In the Matter Of:

IN RE: GARY LEE FINK, MD

HEARING

December 13, 2018
BEFORE THE
NORTH CAROLINA MEDICAL BOARD

In re: Gary Lee Fink, MD, Petitioner.

This matter coming on for hearing on December 13, 2018, at the office of the North Carolina Medical Board, located in Raleigh, North Carolina, before Mary Lynn Fuller, Court Reporter and Notary Public in and for the State of North Carolina, the following proceedings were had, to wit:

MEMBERS OF THE BOARD
Barbara E. Walker, DO
Christine Khandelwal, DO
Michaux R. Kilpatrick, MD
Venkata R. Jonnalagadda, MD
Debra A. Bolick, MD
Ralph A. Walker
A. Wayne Holloman
Varnell D. McDonald-Fletcher, PA-C
and
The Honorable Fred Morelock, Independent Counsel

Counsel for the North Carolina Medical Board:

Brian Blankenship
Deputy General Counsel
Lynne Taylor, Paralegal
North Carolina Medical Board
1203 Front Street
Raleigh, North Carolina 27609

Reporter: Mary Lynn Fuller, CVR
Notary Public #201525100154
<table>
<thead>
<tr>
<th>CONTENTS</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Welcoming Remarks</td>
</tr>
<tr>
<td>4</td>
<td>Prehearing Stipulation</td>
</tr>
<tr>
<td>5</td>
<td>Opening Statement by Mr. Blankenship</td>
</tr>
<tr>
<td>6</td>
<td>Presentation by Mr. Blankenship</td>
</tr>
<tr>
<td></td>
<td>James Bowman</td>
</tr>
<tr>
<td></td>
<td>Jenny Olmstead</td>
</tr>
<tr>
<td></td>
<td>Gary Lee Fink, MD</td>
</tr>
<tr>
<td>8</td>
<td>Closing Statement by Dr. Fink</td>
</tr>
<tr>
<td>9</td>
<td>Closing Statement by Mr. Blankenship</td>
</tr>
<tr>
<td>10</td>
<td>Findings and Recommendations of the Board</td>
</tr>
<tr>
<td>12</td>
<td>Decision of the Board</td>
</tr>
<tr>
<td>13</td>
<td>* * *</td>
</tr>
<tr>
<td>14</td>
<td>EXHIBITS</td>
</tr>
<tr>
<td>15</td>
<td>Board's Exhibits 1-7</td>
</tr>
<tr>
<td>16</td>
<td>Petitioner's Exhibit 1</td>
</tr>
</tbody>
</table>

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P R O C E E D I N G S

PRESIDENT WALKER: The North Carolina Medical Board is now in session. Good morning. Today is Thursday, December 13th, 2018. In accordance with the State Government Ethics Act, it is the duty of every board member to avoid both conflicts of interest and appearances of conflict. If any board member has a conflict of interest or an appearance of conflict with respect to any matters coming before the board during this meeting, please identify the conflict or appearance of conflict at the appropriate time and refrain from any participation in the particular matter involved.

I am Barbara E. Walker, DO, President of the North Carolina Medical Board, and I will be presiding at this hearing. Today is Thursday, December 13th, 2018. The panel members present are: Dr. Khandelwal, Dr. Kilpatrick, Dr. Jonnalagadda, Dr. Bolick, Judge
Walker, Mr. Holloman, and Ms. McDonald-Fletcher.

Also present is the Honorable Fred Morelock, who will be serving as independent counsel to the board for the purpose of this hearing. Counsel for the board is Mr. Brian Blankenship.

Gary Lee Fink, MD, is representing himself.

We are here today for a hearing in the matter of Gary Lee Fink, MD, who has been charged with:

Number one, unprofessional conduct within the meaning of North Carolina General Statute 90-14(a)(6) by failing to comply with the board's January 30th, 2018, order for examination by failing to submit himself for a comprehensive examination within 30 days of his receipt of the order for examination;

number two, failing to respond within a reasonable period of time and in a reasonable manner, as determined by the board, to inquiries from the board concerning any matter affecting his
license to practice medicine within the meaning of North Carolina General Statute 90-14(a)(14), by failing to respond to staff inquiries regarding the board's January 30th, 2018, order for examination; and, number three, failing to respond within a reasonable period of time and in a reasonable manner, as determined by the board, to inquiries from the board concerning any matter affecting his license to practice medicine within the meaning of North Caroling General Statute 90-14(a)(14), by failing to submit himself for a comprehensive examination within 30 days of his receipt of the order for examination.

Specifically, Dr. Fink, number one, failed to comply with the board's January 30th, 2018, order for examination requiring that he submit to a comprehensive examination within 30 days of his receipt of the order; number two, failed to respond to staff inquiries regarding the board's January
30th, 2018, order for examination; and,
number three, failed to submit himself
for a comprehensive examination within
30 days of his receipt of the order for
examination.

Mr. Blankenship and Dr. Fink,
are you ready to proceed?

MR. BLANKENSHIP: Yes, ma'am.
MR. FINK: Yes, ma'am.
PRESIDENT WALKER: Are there
any preliminary matters for
consideration?

MR. BLANKENSHIP: As a
preliminary matter, we entered into a
prehearing stipulation. For the record,
I just want to indicate that we have
stipulated and that the Board's Exhibits
1 through 7 are admitted into evidence.
We also admitted into evidence Dr.
Fink's Exhibit No. 1. We have not yet
published that to the board. If it's
okay, at this time, I would ask that Dr.
Fink's Exhibit No. 1 be published to the
board. We have a hard copy for
everyone. Is that okay?
MR. MORELOCK: Mr.
Blankenship, for the record, do you stipulate --

MR. BLANKENSHIP: Sir?

MR. MORELOCK: -- that his No. 1 is admitted into evidence?

MR. BLANKENSHIP: Yes, sir.

MR. MORELOCK: Thank you.

MR. BLANKENSHIP: And that's stipulated, as well, in the prehearing stipulation.

MR. MORELOCK: Okay. So probably the board will review that later and not now.

MR. BLANKENSHIP: That's what I would recommend, is at the conclusion of testimony, perhaps, or we can take a break before Dr. Fink testifies, if you'd like to do that.

PRESIDENT WALKER: Now we will have opening statements.

Mr. Blankenship, would you like to make an opening statement?

MR. BLANKENSHIP: Yes, ma'am.

Thank you.
OPENING STATEMENT BY MR. BLACKENSHIP:

Board members, the facts are not in dispute. Board Exhibits No. 1 through 7, which you've previously been furnished, show that the board had a reasonable basis to order Dr. Fink to undergo a comprehensive assessment. The board did, in fact, order Dr. Fink to undergo a comprehensive assessment. Dr. Fink received the order for a comprehensive assessment and Dr. Fink failed to comply with the order for an assessment. Those facts are not in dispute.

You will hear from several witnesses today. The first witness you will hear from is Mr. James Bowman, the board investigator, and he will describe the events beginning in 2015 that led to Dr. Fink receiving an interim Letter of Concern, and it's that interim Letter of Concern that is really the beginning -- or the first step that led to us being here today, and he'll describe those events to you.
You'll then hear from Ms. Jenny Olmstead, and she will describe the events that occurred after the interim Letter of Concern was issued up until the work order for assessment, and also her attempts to communicate with Dr. Fink after the order had been served on Dr. Fink and after the 30 days had expired.

And then, finally, I expect that you will hear from Dr. Fink, and he will describe some of the things that were going on in his life around the time that the order for assessment was issued, in particular some health issues that he had in the spring of 2018, and those are reflected in the medical records that you have before you.

Again, the facts are not in dispute. You have three issues before you -- or will have three issues before you: Did Dr. Fink commit unprofessional conduct, did he fail to respond within a reasonable time and in a reasonable manner by failing to respond to staff
inquiries, and did he fail to respond within a reasonable time and in a reasonable manner to inquiries by the board by failing to comply with the board order for a comprehensive assessment.

And I'm confident at the conclusion of the evidence you'll answer yes to all three. Thank you.

PRESIDENT WALKER: Dr. Fink, would you like to make an opening statement?

MR. FINK: No, ma'am.

PRESIDENT WALKER: We're now ready to hear the evidence. We'll call on Mr. Blankenship to present his evidence.

