint being initiated against Dr. Pyle's dental license for failure to adhere to the Board's rules (Tr. 27-28; Board Ex. 4)

11. The Respondents again failed to submit the required renewal materials after the October 1, 202, correspondence. (Tr. 28)

12. On November 30, 2020, Investigator Guice visited Mountaineer Dental and observed that it was still offering dental services to the public. Specifically, Investigator Guice observed that the office was open, the office's lights were on, office staff was present, and there were instructions on the door for COVID-19 and social distancing procedures. Investigator Guice further observed a patient leaving Mountaineer Dental. (Tr. 29-30, 53-57; Board Ex. 9)

13. During her site visit, Investigator Guice hand delivered a letter to Respondent Dr. Pyle regarding his continued non-compliance with renewing Mountaineer Dental's Certificate of Authorization. (Tr. 54-55; Board Ex. 9)

14. Investigator Guice also spoke with Respondent Dr. Pyle, who indicated that he would contact the Board regarding his non-compliance. He explained to Investigator Guice that he had gotten behind on paperwork due to his mother's illness. (Tr. 54-55; Board Ex. 9)

15. Following the site visit by Investigator Guice, the Respondents again failed to submit the required renewal materials. (Tr. 30)

16. During the course of her investigation, Investigator Guice also contacted Mountaineer

Dental via telephone and conducted internet research to confirm that Mountaineer Dental was open for business and providing patient care. Her investigation demonstrated that Mountaineer Dental was providing patient care. (Tr. 56)

17. Following the conclusion of her investigation, Investigator Guice submitted a report to the Board. The contents of the report are consistent with Investigator Guice's testimony at the August 16, 2021, evidentiary hearing. (Tr. 54-55; Board Ex. 9)

18. On February 12, 2021, Respondent Dr. Pyle was copied on a communication from the Board to the WVSOS wherein the Board advised that Mountaineer Dental no longer holds an active Certificate of Authorization with the Board and has not held an active certificate since June 30, 2019. The letter further stated that Mountaineer Dental is prohibited from providing dental services at this time. (Tr. 30-31; Board Ex. 4)

19. The Respondents again failed to submit the required renewal materials after having been copied on the February 12, 2021, letter to the WVSOS. (Tr. 31)

20. On February 17, 2021, after multiple attempts to obtain compliance, Board Executive Director Combs filed a Complaint against Mountaineer Dental and Dr. Pyle. The February 16, 2021, Complaint was designated Case No. 2021-DB-0006D. (Tr. 39-41; Board Ex. 7)

21. The Complaint outlined in detail the Respondents' noncompliance and notified the Respondents to cease and desist rendering dental services in the State. (Board Ex. 7)

22. In the cover letter to the Complaint, Respondents were informed that they had thirty (30) days to file a written response to the Complaint, or else they waived the right to do so. (Tr. 40-41; Board Ex. 7)

23. The Respondents failed to file a written response to the Complaint. The time for

doing so has since expired. (Tr. 41)

24. On June 7, 2021, Investigator Guice again visited Mountaineer Dental where she observed the presence of staff and two patients. (Tr. 57-58)

25. Mountaineer Dental's Facebook page indicates that it remains open.¹ (Tr. 42, 61; Board Ex. 8)

26. Online data from the WVSOS procured on August 11, 2021, indicated that Mountaineer Dental is "[n]ot in compliance." However, as of August 16, 2021, the WVSOS's online database did not reflect non-compliance with its rules and regulations, which are a component of, but not dispositive to, obtaining a Certificate of Authorization with the Board. Stated another way, Dr. Pyle's subsequent compliance with filing requirements for the WVSOS does not have any decisive effect on his status of having an expired Certificate of Authorization with the Board as additional steps need to be taken. (Tr. 32-37; Board Ex. 6)

27. In order to procure a valid Certificate of Authorization from the Board, Respondent Dr. Pyle must complete and sign a one-page renewal form, which is largely limited to providing a signature and identifying the Mountaineer Dental's president and secretary. The Respondents must also pay the \$150.00 registration fee for each year since 2019, pay an additional \$150.00 late fee for each year not in timely compliance, and attach a copy of Mountaineer Dental's annual reports that were filed with the WVSOS. (Tr. 36, 45-47; Board Ex. 4)

28. Once the renewal form and additional materials are received by the Board, the Board reviews the same for completeness and accuracy. Executor Director Combs testified that "its simple.

