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8  
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
10 OF THE STATE OF CALIFORNIA

11  
12 In the Matter of: ) CFL LICENSE NO.: 603-I925  
13 THE COMMISSIONER OF FINANCIAL )  
PROTECTION AND INNOVATION, ) CONSENT ORDER  
14 )  
15 Complainant, )  
16 v. )  
17 CAPEXMD, LLC, )  
18 Respondent. )  
19 )  
20 )  
21 )

22 This Consent Order is entered into by and between the Commissioner of Financial Protection  
23 and Innovation (Commissioner) and CapexMD, LLC (CapexMD) (Consent Order).

24 **I.**

25 **RECITALS**

26 This Consent Order is made with reference to the following facts:

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1           A.       CapexMD is an Arizona limited liability company organized in 2010 with its principal  
2 place of business at 9907 E. Bell Road, #110, Scottsdale, Arizona 85260. CapexMD has held a  
3 license to lend under the CFL since November 29, 2011.

4           B.       Jules Segal is the Chief Executive Officer of CapexMD and is authorized to enter into  
5 this Consent Order on behalf of CapexMD.

6           C.       The Department of Financial Protection and Innovation (Department), through the  
7 Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in  
8 the business of lending and brokering pursuant to the California Financing Law (Fin. Code, § 22000,  
9 et seq.) (CFL).

10          D.       The Commissioner commenced a regular CFL regulatory examination of CapexMD  
11 on December 7, 2016 (Examination).

12          E.       Through the Examination, the Commissioner made the following factual findings  
13 (Findings):

14                i.       CapexMD provided loans under the CFL to California residents to finance  
15 those residents' elective fertility procedures.

16                ii.       CapexMD entered into relationships with several fertility clinics that could  
17 provide information regarding CapexMD to their patients who expressed an interest in financing  
18 options.

19                iii.       CapexMD made loans to the patients only after the clinic confirmed each  
20 patient's procedure cost to CapexMD, which cost then became the loan amount.

21                iv.       After a patient signed a loan agreement, CapexMD disbursed the loan amount  
22 directly to the clinic.

23                v.       In exchange for CapexMD agreeing to provide financing to a clinic's qualified  
24 patients, each clinic agreed to pay CapexMD a "practice fee" of 4-5% of each loan's amount  
25 (Practice Fee(s)).

26                vi.       Neither CapexMD nor the clinics disclosed the payment of the Practice Fees  
27 by the clinics.

28                vii.       For loans of less than \$5,000.00, CapexMD did not treat the Practice Fees as

1 “charges” under the CFL.

2 F. Based on the Findings, the Commissioner determined that CapexMD violated  
3 Financial Code section 22307, subdivision (a), by not computing all “charges” on applicable loans  
4 made under the CFL “as a percentage per month of the unpaid principal balance or portions thereof”  
5 and by not “so express[ing] in every obligation signed by the borrower.”

6 G. CapexMD neither admits nor denies the Commissioner’s Findings and determinations.

7 H. By this Consent Order, CapexMD and the Commissioner intend to resolve this matter  
8 amicably without the necessity of a hearing or other litigation.

9 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions  
10 contained herein, the Commissioner and CapexMD (the Parties) agree as follows:

11 **II.**

12 **TERMS AND CONDITIONS**

13 1. Purpose. This Consent Order resolves the Findings in a manner that avoids the  
14 expense of a hearing and other possible court proceedings, protects consumers, is in the public  
15 interest, and is consistent with the purposes, policies, and provisions of the CFL.

16 2. Desist and Refrain Order. Pursuant to Financial Code section 22712, CapexMD is  
17 hereby ordered to desist and refrain from violating Financial Code section 22307, subdivision (a).

18 3. Penalty. CapexMD shall pay a penalty totaling \$1,000.00 (Penalty) to the  
19 Commissioner. Payment of the Penalty shall be made no more than five business days after the  
20 Effective Date, as defined in Paragraph 25 below (Effective Date), and should be made in the form of  
21 a cashier’s check or Automated Clearing House deposit payable to the “Department of Financial  
22 Protection and Innovation” and transmitted to the attention of “Accounting – Litigation” at  
23 Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California  
24 95834-2036. Notice of such payment shall be forwarded to Adam Wright, Senior Counsel,  
25 Department of Financial Protection and Innovation, Enforcement Division, 320 West 4th Street, Suite  
26 750, Los Angeles, California 90013.