MR. BLANKENSHPH: Thank you, ma'am. We'll call James Bowman to the stand, please.

JAMES BOWMAN, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLANKENSHIP:
Q. Please state your name for the board, please.
A. James Bowman.

Q. And where do you work, Mr. Bowman?
A. I work for the North Carolina State Medical Board.

Q. And what is your job with the medical board?
A. I'm a senior investigator assigned to the investigations department.

Q. How long have you worked as an investigator for the medical board?
A. I've been with the board since 2013.

Q. If you would, please briefly describe your responsibilities as a board investigator.
A. As a board investigator, I am assigned various investigations through the chief investigator. They include a variety of topics. They could be boundary violations, prescription cases. We have cases involving criminal violations, just a wide -- a wide variety of cases involving issues with licensees.

Q. Are you familiar with the respondent in
this case, Dr. Fink?

A. Yes, I am.

Q. And were you assigned as a board investigator to investigate allegations involving Dr. Fink?

A. Yes.

Q. If you would, describe for the board what prompted your investigation.

A. Sure. In June of -- June 30th, 2015, I was assigned the investigation involving Dr. Fink. The case was initiated pursuant to a law enforcement contact to the board. SBI Agent Dewey Callaway, who was a drug diversion investigator with the state, contacted the board regarding a case they had. They had arrested a young man by the name of Brandon Smith, who had been charged with obtaining controlled substances by false pretense.

In the course of that investigation, they -- they had reviewed Mr. Smith's CSRS reports and other documentation. They determined that Mr. Smith was a patient of Dr. Fink and
that he had been prescribed some fairly significant amounts of controlled substances, to the point that the bureau felt that the board should be notified. In particular, there was -- there was an issue where they -- in a 30-day period, Dr. Fink had prescribed -- there were three prescriptions for 180 dosage units of Oxycodone 15 milligram tablets between March 10th and April 7th, 2015. There were three separate prescriptions.

Q. Did you interview Special Agent Callaway?

A. I did.

Q. And after you interviewed Dr. -- I'm sorry -- Special Agent Callaway, what, if anything, did you do in your investigation?

A. Of course I documented my report of interview with Agent Callaway, confirmed the issues regarding the prescribing. I also obtained a Controlled Substance Reporting System Report from the NCCSRS, verified the issues that he had identified to us, as well as some other
findings regarding some significant prescribing.

After doing that, I obtained a North Carolina Medical Board order to produce for -- medical records for five randomly selected patients from the CSRS database for -- from Dr. Fink and I met with and conducted an interview with Dr. Fink.

Q. At the completion of your investigation, what did you do?

A. I prepared what we refer to as an ROI, a Report of Investigation, which is submitted to the board for senior staff review and then a board review.

Q. And was your investigation presented to the board?

A. Yes, it was.

Q. When was it presented to the board?

A. Let's see. I believe it was -- Let's see. I think in Sept -- it was September of 2015, I believe.

Q. And do you know the board action that resulted from your investigation?

A. Yeah. The results of the board action
was an interim Letter of Concern with a
prescribing package for Dr. Fink. I
think there was some CMEs regarding
treatment of ADD, fibromyalgia, and also
a follow-up chart review in six months
after completion of the CMEs.

MR. BLANKENSHP: Sir, that's
all the questions I have.

PRESIDENT WALKER: Does anyone
on the board have any questions?

(NO AUDIBLE RESPONSE.)

PRESIDENT WALKER: Dr. Fink,
do you have any questions?

MR. FINK: No.

MR. BLANKENSHP: Thank you,
sir.

THE WITNESS: Okay.

MR. BLANKENSHP: Ma'am, at
this time, I'll call Jenny Olmstead.

JENNY OLMESTEAD,
having been duly sworn,
tested as follows:

DIRECT EXAMINATION

BY MR. BLANKENSHP:

Q. If you would please state your name for
A. Jenny Olmstead.

Q. And where do you work, Ms. Olmstead?

A. The North Carolina Medical Board.

Q. How long have you worked at the medical board?

A. 28 years.

Q. What is your position at the medical board?

A. I am the Field Investigations Administrative Manager.

Q. And how long have you served in the role of Field Investigations Administrative Manager?

A. Since 2015.

Q. Could you please briefly describe your job responsibilities and duties as a Field Investigations Administrative Manager.

A. I manage three staff people, the Compliance Coordinator, the Investigations Project Coordinator, and an Investigative Coordinator, and then I also perform some administrative duties, also.
Q. Are you familiar with Dr. Fink?
A. Yes.

Q. And how are you familiar with Dr. Fink?
A. I remember in 2015 when his Report of Investigation was submitted for preparation to senior staff committee and then also for the disciplinary committee and then follow-up after that.

Q. I'd like to direct your attention to Board's Exhibit No. 1, please.
And could you identify Board Exhibit No. 1?
A. It's the interim Letter of Concern that was sent to Dr. Fink after the September 2015 board action.

Q. Who sent this letter?
A. I did.

Q. And when was this letter sent?
A. September 22nd, 2015.

Q. What, if anything, did this Letter of Concern require of Dr. Fink?
A. It required that he get educational courses with a focus on proper prescribing of controlled substances, ten hours category 1, and then two
additional hours of CME on the diagnosis and treatment of fibromyalgia and ADD.

Q. Did Dr. Fink complete his CME?
A. Yes, he did.

Q. If I could direct your attention now to Board's Exhibit No. 2.
A. Yes.

Q. And could you describe Board's Exhibit No. 2, please.
A. This is the CME documentation that Dr. Fink submitted.

Q. And Board Exhibit No. 2 is pages 2 through 9; correct?
A. Yes.

Q. Several pages.

What happened after the board received proof of CME from Dr. Fink?
A. After he submitted his CME, we did a follow-up chart review in October of 2016.

Q. What happened after the chart review was conducted?
A. The chart review was reported to the disciplinary committee in January 2017.

Q. And the disciplinary committee -- for
the record, the disciplinary committee,
that's a committee of the board?
A. Yes.
Q. Okay. Was the disciplinary committee report furnished to the full board?
A. Yes.
Q. Do you know when it went to the board?
Q. Okay. And what was the board action?
A. To indict Dr. Fink for an investigative interview in March 2017.
Q. Did Dr. Fink appear for the investigative interview?
A. Yes, he did.
Q. When was the investigative interview?
Q. What was the result of the investigative interview?
A. The board action was to send Dr. Fink a private Letter of Concern and also to perform a medical record review in six months.
Q. I'd like to direct your attention now to Board's Exhibit No. 3. And if you could identify this document for me,
A. This is the private Letter of Concern that was sent to Dr. Fink.

Q. Who sent this document?

A. I did.

Q. I'd like to direct your attention to the first paragraph, please, and ask you to read the first paragraph.

A. Sure. The North Carolina Medical Board has completed its review of the investigation concerning you. Based on the current review, the board has decided to take no disciplinary action at this time. However, findings by internal and external reviewers continue to raise concerns. A confirmed pain generator is not identified in all cases to support the level of opioid prescribing you provide. There are also concerns for ongoing concomitant prescribing of opioids and benzodiazepines.

Another area of concern is overuse of stimulants and intramuscular antibiotics and steroids without clear
1 documentation of the indication for
2 these treatment choices. Please be
3 advised the board will conduct another
4 medical review in the fall of 2017 to
5 evaluate improvements in documentation
6 and prescribing.
7 Q. Was a follow-up medical record review
8 conducted in the fall of 2017?
9 A. Yes.
10 Q. If you could turn now to Board's
11 Exhibit No. 4, please.
12 A. Okay.
13 Q. Could you identify Board Exhibit No. 4,
14 please.
15 A. These are Expert Reviewer Worksheets
16 that were submitted from our expert
17 reviewer after reviewing Dr. Fink's
18 records.
19 Q. What happened after the board received
20 the -- when I say the board, when staff
21 received the outside review worksheets?
22 A. The information was provided to the
23 disciplinary committee and the full
24 board in January 2018.
25 Q. What was the board action after
reviewing these Expert Review

A. To order Dr. Fink for a comprehensive

Q. If you could turn to Board Exhibit No. 5, please.

And could you identify Board Exhibit No. 5.

