BEFORE THE
NORTH CAROLINA MEDICAL BOARD

In re:                   )
Gary Lee Fink, M.D.,     ) FINDINGS OF FACT,
Respondent.             ) CONCLUSIONS OF LAW, AND
) ORDER OF DISCIPLINE

The North Carolina Medical Board ("Board") heard this matter on December 13, 2018. Board members present were Barbara E. Walker, D.O., Board President and Presiding Officer; Venkata Jonnalagadda, M.D.; Debra A. Bolick, M.D.; A. Wayne Holloman; Christine M. Khandelwal, D.O.; Michaux R. Kilpatrick, M.D.; Varnell McDonald-Fletcher, PA-C; and Ralph A. Walker, J.D. The Honorable Fred M. Morelock, Independent Counsel, assisted the Board. Brian L. Blankenship, Deputy General Counsel, represented the Board. Respondent, Gary Lee Fink, M.D. ("Dr. Fink"), appeared before the Board pro se. Pursuant to N.C. Gen. Stat. § 90-14.7, the Board proceeded with the hearing in this matter.

At the hearing, the Board's counsel presented testimony from:

a. The Board investigator who investigated Dr. Fink's case; and

b. The Board's Field Investigations Administrative Manager.

Dr. Fink testified at the hearing and did not present any witnesses.
Based upon the stipulations of the parties, the evidence presented and arguments of counsel and Dr. Fink, the Board enters the following findings of fact.

**FINDINGS OF FACT**

1. The Board finds that it is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted to it in Article 1 of Chapter 90 of the North Carolina General Statutes.

2. The Board finds that Dr. Fink is a physician licensed by the Board on or about August 11, 1982, license number 28409.

3. Dr. Fink came to the attention of the Board in June 2015 when his patient was arrested for obtaining a controlled substance by false pretenses.

4. The Board conducted a review of several of Dr. Fink’s patients’ medical records and, based on that review, recommended and requested Dr. Fink obtain specific and additional continuing medical education (“CME”).

5. Dr. Fink completed the CME in March 2016.

6. In October 2016, the Board requested an independent medical expert, Board Certified in internal medicine, to review three of Dr. Fink’s current patients’ medical records. The independent medical expert opined that Dr. Fink’s care for two of the patients was within the standard of accepted and prevailing
medical practice in North Carolina and his care for one patient was below the standard of accepted and prevailing medical practice in North Carolina.

7. In March 2017, Dr. Fink appeared before a panel of the Board for an investigative interview.

8. As a result of Dr. Fink's interview, the Board issued him a private letter of concern expressing continuing concerns about his prescribing. The Board also informed Dr. Fink that a medical records review would be conducted in approximately six (6) months.

9. In November 2017, the Board requested an independent medical expert, Board Certified in internal medicine, to review three of Dr. Fink's current patients' medical records. The independent medical expert opined that Dr. Fink's diagnosis, treatment and medical records for the three patients were below the standard of accepted and prevailing medical practice in North Carolina.

10. As a result of the independent medical expert's review, the Board issued an Order for Examination ("Order") on January 30, 2018, requiring Dr. Fink to submit himself for a comprehensive examination within thirty (30) days of receipt of the Order.

11. Dr. Fink received the Order on February 2, 2018 and acknowledged receipt of the Order in an email dated April 5, 2018.
12. As of the date of the hearing, Dr. Fink had not submitted himself for a comprehensive examination as required by the January 30, 2018 Order.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Dr. Fink and the subject matter of this case.

2. Dr. Fink failed to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning matters affecting his license to practice medicine within the meaning of N.C. Gen. Stat. § 90-14(a)(14) which is grounds under that section of the North Carolina General Statutes for the Board to annul, suspend, revoke, condition or limit Dr. Fink’s North Carolina license to practice medicine or to deny any application he may make in the future.