¹Dr. Pyle testified that Mountaineer Dental's Facebook page is maintained by a third party.

It's a simple process." (Tr. 37)

29. The Board receives and reviews approximately one-hundred and seventy (170) Annual Registration for Dental Corporation submissions each year. Typically, completed applications are automatically renewed upon review. (Tr. 47)

30. Executor Director Combs testified that the Board has taken exhaustive efforts to remind Dr. Pyle and Mountaineer Dental to submit the required documents in order to get into compliance with the Board's regulatory and statutory scheme. (Tr. 48)

31. Executor Director Combs testified that the recalcitrance of Dr. Pyle and Mountaineer Dental has not been previously encountered by the Board as it pertains to other dental corporations or dentists. (Tr. 48)

32. Respondent Dr. Pyle testified that the Board's presentation of evidence "is accurate." Nonetheless, Dr. Pyle attributed his noncompliance to the death of his father, caring for his mother, disorganization in maintaining his paperwork and potential family conflict interfering with the same, and lack of transportation. (Tr. 62)

33. Dr. Pyle testified that he submitted materials to the WVSOS in August 2021, which was more than two years after Mountaineer Dental's Certificate of Authorization had lapsed. (Tr. 62)

34. Dr. Pyle conceded that the Board had taken numerous efforts to get him to comply over the past two years. (Tr. 63)

35. Dr. Pyle admitted that Mountaineer Dental had seen patients as recently as the week prior to the August 16, 2021, evidentiary hearing. (Tr. 64)

36. As of the date of this filing, the Board has still not received from the Respondents a

completed Annual Registration of Dental Corporation Form, registration fees for the applicable years, late fees for the applicable years, or Mountaineer Dental's annual reports that were submitted to the WVSOS.

ANALYSIS

The facts of this case are not in dispute. Respondents' Certificate of Authorization to offer dental services in the State of West Virginia was obtained on August 27, 2018, and expired on June 30, 2019. For more than two years Respondents have been violating the statutory and regulatory scheme governing the practice of dentistry in West Virginia by providing dental services without proper certification from the Board.

The Board – through exhaustive and patient efforts – repeatedly contacted Dr. Pyle in writing, e-mail and by engaging an investigator to visit Dr. Pyle *twice* to notify him of actions pending and urge compliance with his professional obligations to continue to practice dentistry. The Board has sent him the extraordinarily simple, one page form that needed to be completed (along with the submission of a fee payment of \$150.00 and his annual reports). All to no avail.

Dr. Pyle explains his failure to abide by this simple, but mandatory duty by pointing to his family issues including the death of his father, the declining health of his mother and other issues that have prevented him from completing this important task. He also suggests that he has been disorganized in his paperwork; that his family may have taken his application; and, alternatively, that he believed that he submitted the application to the Board (though none has ever been received by the Board). Ultimately, Dr. Pyle does not dispute any of the facts presented by the Board. And he has yet completed application for the Certificate of Authorization for Mountaineer Dental.

It is beyond cavil the health and safety of the public are paramount. The Board is required

by the Legislature to insure that professional services are rendered by licensees and that various requirements are met to lawfully practice dentistry in this State. It is undisputed that Dr. Pyle and Mountaineer Dental have failed to meet their statutory and regulatory obligations to do so. Therefore, the Board has clearly and unequivocally met its burden by a preponderance of evidence and has established that Respondents have violated the statutory and regulatory scheme governing the practice of dentistry and the operation of a dental corporation by failing to renew Mountaineer Dental's Certificate of Authorization.

The Board has patiently, professionally, and exhaustively attempted to guide Dr. Pyle into compliance. Through correspondence and personal visits from an investigator, the Board has provided Dr. Pyle with the materials needed to obtain his Certificate of Authorization. Moreover, the Board has provided more than ample time for Dr. Pyle to respond to his lapsed credentials.