A. It's a letter to Dr. Fink and then also the order for examination.

Q. And I'm going to ask to you turn to Board's Exhibit No. 7, please. And you'll see that Board's Exhibit No. 7 is marked pages 7-A through 7-D, and I'm going to direct your attention to 7-A and ask you to identify this document for me, please.

A. This is a -- showing an email that I sent to Dr. Fink explaining that he did receive an order for an examination and that he needed -- he was required, within 30 days of receipt of the order, to let us know which place he was going to go for the assessment, and I asked that he let us know as soon as possible.
Q. And when was this email dated?
A. March 15th, 2018.

Q. If I could refer you back to Board's Exhibit No. 5 for just one second --
A. Uh-huh.

Q. -- and ask you to turn to the last page of that exhibit.
A. Yes.

Q. Which is a return receipt that was mailed to Dr. Fink's office. I mean, when does the return receipt show that it was received at Dr. Fink's office?
A. It's hard to tell. It looks like February 2nd is the stamp date.

Q. And if you could turn back to page -- the last page of the order. It's one page up. What was the date of the order?
A. January 30th, 2108.
Q. Okay. Thank you.

So going back to your email of March 15th --
A. Yes.

Q. -- which is Exhibit A, why did you send this email to Dr. Fink?
A. We had not heard from Dr. Fink. I mean, probably in February we should have heard where he chose to go for his examination. And so I wanted to try to get a hold of him to figure out what place he was going to go.

Q. Did you receive a reply email?
A. No, I did not.

Q. Did you receive a phone call?
A. No.

Q. If you could turn to 7-B, please, and identify 7-B.
A. This is another email I sent to Dr. Fink.

Q. And when did you send this email?
A. March 21, 2018.

Q. Did you receive a reply to this email?
A. No, I did not.

Q. Did you receive a phone call?
A. No.

Q. After sending this email on March 21st, what did you do next?
A. I decided to call Dr. Fink because I hadn't received an email and I wanted to make sure he was receiving my emails.
1 So I called him. I did speak with him.
2 He told me that he would schedule the
3 assessment. He felt that he would be
4 going to CPEP and that he would schedule
5 it that day and he would email
6 compliance with his -- his plans, and he
7 did mention that he was having chest
8 pains and that he needed a
9 catheterization but that that would wait
10 until after the assessment.
11 Q. If you could turn to 7-C, please. And
12 please describe this exhibit for the
13 board.
14 A. This is another email that I sent to
15 Dr. Fink asking -- we still had not
16 received anything as to where he was
17 going, any firm plans. And so I was
18 asking again what his plans were.
19 Q. And what's the date of this email?
20 A. April 5th, 2018.
21 Q. And did you receive a reply to this
22 email?
23 A. Yes.
24 Q. All right. And if you could turn to
25 Exhibit 7-D, please --
A. Yes.

Q. -- and identify this document.

A. This is an email I did receive back from Dr. Fink regarding my email.

Q. And, briefly, what did he tell you in this email?

A. He said that he called CPEP and he was awaiting a call back from them and that he -- there were some delays due to his health due to cardiac issues. There again, he said that he would have the appointment and he would notify us hopefully no later than Monday, April 9th.

Q. After the email on April 5th from Dr. Fink, Exhibit 7-D, did you have any further communication with Dr. Fink?

A. No.

Q. Did you receive any indication that he had, in fact, signed up for the assessment at CPEP?

A. No, and I did call Christopher Leo with CPEP on April 6th, just to see if he had scheduled his assessment, and I was told that he had left -- he had called and
that they had tried to call two
different times back to him and -- with
no success.

Q. As of today, have you received any
information that Dr. Fink has submitted
to and completed the assessment as
ordered by the board in January 2018?

A. No.

MR. BLANKENSHIP: That's all
the questions I have.

PRESIDENT WALKER: Dr. Fink,
do you have any questions?

(NO AUDIBLE RESPONSE.)

PRESIDENT WALKER: Does anyone
on the board have questions?

(NO AUDIBLE RESPONSE.)

MR. BLANKENSHIP: Thank you,
Ms. Olmstead.

Ma'am, the next witness I'm
going to call is going to be Dr. Fink.
I'll leave it up to your discretion
whether you want to take a break now to
review his medical record before his
testimony.

PRESIDENT WALKER: Okay.
Let's do that.

MR. BLANKENSHIP: Thank you.

PRESIDENT WALKER: All right.

We'll take a break for 15 minutes.

WHEREUPON, THE BOARD MEMBERS WERE IN RECESS FROM 8:39 A.M. TO 8:54 A.M.)

MR. BLANKENSHIP: Ma'am, as a preliminary matter, one thing I failed to do was make a motion to seal Dr. Fink's medical record. We had talked about that at a prehearing conference, and at this time, I would make a motion to seal Dr. Fink's medical record so that it does not become available to the public as a -- as part of the transcript, and I'll get you an order either later today or tomorrow sealing it, if you approve my motion.

PRESIDENT WALKER: Motion allowed.

MR. BLANKENSHIP: Thank you.

Ma'am, at this time, I'd like to call Dr. Fink as a witness.
GARY LEE FINK, MD,

having been duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. BLANKENSHIP:

Q. Dr. Fink, you'll recall on last Friday you were present at a deposition in Salisbury.

A. Yes, sir.

Q. And I asked you a series of questions about the events that led to the hearing today. I'm just going to be asking you much -- the same questions today so that the board more fully understands the events and circumstances that led to us issuing charges against you.

Where do you live, sir?

A. In Faith, North Carolina.

Q. And for those not familiar with the geography of North Carolina, where is Faith?

A. Faith is about 5 miles outside of Salisbury, North Carolina, 30 miles --

40 miles north of Charlotte now. It's in Rowan County.
Q. All right. How long have you lived in Faith?

A. All my life, other than --

Q. So you --

A. -- in school.

Q. All right. So you were born and raised there?

A. Yes, sir.

Q. Describe Faith for the board. Is it a small town?

A. It's a town of -- as I grew up, it was a town of about 500. It's now close to 800 to a thousand.

Q. And how long have you practiced medicine?

A. In Faith, since 1986.

Q. When did you graduate medical school?

A. I graduated from Chapel Hill in 1983.

I did my residency at Carolina's -- well, it was Charlotte Memorial Hospital at that time.

Q. So have you practiced medicine anywhere other than Faith?

A. No, sir.

Q. What's your relationship with the town
A. My relationship with the town is very good. I've been there 30 years. My 40th birthday, the town gave me a birthday party, renamed the town for me, changed the city limit sign and everything. The same thing on my 50th birthday. I wouldn't let them do it on my 60th.

Q. And, sir, where do you currently work in Faith?

A. At Faith Internal Medicine, which is a division of Rowan Diagnostic Center.

Q. And how long have you worked at Rowan Diagnostic Center?

A. Since 2016.

Q. And you're board certified in internal medicine; correct, sir?

A. Board certified in 1993. I'm board eligible. I did not retake the board because the hospital grandfathered us in and we didn't have to take the board again, so...

Q. So what are your areas of practice now?

A. General internal medicine, cardiology,
endocrinology, all -- you know, as far
as a generalization in those -- in all
those -- in all specialties of internal
medicine, most anything non-surgical.
Q. You had heard Mr. Bowman testify
earlier and he mentioned a particular
patient and a chart review that the
board did; correct?
A. Yes, sir.
Q. And there was some mention about
prescribing for pain. Do you prescribe
for pain now --
A. No, sir.
Q. -- as a part of your practice?
A. No. We -- Actually, at Rowan
Diagnostic, we all gave it up in around
2017. We now have an internal pain
clinic that we refer patients to, but I
write pain medicine only on a very
limited basis, usually five days at the
most, situations.
Q. How many days a week do you work?
A. Basically five days a week, a half a
day on Friday.
Q. And, on average, how many hours a week
1. do you work?
2. A. Well, eight hours a day if I -- 40 to
3. 50.
4. Q. How many patients do you see on an
5. average day?
6. A. An average day, anywhere from 16 to 25.
7. Q. Do you have hospital privileges?
8. A. No, sir, I don't. We don't go to the
9. hospital anymore.
10. Q. Sir, I'm going to direct your attention
11. to Board Exhibit No. 5. And I'm going
12. to ask you to turn to page 2 of Board
13. Exhibit No. 5.
14. Do you recall receiving this
15. order for examination?
16. A. Yes, sir.
17. Q. Now if you'll turn to the last page of
18. Board Exhibit No. 5, you'll see -- I'm
19. sorry, the very last page. So it'll be
20. the return of service. You'll see that
21. it was signed by Faye Bennett and that
22. it was addressed to Rowan Diagnostic
23. Clinic in Salisbury, North Carolina. Is
24. that the office where you work?
25. A. No, sir, and that has been one issue
that -- Rowan Diagnostic takes care of licensing and all that stuff. So their address is on everything. So everything goes to the Salisbury office and then gets to me whenever a courier brings it down. So they received it on February the 2nd. I probably received it, just as a rough guess, at least a week later. It could have been a little bit longer.

