

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2015-031

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In the Matter of )  
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JAY CAPUNITAN, M.D )  
\_\_\_\_\_ )

**STATEMENT OF ALLEGATIONS**

The Board of Registration in Medicine (Board) has determined that good cause exists to believe the following acts occurred and constitute a violation for which a licensee may be sanctioned by the Board. The Board therefore alleges that Jay Capunitan, M.D. (Respondent) has practiced medicine in violation of law, regulations, or good and accepted medical practice as set forth herein. The investigative docket number associated with this order to show cause is Docket No. 14-006.

**Biographical Information**

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.

**Factual Allegations**

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.

#### Legal Basis for Proposed Relief

A. Pursuant to G.L. c. 112, §5, ninth par. (c) and 243 CMR 1.03(5)(a)3, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that he engaged in conduct that places into question the Respondent's competence to practice medicine, including but not limited to gross misconduct in the practice of medicine.

B. Pursuant to 243 CMR 1.03(5)(a)18, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician committed misconduct in the practice of medicine.

C. Pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§ 5, 61 and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 CMR 1.01.

#### Nature of Relief Sought

The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training or other restrictions upon the Respondent's practice of medicine.

#### Order

Wherefore, it is hereby **ORDERED** that the Respondent show cause why the Board

should not discipline the Respondent for the conduct described herein.

By the Board of Registration in Medicine,

Candace Lapidus Sloane, MD

Candace Lapidus Sloane, M.D.  
Board Chair

Date: November 19, 2015