Dr. Pyle's response to the Board's efforts has been confounding. Dr. Pyle simply needs to pay his fee by check, complete the brief application at issue, and submit reports that are already complete and have been submitted to the WVSOS. Although Dr. Pyle has suffered personal family loss and now cares for his mother, these familial obligations do not excuse Dr. Pyle from his obligations as a dentist practicing in West Virginia. In order to maintain his good standing with the Board, he (like every other licensee) must abide by the law governing the practice of dentistry. He has failed to do so.

In its Prayer for Relief, the Board recommends that Dr. Pyle be reprimanded for his willful and extended non-compliance. Additionally, the Board requests that Dr. Pyle have fourteen days from entry of the Board's decision in this matter to submit all necessary materials to process Mountaineer Dental's Annual Registration for Dental Corporation. This should include the

following:

- a. The proper and complete submission of the Annual Registration for Dental Corporation form;
- b. The payment of \$150.00 registration fees for delinquent filings due on June 30, 2019, June 30, 2020, and June 30, 2021, (totaling \$450.00);
- c. The payment of \$150.00 late fees for delinquent filings due on June 30, 2019, June 30, 2020, and June 30, 2021, (totaling \$450.00); and
- d. The provision to the Board of Mountaineer Dental's annual reports filed with the WVSOS for 2019, 2020 and 2021.

Should Respondents fail to do so, Respondents shall immediately cease and desist providing services as Mountaineer Dental.

The Board also seeks a fine of \$10,000 and costs for this proceeding.

Having thoroughly considered the undisputed facts and law to be applied to this case, the undersigned finds the prayer for relief to be reasonable and designed to protect the public interest. As such, the undersigned recommends that the Board adopt this relief in its final order.

In support of the foregoing, the undersigned now issues the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The Board is a state entity created by West Virginia Code §§ 30-4-1, *et seq.*, and is empowered to license and regulate the practice and conduct of dentists in the State of West Virginia.
2. As a licensee of the Board, Dr. Pyle is subject to the authority of the Board. See W. Va. Code §§ 30-4-2, 30-4-8.
3. Pursuant to West Virginia Code § 30-4-1, *et seq.* and West Virginia Code § 5-5-4, the Board is empowered to refuse to renew a license, suspend or revoke any license of a licensee

upon satisfactory proof that a licensee is or has, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct, in violation of West Virginia Code §§ 30-4-1, *et seq.*, 30-4A-1, *et seq.*

4. West Virginia Code § 30-4-16(c) provides that “[n]o corporation may practice dentistry, or any of its branches, or hold itself out as being capable of doing so without a certificate of authorization from the board.”

5. Providing and offering to provide dental services to the public without a valid Certification of Authorization is a violation of the West Virginia Dental Practice Act and the rules promulgated thereunder. *See* W. Va. Code §§ 30-4-16, 19(g)(4), 19(g)(12)(I) and (O).

6. The Board has the authority to institute charges against one of its licensees when probable cause exists for believing that the licensee may have engaged in conduct, practices or acts in such condition that his license should be suspended, revoked or otherwise disciplined for one or more of the grounds listed in W. Va. Code §§ 30-1-1-*et seq.*, 30-4-1 *et seq.*, 30-4A-1, *et seq.*, or the Board’s legislative rules (hereinafter referred to as “the Dental Practice Act.”) W. Va. Code R. § 5-4-6.4.

7. “Charges may be based upon information received by way of a written complaint filed with the Board and any information gathered by the Board in the process of investigating a complaint.” W. Va. Code R. § 5-4-6.4.

8. Dr. Pyle and Mountaineer Dental Company have willfully and continually failed to comply with the Board’s laws and regulations pertaining to the obtainment of a Certificate of Authorization.

9. The Respondents' continued failure to obtain the required Certificate of Authorization is in spite of numerous formal and informal attempts from the Board to urge compliance.