Q. Now if you'll go back to the first page of the order. And it's labeled at the top Order for Examination. You'll see that this order required you to submit to a comprehensive assessment at one of three assessment centers, and it required you to do that within 30 days. Did you comply with this board order, sir?

A. No, sir. I attempted to, but that was -- in February, as you can see, it was about the time I started having chest pain and I couldn't do a whole lot of anything without getting tired. It basically started as fatigue to start with and I -- it was about what I could
do to get through my day and go home.
And then I did make -- after I got some
more correspondence, I did make calls to
Mr. -- I talked to Mr. Bill O'Neill at
CPEP, and we played phone tag for a
while, and then at that point in time,
when I talked to Ms. Olmstead about -- I
would -- I think it was on April the 4th
or 5th, when I would do that, I had a
cardiac catheterization the next day and
was found to have all three major
arteries 95 percent blocked, and I was
told to go home and do nothing until I
got to the surgeon the next week. And I
went to see the surgeon on the -- the
next week and had surgery then the
following week.

Q. All right. So let's -- I'm going to
back up and unpack that --
A. Okay.

Q. -- a little bit; okay?

So you referenced the email --
or an email that you had sent
Ms. Olmstead. So I'm going to direct
your attention to Board Exhibit 7-D.
So this is an email you sent Ms. Olmstead on April 5th; correct?

A. That's correct.

Q. And you mentioned in the email your intent to schedule an appointment with CPEP not later than April 9th; correct?

A. Correct.

Q. All right. So the day after this email, what happened?

A. I had my cardiac catheterization done and, like I said, I was found to have three major blockages. In fact, when I woke up from the catheterization, the cardiologist's words were, I don't think you need to go to Charlotte today. I think we can do it electively next week one day, if you'll take it easy. And I had been started on Ranexa, an anti-anginal agent. My pain had gotten better. You know, it was not totally gone, but it was actually very tolerable. And so he felt like it was safe to wait and do this more electively than do it emergently.

Q. You did end up having surgery though;
A. Yes, sir. I had surgery on April the 16th. I had a triple bypass. I also had a complication of -- that was found out actually prior to the surgery, that I had a calcium -- I had a pericardium that was full of calcium for an unknown reason. No history of trauma, no history of pericarditis or any of the precipitating causes. However, he did have to -- you can note in the note that, for about an hour, he had to chisel the calcium away just to be able to get to the right ventricle and to be able to do surgery. So I subsequently had a pericardiectomy during that surgery and have been left with what's called a hostile chest. I have just breast bone, scar tissue, and then myocardium. So there's nothing else in between there. So he said re-entry into my chest for any cardiac reason cannot be done. He said, barring a gunshot wound or a stab wound, he said, nobody's going to have to open you up. So that
was kind of where we were left. That doesn't leave any option -- I mean, that leaves options of stents and those kind of things, but no more surgical options should they be needed, although he assured me that he thought I was probably good for 25 more years now. At least my heart's good for 25 more years. My knees and other things may be a different story.

Q. Did the surgery require you to be out of work for any period of time?
A. He had me -- He wanted me to stay out for three months. He told me on the June the 4th that I could go back if I wanted to, at half days, and I elected to do that and, unfortunately, that was my first mistake. I then developed cellulitis in the leg that they took the vein grafts out of. And so I had to cut back work greatly and keep my leg elevated and on PO antibiotics for several weeks, actually almost a month, and then it finally healed and then, at the same time, most likely from the
Foley catheter during surgery, I
developed acute prostatitis, which was
worse than the cellulitis. It lasted
about a month or a little bit longer,
and I took IV antibiotics for the whole
month of August for that, so --

Q. So --

A. -- and so I missed more work during
that time, but they were most gracious
in adjusting my schedules and --

Q. So you returned to work in a limited
capacity in June --

A. Yes, sir.

Q. -- of 2018 --

A. Yes.

Q. -- correct?

And you worked a limited work
schedule for the reasons you just
described between June and August?

A. Yeah, and still on a limited schedule
of -- I worked -- right now, I work all
day on Monday, a half a day on Tuesday,
all day Wednesday, a half to a whole day
on Thursday, just depending on my
schedule, and then a half day on Friday,
simply due to the fact that, as he told me, it would take six months to a year to feel normal again, and I'm still in the process of getting my stamina back, and I also developed, after surgery -- and no one knows why -- I have developed a problem with my left hip that keeps me from walking good. I limp a lot, and we've had x-rays and all kinds of things done and nobody's really sure, but we just keep thinking hopefully it will get better as time goes on. We can't find any pathology, per se, but -- so that has kind of limited my ability to get around, too. And so I've just kind of maintained, at this point in time, my limited schedule because I have so many patients that I've taken care of for 30 or 40 years that depend on me that I just -- I don't -- I want to go see them and take care of them. You know, many of them waited until I came back to work before they would even go see anyone, so...

Q. So could you -- well, let me back up,
·1· sir.

·2· So you've had a few

·3· interactions with the board over your

·4· career; correct?

·5· A. Yes, sir, and it's always -- I think --

·6· if you look at my record, it has always

·7· been my intent -- and I have always

·8· complied with the board of anything

·9· they've ever asked me to do, and I'm

·10· going to comply with this. I have

·11· talked to Mr. O'Neill now and I've

·12· gotten this 12-page document to fill out

·13· that I have to send back and, in fact,

·14· it'll probably be the first of the year

·15· because he says it takes four weeks to

·16· schedule the test once you do it, so...

·17· Q. Has the board ever asked you to do

·18· something that you didn't comply with?

·19· A. Not to my knowledge, no, sir.

·20· Q. And what is the primary reason that you

·21· have not scheduled and completed an

·22· assessment to date?

·23· A. Primarily my health and not being up to

·24· par, and then during -- the fact of all

·25· the things that went on in recovery and,
honestly, it just kind of got put on the back burner, not intentionally, not on purpose. It just -- I was trying hard to get back to work and to do things, and, you know, I could have handled it in a much better manner. I know that, but it just -- health was the biggest reason that I didn't comply.

Q. You intend to comply with the order; correct?

A. Yes, sir. I'm in the process of getting it all scheduled and done now.

Q. Okay. And when do you intend -- based on the conversations you've had, when do you intend to have the --

A. I -- My goal is -- I should have the 12-page questionnaire -- it's amazing all the questions, but the 12-page -- I'm going to have that completed, sent in, pay the deposit, and then he will set the test up sometime in the next four to six weeks.

MR. BLANKENSHIP: Sir, I believe that's all the questions I have.

The board members may have some
questions for you.

PRESIDENT WALKER: Board members, do you have any questions from the board?

MR. WALKER: What -- What's the -- well, which way do we go? I mean, he's been cross-examined here, I assume.

MR. MORELOCK: Well, it's an opportunity for the board members to ask questions.

MR. WALKER: Well, I didn't know whether the doctor wanted to ask -- or give some more before -- I have some questions for him.

MR. MORELOCK: Well, it's not his evidence.

MR. WALKER: Yeah, I know.

And so --

PRESIDENT WALKER: He'll present --

MR. WALKER: -- I just want to make sure --

PRESIDENT WALKER: -- his evidence.
MR. WALKER: I want to make sure that we follow protocol here.

PRESIDENT WALKER: Did you have some questions, Judge?

MR. WALKER: I have some questions, yes.

MR. MORELOCK: Now's the time.

MR. WALKER: Okay. But are we going to ask him for further examination if he wants to have an examination presented?

