

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2015-031

In the Matter of)
)
)
JAY CAPUNITAN, M.D.)
_____)

CONSENT ORDER

Pursuant to G.L. c. 30A, § 10, Jay Capunitan, M.D. (Respondent) and the Board of Registration in Medicine (Board) (hereinafter referred to jointly as the "Parties") agree that the Board may issue this Consent Order to resolve the above-captioned adjudicatory proceeding. The Parties further agree that this Consent Order will have all the force and effect of a Final Decision within the meaning of 801 CMR 1.01(11)(d). The Respondent admits to the findings of fact specified below and agrees that the Board may make the conclusions of law and impose the sanction set forth below in resolution of investigative Docket No. 14-006.

Findings of Fact

1. The Respondent was born on May 4, 1973. He graduated from the University Of Santo Tomas Faculty of Medicine & Surgery in the Philippines in 1998. He is certified by the American Board of Internal Medicine with a subspecialty certification in Infectious Disease. He has been licensed to practice medicine in Massachusetts under certificate number 251040 since July 25, 2012.

2. On January 10, 2014, the Respondent entered into a Voluntary Agreement not to Practice.

Disruptive Behavior

3. On June 19, 2013, the Respondent became upset when a co-worker double-booked him for an appointment without prior approval from the Respondent.

4. The Respondent went and spoke with his co-worker because he disagreed with the way his co-worker scheduled the patient. After a discussion about the scheduling the Respondent called his co-worker a bitch.

5. At the time that the Respondent spoke with his co-worker, patients were present.

6. He immediately reported the incident to his supervisor and attended counseling sessions.

7. Board Policy Number 01-01 on Disruptive Physician Behavior states that “Disruptive behavior by a physician has a deleterious effect on the health care system and increases the risk of patient harm.”

8. Behaviors such as foul language; rude, loud or offensive comments; and intimidation of staff, patients and family members are now recognized as detrimental to patient care.

Patient A

9. In September 2013, the Respondent began treating Patient A as Patient A’s Primary Care Physician.

10. Patient A suffered from mental health issues.

11. Patient A was unemployed. On November 2, 2013, the Respondent began exchanging texts with Patient A.

12. Via text, the Respondent set up a meeting with Patient A on Saturday, November 9, 2013 outside of the Respondent's office. Patient A believed that the meeting was to discuss one of Patient A's medical diagnoses.

13. Patient A did not show up for the November 9, 2013 meeting.

14. After Patient A did not show up for the November 9, 2013 meeting, the Respondent texted Patient A and wrote that he could not believe that Patient A blew him off. The Respondent also wrote that he had been nice to Patient A and had hoped that Patient A would be nice to him. Patient A texted the Respondent on November 16, 2013 and apologized to the Respondent for the missed meeting and asked the Respondent to call Patient A. The Respondent rescheduled the meeting with Patient A for Saturday, November 16, 2013.

15. On November 16, 2013 at approximately 6:30 p.m., the Respondent drove to Patient A's apartment building and picked up Patient A and drove Patient A to a pizza place. The Respondent bought a pizza and drove Patient A to the Respondent's apartment.

16. At the Respondent's apartment, Patient A requested a glass of wine and the Respondent served it to Patient A.

17. At the Respondent's apartment, Patient A and the Respondent had sexual contact which included manual and/or other stimulation of one or both of their genitals.

18. After the sexual encounter, the Respondent drove Patient A home.

Conclusion of Law

A. The Respondent has violated G.L. c. 112, § 5, ninth par. (c) and 243 CMR 1.03(5)(a)3 by engaging in conduct that places into question the Respondent's competence to practice medicine including gross misconduct in the practice of medicine.

B. The Respondent has violated 243 CMR 1.03(5)(a)18 by committing misconduct in the practice of medicine.

C. The Respondent lacks good moral character and has engaged in conduct that undermines the public confidence in the integrity of the medical profession. *See Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982).

Sanction and Order

The Respondent's license is hereby revoked retroactive to the day that he signed his Voluntary Agreement not to Practice. This sanction is imposed for each violation of law listed in the Conclusion section and not a combination of any or all of them.

Execution of this Consent Order

The Respondent shall provide a complete copy of this Consent Order with all exhibits and attachments within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which s/he practices medicine; any in- or out-of-state health maintenance organization with whom the Respondent has privileges or any other kind of association; any state agency, in- or out-of-state, with which the Respondent has a provider contract; any in- or out-of-state medical employer, whether or not the Respondent practices medicine there; the state licensing boards of all states in which the Respondent has any kind of license to practice medicine; the Drug Enforcement Administration Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. The Respondent shall also provide this notification to any such designated entities with which the Respondent becomes associated for the duration of this revocation. The

Respondent is further directed to certify to the Board within ten (10) days that the Respondent has complied with this directive.

The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.

Jay Capunitan
Jay Capunitan, M.D.
Licensee

9/25/15
Date

W. Scott Liebert
W. Scott Liebert, Esq.
Attorney for the Licensee

Sept. 25, 2015
Date

James Paikos
James Paikos
Complaint Counsel

9/25/2015
Date

So ORDERED by the Board of Registration in Medicine this 19th day of November, 2015.

Candace Lapidus Sloane, M.D.
Candace Lapidus Sloane, M.D.
Board Chair