10. The following evidence presented at the hearing establishes, by a preponderance of the evidence, that the Respondents have willfully failed to comply with their legal obligations and, therefore, should be subjected to disciplinary action by the Board:

- a. Dr. Pyle has conceded that the Board's presentation of evidence during the evidentiary hearing was accurate. (Tr. 62);
- b. Mountaineer Dental was previously authorized by the Board to offer dental services to the public. This certificate was obtained from the Board on August 27, 2018, and expired on June 30, 2019. (Tr. 22-23);
- c. Mountaineer Dental failed to renew its Certificate of Authorization on or after June 30, 2019, despite multiple communications from the Board urging compliance. (Tr. 23);
- d. Dr. Pyle conceded that the Board has taken numerous efforts to get him to comply over the past two years. (Tr. 63);
- e. On July 29, 2019, the Board issued a letter to Mountaineer Dental advising that Mountaineer Dental's annual registration for a dental corporation was not renewed. (Tr. 23-25; Board Ex. 2);
- f. The Respondents failed to submit the required renewal materials after the July 29, 2019, letter. (Tr. 23, 25);
- g. On April 20, 2020, the Board emailed Dr. Pyle and again advised that the annual registration for the dental corporation had expired on June 30, 2019. (Tr. 26, Board Ex. 3);
- h. On April 21, 2020, Dr. Pyle indicated via email that the issue would be handled immediately; however, the Board did not receive any renewal materials from Dr. Pyle or anyone on his behalf. (Tr. 26; Board Ex. 3);
- i. On October 1, 2020, the Board issued another letter to the Respondents again advising of their failure to renew the dental corporation certificate. (Tr. 27-28; Board Ex. 4);

- j. The Respondents again failed to submit the required renewal materials after the October 1, 2020, correspondence. (Tr. 28);
- k. On November 30, 2020, Investigator Guise visited Mountaineer Dental and observed that it was offering dental services to the public. (Tr. 29-30, 53-57; Board Ex. 9);
- l. During her site visit, investigator Guice hand delivered a letter to Dr. Pyle regarding his continued non-compliance with renewing Mountaineer Dental's Certificate of Authorization. (Tr. 54-55; Board Ex. 9);
- m. Investigator Guise also spoke with Dr. Pyle, who indicated that he would contact the Board regarding his non-compliance and that he had gotten behind on paperwork due to his mother's illness. (Tr. 54-55; Board Ex. 9);
- n. Following the site visit by Investigator Guice, the Respondents again failed to submit the required renewal materials. (Tr. 30);
- o. During the course of her investigation, Investigator Guise also contacted Mountaineer Dental via telephone and conducted internet research to confirm that Mountaineer Dental Company was open for business and providing patient care. (Tr. 56);
- p. On February 12, 2021, Respondent Dr. Pyle was copied on a communication from the Board to the WVSOS wherein the Board advised that Mountaineer Dental no longer holds an active Certificate of Authorization with the Board and has not held an active certificate since June 30, 2019. The letter further stated that Mountaineer Dental cannot provide dental services at this time. (Tr. 30-31; Board Ex. 4);
- q. The Respondents again failed to submit the required renewal materials after having been copied on the February 12, 2021, letter to the WVSOS. (Tr. 31);
- r. On February 17, 2021, after multiple attempts to obtain compliance, Board Executive Director Combs filed a Complaint against Mountaineer Dental and Dr. Pyle. (Tr. 39-41; Board Ex. 7);
- s. In the cover letter to the Complaint, Respondents were informed that they have thirty (30) days to file a written response to the Complaint, or else they waived the right to do so. (Tr. 40-41; Board Ex. 7);
- t. The Board did not receive a written response from Respondents and the time for doing so expired. (Tr. 41);

- u. On June 7, 2021, Investigator Guice again visited Mountaineer Dental and observed the presence of staff and two patients. (Tr. 57-58);
- v. Mountaineer Dental's Facebook page indicates that it remains open. (Tr. 42, 61; Board Ex. 8); and
- w. Dr. Pyle conceded that Mountaineer Dental had seen patients as recently as the week prior to the August 16, 2021, hearing. (Tr. 64)

11. The Respondents' willful and extended failure to comply with the renewal of a Certificate of Authorization is compounded by the simplicity of the renewal process. In order to procure a valid Certificate of Authorization from the Board, Dr. Pyle need only complete and sign a one-page renewal form, which is largely limited to providing a signature and identifying the president and secretary. The Respondents must also pay registration fees for the applicable years, pay late fees for the applicable years, and attach a copy of Mountaineer Dental's annual reports that were filed with the WVSOS. In other words, in order to comply with his statutory obligation to practice dentistry in West Virginia he simply needs to pay his fee, fill out the (very short) one page renewal, and submit his annual reports. Yet, he has failed to do so. Stated plainly, this is clearly not a herculean task that is difficult or time-consuming to complaint. (Tr. 36-37, 45-57, 50; Board Ex. 4)