PRESIDENT WALKER: He will present his evidence afterwards.

MR. BLANKENSHIP: So the --

MR. WALKER: Well, I'm going to wait until after he presents his evidence.

MR. BLANKENSHIP: Okay. Dr. -- Dr. Fink, at this time, do you have any other statement you would like to provide to the board?

MR. FINK: No, sir, only to just reiterate that I am in the process of complying, intend to comply, and that my only reason for not complying was for
medical reasons that got in the way and that, as I've said, I've always attempted to cooperate with the board in the fullest, and I wish that would be taken into consideration.

PRESIDENT WALKER: Yes, sir.

Dr. Kilpatrick?

MS. KILPATRICK: Good morning, Dr. Fink.

MR. FINK: Good morning.

MS. KILPATRICK: I just had a quick question. You said that you think you received the order -- we're going to say -- sometime around mid February, and then you had your catheterization on April 6th?

MR. FINK: Yes, ma'am, but there was a lot that went on between then and that.

MS. KILPATRICK: Yes. Can you elaborate?

MR. FINK: I think --

MS. KILPATRICK: That's what --

MR. FINK: Sure.
MS. KILPATRICK: -- I wanted to --

MR. FINK: I started having chest pains, spoke with the cardiologist, met with him around the 1st of March, was started on the Ranexa and a beta blocker to help with the pain, told to limit my schedule and take it easy, and then I had a treadmill a week and a half, ten days later, which was somewhere around the 29th or -- might have been two weeks later. I had my -- I had a Lexiscan Stress Test, which I badly failed. With the administration of the Lexiscan, I developed chest pain, nausea, and then, obviously, the images from that were all positive. And so I -- it was approximately one week later I had a catheterization.

PRESIDENT WALKER: Mr. Holloman?

MR. HOLLOMAN: This is part of that recovery, but I just -- for clarification, so I understand it, you
1 practice in the town of Faith --
2     MR. FINK: Yes, sir.
3     MR. HOLLOMAN: -- Right? It's
4 an 800 population, just north of
5 Salisbury. The -- Your clinic there, is
6 -- are you the only doctor? Is this a
7 solo operation?
8     MR. FINK: No, sir. I mean,
9 it was a solo operation for many years,
10 but I actually have a physician's
11 assistant now who is quite awesome and a
12 big help. And so it is the two of us
13 though there.
14     MR. HOLLOMAN: You and the PA?
15     MR. FINK: Yes, sir.
16     MR. HOLLOMAN: It's run by
17 both of you?
18     MR. FINK: And the -- And it
19 has been that way since probably 2008
20 roughly, somewhere in that general
21 vicinity.
22     PRESIDENT WALKER: Dr. Bolick?
23     MS. BOLICK: So since you
24 exhibited -- or submitted your medical
25 record for exhibit, I notice that you
have been on pain medication long-term
for your back pain. Are you still on
pain medication?

MR. FINK: Intermittently. I
don't take it regularly, but I do still
see the pain doctor for my back, but I
don't always take it. But, you know,
during my surgery and post-surgery, I
had taken it as prescribed. Because of
my hip, a little more here lately. That
and the 800 ibuprofen seems to actually
do better for my hip when it gets down
to it. So that and heat have been the
mainstays for it.

MS. BOLICK: So give me an
idea of what you're taking in all.

MR. FINK: I take hydrocodone
maybe one -- it -- no more than three
times a day is the way it's written, but
I may take two a day.

MS. BOLICK: What milligram
strength?

MR. FINK: 10.

MS. BOLICK: Combined with
acetaminophen or just hydrocodone?
MR. FINK: Combined with acetaminophen.

MS. BOLICK: So hydrocodone, acetaminophen --

MR. FINK: 10 --

MS. BOLICK: -- and --

MR. FINK: -- 325s.

MS. BOLICK: -- 325 up to three times a day?

MR. FINK: Yes.

MS. BOLICK: And how long have you been maintained on narcotics medications?

MR. FINK: I had a -- I think I first saw him in 2015, somewhere around in there.

MS. BOLICK: At least three years?

MR. FINK: Yeah. Yes, ma'am. I had had it for years and tolerated it.

I had a compression fracture in 1989 of L2, and it's always given me some trouble, but the older I get, the more trouble it seems to cause at times. It is very weather-driven and things of
that nature.

MS. BOLICK: One of the other concerns that we had, in your prescribing, you mentioned that you're no longer prescribing narcotics except for short-term acute pain. We also had concerns in terms of other controlled substances, benzodiazepines, ADHD medications.

Have you continued to prescribe those medications?

MR. FINK: We do prescribe some of those. We are in the process of -- the PA and I both, over the last year or so, weaning everyone off Xanax and coming down on that, which, again, as you know, you have to wean some of those people very slowly, but we're weaning those.

I do not write many benzodiazepines. I won't say I don't write any, but I don't write it like we used to. I use more Buspar, hydroxyzine, those kind of things, along with the SSRI anti-depressants.
PRESIDENT WALKER: Judge Walker?

MR. WALKER: Dr. Fink, Mr. Holloman mentioned the 2013, and I want to go back to that. Has that been resolved?

MR. FINK: I -- As far as I know, I mean, except for what the board has. The case against the young man was dismissed, unfounded and thrown out of court, so --

MR. WALKER: As far as you're concerned, it's been resolved?

MR. FINK: Yes, sir. I mean, other than complying with what the board --

MR. WALKER: Well, yeah. Right.

MR. FINK: -- tells me to do.

MR. WALKER: Going back to the pain management, you say you've given it up --

MR. FINK: Yes, sir.

MR. WALKER: -- last year --

MR. FINK: Yes, sir. We
write --

MR. WALKER: Following up with Dr. Bolick, if patients come in today and want the -- in pain or an accident at work or on -- in a car wreck, how do you handle that?

MR. FINK: Our philosophy is, in conjunction with the board, we will give them five days -- if it's indicated, we give them five days. After that, they would have to be reevaluated, and, mostly likely, they would be referred out to a specialist and not given any more pain medication, but we don't give anyone -- the only people that we treat long-term with pain medication, the ones that the pain clinic doesn't wanna see, are basically people in the life, that kind of thing.

MR. WALKER: All right. Thank you.

PRESIDENT WALKER: Any other questions from the board? Dr. Kilpatrick?

MS. KILPATRICK: I just have a
follow-up to Dr. Bolick's question --

MR. FINK: Uh-huh.

MS. KILPATRICK: -- and this might be a discrepancy in your medical records. There's one area -- and you just said -- where you're on hydrocodone 10/325, but in -- during your hospitalization, they're documenting that your chronic home medication is oxycodone.

MR. FINK: That is incorrect.

MS. KILPATRICK: That's incorrect?

MR. FINK: Yes, ma'am. They prescribed oxycodone post-surgery instead of the hydrocodone, but, yes, ma'am, my home medicine is hydrocodone. That's just an inconsistency.

I actually caught that this week when I was going through the records. I should have mentioned that, but it was a mistake.

PRESIDENT WALKER: Dr. Khandelwal?

MS. KHANDELWAL: Good morning,
Dr. Fink.

MR. FINK: Good morning.

MS. KHANDELWAL: Do you yourself have a primary care physician --

MR. FINK: Yes, I do.

MS. KHANDELWAL: -- that you see? How --

MR. FINK: Dr. --

MS. KHANDELWAL: How regularly do you see him?

MR. FINK: I see him quite regularly. I last saw him in July. I had an appointment October the 30th, which got -- I missed it, but we -- I rescheduled for actually this coming -- next Friday, the 21st. I see him about every three to four months, and I -- I'm sorry. I for -- did -- totally didn't put the endocrinologist. I see an endocrinologist for my diabetes about every three months.

MS. KHANDELWAL: So as -- and just -- that was -- the last record I saw was Dr. Ginn. Is that
your --

MR. FINK: Dr. Ginn, right.

MS. KHANDELWAL: -- primary

--

MR. FINK: Yes, ma'am.

THE COURT REPORTER: I'm sorry. You guys are speaking over each other. Can you -- I didn't get her last comment. I'm sorry.

MS. KHANDELWAL: I was just confirming his physician -- his primary care physician, which is documented, and July 16 was the last visit.