27 4. Refunds. CapexMD shall refund all Practice Fees received by CapexMD on loans of  
28 less than \$5,000.00 that were made under the CFL (Refunds). CapexMD represents that the total

1 amount of Refunds is \$11,365. CapexMD shall pay the Refunds no later than 90 days after the  
2 Effective Date. CapexMD shall submit an electronic report and evidence of the Refunds to the  
3 Commissioner on no later than 120 days after the Effective Date. CapexMD shall escheat any  
4 unclaimed Refunds to the California State Controller’s Office within the period provided by Code of  
5 Civil Procedure section 1520 of the Unclaimed Property Law (Code of Civ. Proc., section 1500, et  
6 seq.).

7 5. Required Disclosure. CapexMD agrees that, in the event it makes any loans to  
8 California residents of less than \$5,000 and collects a fee from a clinic in connection with such a  
9 loan, CapexMD shall disclose to the respective borrower, in bold lettering, that the respective clinic  
10 paid CapexMD a fee in connection with the loan that has not been included in the loan’s disclosed  
11 annual percentage rate.

12 6. Proof of Compliance. CapexMD acknowledges that the Commissioner will examine  
13 and review its compliance with Paragraphs 3 through 5 of this Consent Order. CapexMD agrees to  
14 provide, upon the Commissioner’s request, documentation satisfactory to the Commissioner to  
15 determine compliance with Paragraphs 3 and 4.

16 7. Waiver of Hearing Rights. CapexMD acknowledges the Commissioner is ready,  
17 willing, and able to proceed with the filing of an enforcement action upon the Findings. CapexMD  
18 hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review  
19 which may be afforded pursuant to the CFL, the California Administrative Procedure Act, the  
20 California Code of Civil Procedure, or any other provision of law. CapexMD further expressly  
21 waives any requirement for the filing of an Accusation pursuant to Government Code section  
22 11415.60, subdivision (b). By waiving such rights, CapexMD effectively consents to this Consent  
23 Order, and the Desist and Refrain Order contained herein, becoming final.

24 8. Full and Final Settlement. The Parties hereby acknowledge and agree that this  
25 Consent Order is intended to constitute a full, final, and complete resolution of the Findings, and that  
26 no further proceedings or actions will be brought by the Commissioner in connection with the  
27 Findings under the CFL or any other provision of law, excepting therefrom any proceeding to enforce  
28 compliance with the terms of this Consent Order.

1           9.       Failure to Comply with Consent Order. CapexMD agrees that, if it fails to comply  
2 with Paragraphs 3-6 of this Consent Order, the Commissioner may, following 10 business days from  
3 CapexMD’s receipt of notice from the Commissioner of CapexMD’s failure to comply, in addition to  
4 all other available remedies it may invoke under the CFL, summarily suspend the CFL license of  
5 CapexMD until CapexMD is in compliance. In such case, CapexMD waives any notice and  
6 hearing rights to contest such remedies which may be afforded under the CFL, the California  
7 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of  
8 law in connection therewith.

9           10.      Information Willfully Withheld or Misrepresented. This Consent Order may be  
10 revoked, and the Commissioner may pursue any and all remedies available under the law against  
11 CapexMD if the Commissioner discovers that CapexMD knowingly or willfully withheld or  
12 misrepresented information used for and relied upon in this Consent Order.

13           11.      Future Actions by Commissioner. If CapexMD fails to comply with any terms of the  
14 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
15 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions  
16 against CapexMD, or any of its partners, owners, officers, shareholders, directors, employees or  
17 successors for any and all unknown violations of the CFL.

18           12.      Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s  
19 ability to assist a government agency (whether city, county, state, or federal) with any administrative,  
20 civil or criminal prosecutions brought by that agency against CapexMD or any other person based  
21 upon any of the activities alleged in this matter or otherwise.