12. In fact, this task is routinely accomplished by approximately one-hundred and seventy (170) other dental corporations in the State of West Virginia each year. Recalcitrance of the magnitude of Dr. Pyle and Mountaineer Dental to this uncomplicated process has not been previously encountered by the Board. (Tr. 47-48)

13. Dr. Pyle's justifications for his extended failure to comply is unavailing. Although Dr. Pyle attributed his noncompliance to caring for his mother, disorganization in maintaining his

paperwork, and a lack of transportation, these in no way justify a more than two-year (and ongoing) failure to come into compliance especially given the exhaustive efforts undertaken by the Board to facilitate compliance. (Tr. 62)

14. Any argument that Respondents are now in compliance with the Certificate of Authorization due to recent action taken with the WVSOS is likewise unavailing. Online data from the WVSOS procured on August 11, 2021, indicated that Mountaineer Dental was “[n]ot in compliance.” However, as of August 16, 2021, the WVSOS’s online database did not reflect non-compliance with its rules and regulations, which are but one component to obtaining a Certificate of Authorization with the Board.

15. Simply put, Dr. Pyle’s subsequent compliance requirements with the WVSOS, which was notably more than two years after the certificates’ expiration, does not have any dispositive implication on his status of having an expired Certificate of Authorization with the Board because additional steps need to be taken. (Tr. 32-37; Board Ex. 6)

16. As of the date of this filing, the Board has *still* not received from the Respondents a completed Annual Registration of Dental Corporation Form, registration fees for the applicable years, late fees for the applicable years, or Mountaineer Dental’s annual reports submitted to the WVSOS.

17. The witnesses, testimony, and evidence presented by the Board in this matter were consistent, reliable, and credible. The undersigned was able to observe the witnesses and found each to exhibit the hallmarks of truthfulness demonstrated by their demeanor and internally consistent testimony.

18. The Board has met its burden of proof in this matter, by a preponderance of the

evidence, and shall penalize Dr. Pyle and Mountaineer Dental accordingly.

19. The evidentiary record clearly reflects that the Respondents have continued to practice dentistry without a valid Certificate of Authorization from the Board, which is contrary to West Virginia Code § 30-4-16(c): “[n]o corporation may practice dentistry, or any of its branches, or hold itself out as being capable of doing so without a certificate of authorization from the board.”

20. The Respondents’ continued provision of dental services to the public without a valid Certificate of Authorization is a violation of the West Virginia Dental Practice Act and the rules promulgated thereunder. *See* W. Va Code §§ 30-4-16, 19(g)(4),(12)(I)and (O) and W. Va. Code R. §5-6-5.

RECOMMENDED PENALTY

Based upon the foregoing, the undersigned recommends the following disciplinary action be taken against the Respondents.

1. That Respondent Dr. Pyle be reprimanded for his willful and extended non-compliance;

2. That Respondents Dr. Pyle and Mountaineer Dental have fourteen (14) calendar days from the date of entry of the Board’s decision in this matter to submit all materials necessary to process Mountaineer Dental’s Annual Registration for Dental Corporation. This should include the following:

- a. The proper and complete submission of the Annual Registration for Dental Corporation form;
- b. The payment of \$150.00 registration fees for delinquent filings due on June 30, 2019, June 30, 2020, and June 30, 2021, (totaling \$450.00);

- c. The payment of \$150.00 late fees for delinquent filings due on June 30, 2019, June 30, 2020, and June 30, 2021, (totaling \$450.00); and
- d. The provision to the Board of Mountaineer Dental's annual reports filed with the WVSOS for 2019, 2020 and 2021.

3. Should the Respondents fail to comply with submitting all of the above-delineated materials within fourteen (14) calendar days from the date of entry of the Board's decision in this matter, the Respondents shall immediately cease and desist providing services to the public as Mountaineer Dental;

4. That the Respondents be collectively fined \$10,000.00; and

5. That the Respondents shall reimburse the Dental Board its costs in prosecuting this matter.



JEFFREY G. BLAYDES
HEARING EXAMINER

Entered this 8th day of November, 2021.