And it sounds like your providers had added things to your medication regimen. Are you compliant, as best as you can be --

MR. FINK: Oh, yes.

MS. KHANDELWAL: -- as far as --

MR. FINK: I'm compliant with my regimens. Like I said, the Ranexa is gone and the Bystolic was gone, which I was on. I -- My regimen has been greatly simplified to metformin and
Toprol, as well as my insulin.

MS. KHANDELWAL: Uh-huh. And there's also -- your provider started your Wellbutrin. You're continuing that medication, as well?

MR. FINK: Yes. He started that post-op. Just -- I have taken it somewhat before but not regularly. He wanted me to take it post-op just because -- so that I didn't get pumphead or any of those other things that people talk about. I've had no issues with that, and I also noticed that -- as a follow-up, you may have noticed in here that my hemoglobin A1C was like 11 or 12 when I went to the hospital. It's 7.4 now.

MS. KHANDELWAL: That's what I understand.

MR. FINK: And with the endocrinologist, we have made great strides in it coming down.

MS. KHANDELWAL: Thank you.

PRESIDENT WALKER: Any other questions from the board?
(NO AUDIBLE RESPONSE.)

PRESIDENT WALKER: Mr. Blankenship, do you have any further evidence?

MR. BLANKENSHIP: No, ma'am.

That closes our case.

PRESIDENT WALKER: Okay.

Dr. Fink, do you have any other evidence that you wish to present?

MR. FINK: No, ma'am, other than what we've already gone over.

PRESIDENT WALKER: Dr. Fink, would you like to make a closing statement?

MR. FINK: Yes, ma'am.

CLOSING STATEMENT BY MR. FINK:

I would just like to say that I am in the process of complying with the board. I would love to be able to continue practicing in the process of doing that. I do live in a small town and I have many people who depend on me, and not only would it be a disadvantage to me, but it would be a disadvantage to them, and I am fully going to -- intend
-- you know, am in the process of complying. I would just like to ask that I be able to continue to practice as I do that.

PRESIDENT WALKER: Mr. Blankenship, would you like to make a closing statement?

MR. BLANKENSHP: Yes, ma'am.

CLOSING STATEMENT BY MR. BLANKENSHIP:

So what the board's being asked to decide right now in Phase 1 is whether Dr. Fink failed to comply with a board order; and, in doing so, committed unprofessional conduct and failed to respond to board inquiries within a reasonable time and in a reasonable manner, as determined by the board, in violation of 90-14(a)(14).

So we've certainly heard some evidence in mitigation. I think we've heard some things that the board can consider in Phase 2, if we get to Phase 2, but, right now, the only thing the board is going to be asked to answer are three issues, and the three issues are:
Again, whether Dr. Fink committed unprofessional conduct and whether he failed to respond to a board inquiry.

The evidence is not disputed that the board ordered Dr. Fink for an assessment and that he failed to comply with the order. The evidence is not in dispute that he received the order. He may not have received it on the date on the card, February 2nd, but he did receive the order and he failed to comply.

Again, the reasons that he failed to comply we can consider in Phase 2, but they are not a defense. They're not a defense. And I think if you back up from the order, you see that the board had a reasonable basis, and it is a continuing reasonable basis, to order Dr. Fink for an assessment, starting with the interim Letter of Concern. We've done several chart reviews. The chart reviews have continued to express concern. And if you look at the most recent chart review
that was completed and conducted in November of 2017, it was that board -- it was those Expert Review Worksheets that led to the order for an assessment. And if you review those, as you may have already, you'll see that the concern expressed by the expert reviewer is across the board in internal medicine. It doesn't just apply to prescribing for pain.

So the board had a reasonable basis. That basis continues. The board issued an order, and Dr. Fink did not comply with the order. We are not yet at the stage of determining discipline, if any. We are just determining yes or no to the issues. And I would submit to you that the evidence is beyond dispute that the answer should be yes to each question.

If you answer yes to any one of those, we'll come back and have another conversation about the appropriate discipline, but that is presumptuous at this point and we may
not get there. Okay? So I'm going to ask you to return an answer of yes to each of the board issues, and then we can talk about appropriate discipline, but I would ask that you not consider the mitigation as a defense to any of the alleged misconduct. Thank you.

PRESIDENT WALKER: The panel will now go into closed session to consider the evidence and we will announce its decision.

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WHEREUPON, THE BOARD MEMBERS RECESS INTO EXECUTIVE SESSION FROM 9:26 A.M. TO 9:51 A.M.)
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PRESIDENT WALKER: The panel has found -- regarding the three charges, on number 1, the panel has found -- the panel has voted no on that question. On questions 2 and 3, the panel voted yes. So that would constitute a violation of the Medical Practice Act.

Since the panel has found that
Dr. Fink committed a violation of the Medical Practice Act, we must proceed to Phase 2 and determine an appropriate disposition.

Dr. Fink, would you like to present witnesses, exhibits, or otherwise be heard on the question of the appropriate disposition of this case?

MR. FINK: Yes, ma'am. I'd like to just say that this was not intentional. As this thing started, I mean, I -- as you know -- if you've never had chest pain, you don't understand, but I -- it scares you and you're really in fear every day of what might happen and it just took over and recovery since then has just got in the way and I just ask that you consider it. It really was not intentional. I was not trying to avoid doing it and I am more than willing to do it and I would just like to be allowed more time to do it and I will get it done.

PRESIDENT WALKER: Thank you,
Mr. Blankenship, any witnesses, exhibits, or otherwise be heard on the question of the appropriate disposition of this case?

MR. BLANKENSHIP: Yes, ma'am. I don't have any additional exhibits or witnesses. I would like to be briefly heard.

So, on one extreme, I think the board would be well within its authority to indefinitely suspend Dr. Fink's license and then, if and when he completes the assessment that the board has ordered, Dr. Fink apply for reinstatement. He can submit the assessment and the board can determine if he is safe to continue practicing medicine; and, if so, what, if any, limitations or conditions should be applied. And I think that's one -- one end of the spectrum, and I think that would be within your authority, given the fact that he has failed to comply with an order for assessment for ten
months now and given that the board's mission is to protect the public.

And we have a basis -- based on the Expert Review Worksheets that you received, based on the history, the board has reasonable concerns about Dr. Fink's ability to safely practice, and the board's primary mission is to protect the patients he obviously cares about, but our mission is to protect them. So I think the board could do that.

I think, based on the evidence you've heard today, perhaps the other end of the spectrum is for the board to give Dr. Fink more time. What I would submit to you as a reasonable discipline for -- for that end of the spectrum is a indefinite suspension, stayed immediately, with no active time, stayed on the condition that he complete a comprehensive assessment within a period of time, and you can set that period of time. I would submit probably not more than 60 days, giving deference to the
holiday season and pulling together
$7,500 and completing the worksheet,
and, also, we -- we don't know CPEP's
schedule. So he can make every effort
in the world, but CPEP might have to
push it out. So 60 to 90 days I think
would be entirely reasonable, and, you
know, that would be my recommendation if
you wanted to not take his license,
allowing more time based on the
mitigating evidence you heard today.

So, again, an indefinite
suspension. And the reason I'm asking
for that is that if, for whatever
reason, he doesn't apply, then we're
going to do this again and we'll be back
here in May or perhaps August, and I
will be asking at that time that he be
indefinitely suspended. That's the
default. You're giving him more time.
That's the default and, if he doesn't
complete it, I'll be asking for an
indefinite suspension, and I think that
-- I'm hoping, anyway, that having that
stayed indefinite suspension will be a
powerful motivator -- if Dr. Fink needs one, it will be a powerful motivator to complete the assessment.

So, again, my recommendation would indefinite suspension, stayed immediately on the condition that he complete a comprehensive assessment within 60 to 90 days, and I'll leave it to your discretion how much time you give him.

MR. MORELOCK: I have a quick procedural question --

MR. BLANKENSHIP: Sure.

MR. MORELOCK: -- on the --

option number 1 that you laid out.

MR. BLANKENSHIP: Uh-huh.

MR. MORELOCK: If an indefinite suspension is not stayed, he would have to wind down, correct, close his practice or stop practicing?

MR. BLANKENSHIP: Yes, sir.