22           13.      Headings. The headings to the paragraphs of this Consent Order are inserted for  
23 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
24 the provisions hereof.

25           14.      Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
26 interest.

27           15.      Reliance. Each of the Parties represents, warrants, and agrees that in executing this  
28 Consent Order it has relied solely on the statements set forth herein and the advice of its own counsel.

1 Each of the Parties further represents, warrants, and agrees that in executing this Consent Order it has  
2 placed no reliance on any statement, representation, or promise of any other party, or any other  
3 person or entity not expressly set forth herein, or upon the failure of any party or any other person or  
4 entity to make any statement, representation or disclosure of anything whatsoever. The Parties have  
5 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to  
6 execute this Consent Order; and (2) to preclude the introduction of parol evidence to vary, interpret,  
7 supplement, or contradict the terms of this Consent Order.

8 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of  
9 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.  
10 The waiver of any provision of this Consent Order will not be deemed a waiver of any other  
11 provision. No waiver by either party of any breach of, or of compliance with, any condition or  
12 provision of this Consent Order by the other party will be considered a waiver of any other condition  
13 or provision or of the same condition or provision at another time.

14 17. Full Integration. This Consent Order is the final written expression and the complete  
15 and exclusive statement of all the agreements, conditions, promises, representations, and covenants  
16 between the Parties with respect to the subject matter hereof, and supersedes all prior or  
17 contemporaneous agreements, negotiations, representations, understandings, and discussions between  
18 and among the Parties, their respective representatives, and any other person or entity, with respect to  
19 the subject matter covered hereby.

20 18. Governing Law. This Consent Order will be governed by and construed in accordance  
21 with California law. Each of the Parties hereto consents to the jurisdiction of such court, and hereby  
22 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the  
23 maintenance of such action or proceeding in such court.

24 19. Counterparts. This Consent Order may be executed in one or more separate  
25 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
26 together constitute a single document.

27 20. Effect Upon Future Proceedings. If CapexMD applies for any license, permit or  
28 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future

1 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be  
2 admitted for the purpose of such application(s) or proceeding(s).

3 21. Voluntary Agreement. CapexMD enters into this Consent Order voluntarily and  
4 without coercion and acknowledges that no promises, threats or assurances have been made by the  
5 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent  
6 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and  
7 without any duress or undue influence of any kind from any source.

8 22. Notice. Any notice required under this Consent Order shall be provided to each party  
9 at the following addresses.

10 i. To CapexMD:

11 Jules Segal  
12 c/o Brian J. Schulman  
13 Weiss Brown  
14 6263 N. Scottsdale Road, Suite 340  
15 Scottsdale, AZ 85250  
16 Email: brian.schulman@weissbrown.com

17 ii. To the Commissioner:

18 Adam Wright  
19 Senior Counsel, Enforcement Division  
20 Department of Financial Protection and Innovation  
21 3240 West 4th Street, Suite 750  
22 Los Angeles, California 90013-2344  
23 adam.wright@dfpi.ca.gov

24 23. Signatures. A fax or electronic mail signature shall be deemed the same as an original  
25 signature.

26 24. Public Record. CapexMD hereby acknowledges that this Consent Order is and will be  
27 a matter of public record.

28 25. Effective Date. This Consent Order shall become final and effective when signed by  
all Parties and delivered by the Commissioner's agent via e-mail to CapexMD's counsel, Brian J.  
Schulman, at brian.schulman@weissbrown.com.

26 26. Authority to Sign. Each signatory hereto covenants that he or she possesses all  
27 necessary capacity and authority to sign and enter into this Consent Order and undertake the  
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1 obligations set forth herein.

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3 Dated: February 16, 2021

MANUEL ALVAREZ  
Commissioner of Financial Protection and Innovation

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By \_\_\_\_\_  
Mary Ann Smith  
Deputy Commissioner

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8 Dated: February 15, 2021

CAPEXMD, LLC

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By \_\_\_\_\_  
Jules Segal  
Chief Executive Officer

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