ADDITIONAL FINDINGS AND CONCLUSIONS REGARDING DISCIPLINE

1. Respondent’s failure to respond within a reasonable period of time and in a reasonable manner to inquiries from the Board is mitigated by the following:

   a. Beginning in February 2018, Dr. Fink experienced a health condition that ultimately required surgery in April 2018;

   b. Following his surgery in April 2018, Dr. Fink did not work until June 4, 2018; and
c. Since June 4, 2018, Dr. Fink has been on a limited work schedule.

2. There are no aggravating findings or conclusions.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings and Conclusions Regarding Discipline, the Board enters the following:

ORDER OF DISCIPLINE

1. Dr. Fink’s North Carolina license to practice medicine is hereby INDEFINITELY SUSPENDED. However, this indefinite suspension is IMMEDIATELY STAYED subject to the following terms and conditions:
   a. Dr. Fink shall submit to a comprehensive examination at an assessment or examination center approved in advance by the Board’s Office of the Medical Director ("OMD") not later than ninety (90) days from January 17, 2019;
   b. For purposes of this ORDER, the Center for Personalized Education for Professionals ("CPEP") is an approved assessment and examination center and prior approval of the OMD is not required;
   c. If Dr. Fink intends to obtain an examination at any assessment or examination center other than CPEP, he shall submit the name of the assessment or
examination center to the Board's Compliance Coordinator for approval by the OMD at North Carolina Medical Board, P.O. Box 20007, Raleigh, NC 27619-0007 or compliance@ncmedboard.org within twenty (20) days of the date of this Order;

d. If Dr. Fink submits the name of an assessment or examination center that is unacceptable to the OMD, then the OMD shall provide a list of approved assessment or examination centers that Dr. Fink shall select from. Upon receipt of the names of the approved assessment or examination centers from the OMD, Dr. Fink shall immediately select an assessment or examination center, schedule the examination, and complete the examination within ninety (90) days from January 17, 2019; and

e. Dr. Fink shall cooperate fully with the assessment or examination center and its staff and shall promptly submit to any further examinations deemed necessary by his examiners. Further, Dr. Fink shall authorize and request that his examiners communicate with the Board and send a copy of the examination report and all other assessment or examination center records to the Board’s
Compliance Coordinator. Dr. Fink shall sign any waivers or releases that the assessment or examination center requires to communicate with the Board about the results of its examination.

2. Failure to comply with any aspect of this Order may be considered failure to respond, within a reasonable time and manner as determined by the Board, to inquiries from the Board concerning any matter affecting his license to practice medicine within the meaning of N.C. Gen. Stat. § 90-14(a)(14) and unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6), and may result in the Board initiating public disciplinary proceedings.

By Order of the North Carolina Medical Board this the 29th day of January, 2019.

NORTH CAROLINA MEDICAL BOARD

By:  
Barbara E. Walker, D.O.
President
RELEASE OF INFORMATION

I, Gary Lee Fink, M.D., authorize the Center for Personalized Education for Professionals ("CPEP") to disclose any and all information related in any way to me to the North Carolina Medical Board ("Board").

I understand that I am currently under investigation by the Board and that any and all information the Board receives from CPEP may be used by the Board in determining any further Board action. I also understand that, in the event the Board decides to pursue disciplinary charges against me, any and all information the Board receives from CPEP may be used at a public hearing.

_______________________________   _________________
Gary Lee Fink, M.D.      Date

_______________________________   _________________
Witness Signature      Date

_______________________________
Printed Name of Witness
RELEASE OF INFORMATION

I, Gary Lee Fink, M.D., authorize the assessment or examination center approved by the Office of the Medical Director ("Approved Examination Center") to disclose any and all information related in any way to me to the North Carolina Medical Board ("Board").

I understand that I am currently under investigation by the Board and that any and all information the Board receives from the Approved Examination Center may be used by the Board in determining any further Board action. I also understand that, in the event the Board decides to pursue disciplinary charges against me, any and all information the Board receives from the Approved Examination Center may be used at a public hearing.

_______________________________   _________________
Gary Lee Fink, M.D.      Date

_______________________________   _________________
Witness Signature      Date

_______________________________
Printed Name of Witness