MR. MORELOCK: Notify patients?

MR. BLANKENSHIP: Yes, sir.

So --
MR. MORELOCK: All right.

MR. BLANKENSHIP: Yes, sir.

So if the board were to indefinitely suspend his license today, he would not be able to practice after today.

The board could indefinitely suspend his license and stay it for a period of days, allowing him to wind down, and then the indefinite suspension would become active, but you are correct, sir. If the board indefinitely suspended his license, effective today, he couldn't practice medicine. And I guess the third option that the board has done before is the board would say he is indefinitely suspended, effective X date at X time. So you could say his license is indefinitely suspended, effective December 29th at 5 p.m., and that would allow him time to wind down, but you would -- I would request that, if you went that route, that you would permit some time to not only wind down but to -- you know, there are people that work for him, as well as patients,
and they would need to make -- they
would need to make arrangements.

MR. WALKER: Question.

PRESIDENT WALKER: Go ahead.

MR. WALKER: Mr. Blankenship,
what's your position with regard to his
appearance before the board in 2015 and
2017?

MR. BLANKENSHIP: I'm not sure
I understand your question, sir.

MR. WALKER: He did appear
before the board in July -- I'm sorry --
2015?

MR. BLANKENSHIP: Well, a
board investigation was submitted to the
board in 2015. I believe he appeared
before the board for an investigative
interview. I'd have to go back and
check the testimony and check the time
line, but in terms of his appearance
before the board, my recollection, based
on the evidence in Phase 1, is that he
appeared for an investigative interview
at sometime.

When -- What you're
referencing in 2015, I believe, was a board investigation that was submitted to the board, and the board's action in that case was an interim Letter of Concern requiring CME and a follow-up chart review.

MR. WALKER: Did he comply with that?

MR. BLANKENSHIP: Yes, sir.

That is Board Exhibit --

MR. WALKER: 2.

MR. BLANKENSHIP: Yes, sir.

That was submitted as -- Board Exhibit No. 2, I believe, was the CME. So he complied with the CME requirement.

That's Board Exhibit No. 2.

And then we did a follow-up chart review. That resulted in an investigative interview in, I believe, March of 2017. That resulted in a private Letter of Concern that required an additional chart review. That's Board Exhibit No. 4.

MR. WALKER: Right.

MR. BLANKENSHIP: And it was
those Expert Review Worksheets that led to the order for assessment. So I don't know if that answers your question.

MR. WALKER: Did he comply with that?

MR. BLANKENSHIP: Did he comply with what, sir?

MR. WALKER: The July -- I'm sorry, the 17th of -- March '17 request of the board.

MR. BLANKENSHIP: So, sir, the -- he had no obligation on the March '17 -- so his obligation was to appear before the board for an investigative interview, and he appeared.

MR. WALKER: Okay.

MR. BLANKENSHIP: And then the board sent him a private Letter of Concern expressing concerns, and then we did a chart review, but I don't think -- there was nothing required of him in that private Letter of Concern. The board merely expressed its concern.

MR. WALKER: Okay. I'm trying to determine --
MR. BLANKENSHIP: Uh-huh.

MR. WALKER: -- where he is as of 2018.

MR. BLANKENSHIP: Right. So the only issue before the board was whether he failed to comply with the board order for an assessment, which the board has answered yes to.

MR. WALKER: Okay. Thank you.

PRESIDENT WALKER: Are there any other questions from anyone?

(NO AUDIBLE RESPONSE.)

PRESIDENT WALKER: Okay.

We'll retire to a closed session and consider the evidence.

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WHEREUPON, THE BOARD MEMBERS RECESS INTO A CLOSED SESSION FROM 10:00 A.M. TO 10:10 A.M.)

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PRESIDENT WALKER: It is the determination of this panel, unanimously, that the disposition of this case is an indefinite suspension, to be stayed on the condition that
Dr. Fink complete a comprehensive evaluation within 90 days from today. Mr. Blankenship, I'd like you prepare a final order and have the final order for me to review no later than January 17th, 2019. Mr. Blankenship, do you have any other matters --

MR. BLANKENSHIP: The only other thing --

PRESIDENT WALKER: -- for the board to consider?

MR. BLANKENSHIP: -- that we can take care of, as soon as we go off the record, I do have the order to seal his medical record prepared, and I'd ask you to sign that at the conclusion of the case. That's all I have, ma'am.

PRESIDENT WALKER: All right.

MR. FINK: Thank you.

PRESIDENT WALKER: This hearing is concluded.

(THE HEARING CONCLUDED AT 10:12 A.M.)
CERTIFICATE

State of North Carolina
County of Harnett

I, Mary Lynn Fuller, a notary public in and for the State of North Carolina, do hereby certify that I was the court reporter at the aforementioned proceedings and that the foregoing is a true, correct, and full transcript of the proceedings herein.

I further certify that I am not counsel for, nor in the employment of any of the parties to this action; that I am not related by blood or marriage to any of the parties, nor am I interested, either directly or indirectly, in the results of this action.

In witness whereon, I have hereto set my hand, this the 2nd day of January, 2019.

Mary Lynn Fuller, CVR
Notary Public
Exhibits

12-13 Exhibit 01 2:16 6:17,18, 20,23 17:10,12
12-13 Exhibit 02 18:6,8,9,12 69:13,14,16
12-13 Exhibit 03 19:24
12-13 Exhibit 04 21:11,13 69:23
12-13 Exhibit 05 22:5,6,8 23:4 33:11,13,18
12-13 Exhibit 06
12-13 Exhibit 07A
12-13 Exhibit 07B
12-13 Exhibit 07C
12-13 Exhibit 07D

$7,500  65:2

4
4 21:11,13 69:23
40 29:24 33:2 40:19
40th 31:4
4th 35:8 38:15

5
5 22:6,8 23:4 29:22 33:11,13,18 67:19
50 33:3
500 30:12
50th 31:7
5th 25:20 26:15 35:9 36:2

6
60 64:25 65:6 66:8
60th 31:9
6th 26:23 45:16

7
7 6:18 8:4 22:12,14
7-A 22:14,16
7-B 24:11,12
7-C 25:11
7-D 22:15 25:25 26:16 35:25
7.4 56:16
7th 13:10

8
800 30:13 47:4 48:11
8:39 28:7
8:54 28:7

9
9 18:13
cooperate 45:3
Coordinator 16:21,22,23
copy 6:24
correct 18:13 31:18 32:8 36:2,3, 6,7 37:1 39:16 41:4 42:10 66:19 67:11
correspondence 35:3
counsel 4:5,6
County 29:25
courier 34:5
courses 17:23
court 51:11 55:6
CPEP 25:4 26:7,21,23 35:5 36:6 65:5
CPEP's 65:3
criminal 11:22
cross-examined 43:7
CSRS 12:23 14:6
current 20:12
cut 38:20
database 14:7
date 23:14,17 25:19 41:22 59:9 67:17
dated 23:1
December 3:5,22 67:19
decide 58:11
decided 20:13 24:23
decision 61:11
default 65:20,21
defense 59:15,16 61:6
deferece 64:25
delays 26:9
department 11:10
depend 40:19 57:22
depending 39:24
deposit 42:20
deposition 29:7
describe 8:18,24 9:2,12 11:14 12:7 16:16 18:8 25:12 30:9
determination 71:22
determine 62:3 63:17 70:25
determined 4:23 5:9 12:24 58:17
determining 60:15,16
developed 38:18 39:2 40:5,6 46:16
Dewey 12:13
diabetes 54:21
diagnosis 18:1
Diagnostic 31:13,15 32:16 33:22 34:1
disadvantage 57:23,24
discipline 60:15,24 61:4 64:17
discrepancy 53:4
discretion 27:21 66:9
dismissed 51:10
disposition 62:4,8 63:5 71:23
dispute 8:3,14 9:20 59:8 60:18
disputed 59:4
diversion 12:14
division 31:13
doctor 43:13 47:6 48:6
documentation 12:24 18:10 21:1,5
| post-op | 56:7,9 |
| post-surgery | 48:8 53:15 |
| powerful | 66:1,2 |
| practice | 5:1,11 31:24 32:14 47:1 |
| precipitating | 37:10 |
| prehearing | 6:15 7:10 28:13 |
| preliminary | 6:11,4 28:10 |
| prescription | 11:21 |
| prescriptions | 13:8,11 |
| present | 3:23 4:3 10:16 29:7 |
| provided | 21:22 |
| protocol | 44:2 |
| pumps | 56:10 |
| purpose | 4:6 42:3 |
| pursuant | 12:12 |
| put | 42:1 54:20 |
| question | 45:12 53:1 60:20 61:21 |
| questionnaires | 42:17 |
| questions | 15:8,10,13 27:10,12 |
| qualitative | 56:23 65:25 |
| raised | 30:6 |
| random | 14:6 |
| Ranexa | 36:18 46:6 55:22 |
| re-entry | 37:21 |
| read | 20:8 |
| ready | 6:7 10:15 |
| reason | 37:8,22 41:20 42:8 44:25 |
| reasonable | 15:2 23:7 57:18 58:1 |
| receipt | 4:20 5:16,23 6:4 22:22 |
| recent | 59:25 |
| RECESSION | 28:6 61:13 71:17 |
| recollection | 68:21 |
| recommend | 7:16 |
| recommendation | 65:8 66:4 |
| record | 6:15 7:2 19:1,21 21:7 |
| referred | 52:13 |
| referenced | 35:22 |
| referencing | 69:1 |
| refrain | 3:16 |
| regard | 68:6 |
| regimen | 55:16,24 |
| regimens 55:22 |
| regularly 48:5 54:10,13 56:8 |
| reinstatement 63:16 |
| reiterate 44:23 |
| relationship 30:25 31:2 |
| remember 17:4 |
| renamed 31:5 |
| reply 24:7,17 25:21 |
| report 13:19,23 14:13 17:4 19:5 |
| reported 18:23 |
| REPORTER 55:6 |
| Reporting 13:23 |
| reports 12:23 |
| representing 4:8 |
| request 67:21 70:9 |
| require 17:21 38:11 |
| required 17:22 22:21 34:13,16 69:21 70:21 |
| requirement 69:15 |
| requiring 5:21 69:5 |
| rescheduled 54:16 |
| residency 30:19 |
| resolved 51:6,13 |
| respect 3:12 |
| respondent 11:25 |
| RESPONSE 15:11 27:13,16 57:1 71:12 |
| responsibilities 11:15 16:17 |
| result 19:17 |
| resulted 14:24 69:18,20 |
| results 14:25 |
| retake 31:20 |
| retire 71:14 |
| return 23:9,11 33:20 61:2 |
| returned 39:11 |
| review 7:13 14:15 15:5 18:19,21, |
| reviewed 12:22 |
| reviewer 21:15,17 60:7 |
| reviewers 20:15 |
| reviewing 21:17 22:1 |
| reviews 59:23 |
| ROI 14:12 |
| role 16:13 |
| rough 34:8 |
| roughly 47:20 |
| route 67:22 |
| Rowan 29:25 31:13,14 32:15 33:22 34:1 |
| run 47:16 |

---

| S |
| safe 36:23 63:18 |
| safely 64:7 |
| Salisbury 29:8,23 33:23 34:4 47:5 |
| SBI 12:13 |
| scar 37:19 |
| scares 62:15 |
| scheduled 26:24 41:21 42:12 |
| schedules 39:10 |
| school 30:5,17 |
| seal 28:11,15 |
| sealing 28:19 |
| season 65:1 |
| selected 14:6 |
| send 19:19 23:24 24:15 41:13 |
| sending 24:21 |
| senior 11:9 14:14 17:6 |
| separate 13:11 |
| Sept 14:21 |
| September 14:22 17:14,19 |
| series 29:10 |
| served 9:7 16:12 |
| service 33:20 |
| serving 4:4 |
| session 3:4 61:9,14 71:14,18 |
| set 42:21 64:23 |
| short-term 50:6 |
| show 8:5 23:11 |
| showing 22:18 |
| sign 31:6 |
| signed 26:20 33:21 |
| significant 13:2 14:1 |
| simplified 55:25 |
| simply 40:1 |
| situations 32:21 |
| slowly 50:18 |
| small 30:10 57:21 |
| Smith 12:18,25 |
| Smith's 12:23 |
| solo 47:7,9 |
| sounds 55:14 |
| speak 25:1 |
| speaking 55:7 |
| Special 13:12,16 |
| specialist 52:13 |
| specialities 32:3 |
| Specifically 5:18 |
| spectrum 63:22 64:15,18 |
| spoke 46:4 |
| spring 9:16 |
| **SSRI** | 50:25 |
| **stab** | 37:24 |
| **stage** | 60:15 |
| **stamina** | 40:4 |
| **stamp** | 23:14 |
| **stand** | 10:20 |
| **start** | 34:24 |
| **started** | 34:21,24 36:18 46:3,6 56:3,6 62:12 |
| **starting** | 59:21 |
| **state** | 3:6 11:1,5 12:15 15:25 |
| **statement** | 7:23 8:1 10:12 44:20 57:14,16 58:7,9 |
| **statements** | 7:21 |
| **Statute** | 4:15 5:3,13 |
| **stay** | 38:13 67:7 |
| **stayed** | 64:19,20 65:25 66:5,18 71:25 |
| **stents** | 38:3 |
| **step** | 8:23 |
| **steroids** | 20:25 |
| **stimulants** | 20:24 |
| **stipulate** | 7:3 |
| **stipulated** | 6:17 7:10 |
| **stipulation** | 6:15 7:11 |
| **stop** | 66:20 |
| **story** | 38:10 |
| **strength** | 48:22 |
| **Stress** | 46:13 |
| **strides** | 56:22 |
| **stuff** | 34:2 |
| **submit** | 4:18 5:14,21 6:2 34:13 60:17 63:16 64:17,24 |
| **subsequently** | 37:15 |
| **Substance** | 13:22 |

| **substances** | 12:19 13:3 17:24 50:8 |
| **success** | 27:3 |
| **support** | 20:18 |
| **surgeon** | 35:14,15 |
| **surgery** | 35:16 36:25 37:2,5,15,17 38:11 39:1 40:5 48:8 |
| **surgical** | 38:4 |
| **suspend** | 63:12 67:4,7 |
| **suspended** | 65:19 67:12,16,18 |
| **sworn** | 10:22 15:21 29:2 |
| **System** | 13:23 |

| **T** |
| **T** |
| **T** |
| **T** |
| **T** |

| **tablets** | 13:9 |
| **tag** | 35:5 |
| **takes** | 34:1 41:15 |
| **taking** | 48:16 |
| **talk** | 56:12 61:4 |
| **talked** | 28:12 35:4,7 41:11 |
| **tells** | 51:19 |
| **ten** | 17:25 46:10 63:25 |
| **terms** | 50:7 68:20 |
| **test** | 41:16 42:21 46:13 |
| **testified** | 10:23 15:22 29:3 |
| **testifies** | 7:18 |
| **testify** | 32:5 |
| **testimony** | 7:17 27:24 68:19 |
| **thing** | 28:10 31:7 52:19 58:23 62:12 |
| **thinking** | 40:11 |
| **thought** | 38:6 |
| **thousand** | 30:13 |
| **thrown** | 51:10 |

| **Thursday** | 3:5,22 39:24 |
| **times** | 27:2 48:19 49:9,24 |
| **tired** | 34:23 |
| **tissue** | 37:19 |
| **told** | 25:2 26:24 35:13 38:14 40:1 46:8 |
| **tolerable** | 36:22 |
| **tolerated** | 49:20 |
| **tomorrow** | 28:19 |
| **top** | 34:12 |
| **topics** | 11:20 |
| **Toprol** | 56:1 |
| **totally** | 36:20 54:19 |
| **town** | 30:10,11,12,25 31:2,4,5 47:1 57:21 |
| **transcript** | 28:18 |
| **trauma** | 37:8 |
| **treadmill** | 46:9 |
| **treat** | 52:16 |
| **treatment** | 15:4 18:2 21:2 |
| **triple** | 37:3 |
| **trouble** | 49:23,24 |
| **Tuesday** | 39:22 |

| **U** |
| **Uh-huh** | 23:5 53:2 56:2 66:16 71:1 |
| **unanimously** | 71:23 |
| **undergo** | 8:7,9 |