

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)	
)	
)	
Bayardo Cruz, M.D.)	Case No. 06-2009-200309
)	
Physician's and Surgeon's)	
Certificate No. A 63740)	
)	
Respondent.)	
<hr/>		

DECISION EFFECTIVE DATE AFTER JUDICIAL STAY

On May 14, 2012, the Medical Board of California issued its Default Decision and Order in the Matter of the Accusation against Bayardo Cruz, M.D. (Respondent) with an effective date of June 13, 2012.

On June 25, 2012, Respondent filed a Petition for Writ of Administrative Mandate and Stay Order in the Superior Court of the State of California for the County of Los Angeles, Case No. BS138042. On June 25, 2012, the Superior Court issued an Order staying the Medical Board's Decision until July 3, 2012, when the matter regarding the issuance of a stay pending petition for administrative mandamus could be heard and decided de novo.

On July 3, 2012, the Superior Court issued an Order denying Respondent's request for stay. Since no additional stays have been granted, the Stay, issued on June 25, 2012, has dissolved and the **Default Decision and Order of the Board became effective July 3, 2012.**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/03/12

DEPT. 85

HONORABLE JAMES C. CHALFANT

JUDGE

A. FAJARDO

DEPUTY CLERK

HONORABLE
#4

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

J. DE LUNA, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

BS138042

Plaintiff
Counsel

ANN C. SCHNEIDER

[X]

BAYARDO CRUZ

VS

Defendant
Counsel

EDWARD K. KIM

[X]

LINDA K WHITNEY

NATURE OF PROCEEDINGS:

EX PARTE APPLICATION OF PETITIONER, BAYARDO CRUZ, FOR ORDER TO STAY REVOCATION OF PETITIONER'S PHYSICIAN AND SURGEON LICENSES RETROACTIVE TO JUNE 22, 2012, PENDING DETERMINATION OF PETITION FOR WRIT OF MANDATE

The matter is called for hearing.

The Court has read and considered the above stated Ex Parte Application.

After argument, the Court denies the Application.

The Court and Counsel confer regarding the status of the Record.

A TRIAL SETTING CONFERENCE is set on JULY 24, 2012 at 1:30p.m. in this department.

The Respondent is directed to prepare and consecutively bates stamp the Record.

Notice is waived.

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

BAYARDO CRUZ, M.D.)

Case No. 06-2009-200309

Physician's and Surgeon's)
Certificate No. A 63740)

Petitioner.)
_____)

PETITION FOR RECONSIDERATION; DENIAL BY OPERATION OF LAW

No action having been taken on the petition for reconsideration filed by Bayardo Cruz, M.D., (Petitioner), and the time for action having expired at 5 p.m. on June 22, 2012, the petition is deemed denied by operation of law.

However, as Petitioner's *ex parte* application for a stay has been granted by the Superior Court of Los Angeles County, the Medical Board of California's decision in the above-captioned matter has not become effective.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/25/12

DEPT. 86

HONORABLE ANN I. JONES

JUDGE

N DIGIAMBATTISTA

DEPUTY CLERK

HONORABLE
2E

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

8:30 am

BS138042

Plaintiff

Counsel

ANN C. SCHNEIDER (X)

BAYARDO CRUZ

VS

Defendant

Counsel

NO APPEARANCE

LINDA K WHITNEY

NATURE OF PROCEEDINGS:

EX PARTE APPLICATION OF PETITIONER, BAYARDO CRUZ, FOR ORDER TO STAY REVOCATION OF PETITIONER'S PHYSICIAN AND SURGEON LICENSES RETROACTIVE TO JUNE 22, 2012, PENDING DETERMINATION OF PETITION FOR WRIT OF MANDAMUS

Matter comes on for hearing.

The ex parte application for a stay is granted until July 3, 2012, when the matter regarding the issuance of a stay pending petition for administrative mandamus shall be heard and decided de novo by Judge Chalfant.

The ex parte application is continued to July 3, 2012, at 8:30 a.m. in Department 86.

Petitioner is to give notice of the court's ruling and of the continuance.

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

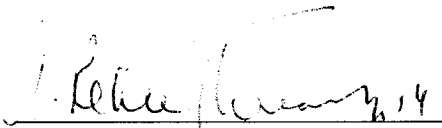
In the Matter of the Accusation Against:)	
)	MBC No. 06-2009-200309
BAYARDO CRUZ, M.D.)	
)	
Physician's & Surgeon's)	ORDER GRANTING STAY
Certificate No. A 63740)	
)	(Gov't Code Section 11521)
)	
_____ Respondent)	

Respondent Bayardo Cruz, M.D., has filed a Petition for Reconsideration of the Decision in this matter with an effective date of June 13, 2012.

Execution is stayed until June 22, 2012.

This stay is granted solely for the purpose of allowing the Board to review and consider the Petition for Reconsideration.

DATED: June 7, 2012



A. Renee Threadgill
Chief of Enforcement
Medical Board of California

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Attorneys for Complainant
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8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against

Case No. 06-2009-200309

11 **BAYARDO CRUZ, M.D.**
12 **P.O. Box 6570**
13 **Buena Park, CA 90622**

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520.]

14 **Physician's and Surgeon's Certificate**
15 **No. A 63740**

16 Respondent.

17
18 FINDINGS OF FACT

19 1. On or about April 14, 2011, Complainant Linda K. Whitney, in her official capacity
20 as the Executive Director of the Medical Board of California, Department of Consumer Affairs,
21 filed Accusation No. 06-2009-200309 against Bayardo Cruz, M.D. (Respondent) before the
22 Medical Board of California.

23 2. On or about October 24, 1997, the Medical Board of California (Board) issued
24 Physician's and Surgeon's Certificate No. A 63740 to Respondent. The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on October 31, 2013, unless renewed. A true and correct copy of the
27 Certificate of Licensure setting forth Respondent's address of record and licensing history is
28 attached hereto as **Exhibit A** and is incorporated herein by reference.

1 3. On or about April 14, 2011, Kelly Montalbano, an employee of the Complainant
2 Agency, served by Certified Mail a copy of Accusation No. 06-2009-200309, Statement to
3 Respondent, Notice of Defense, Request for Discovery, and copies of Government Code sections
4 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and
5 is P.O. Box 6570, Buena Park, California 90622. A true and correct copy of the Accusation, the
6 related documents, and Declaration of Service are attached as **Exhibit B**, and are incorporated
7 herein by reference.

8 4. Service of the Accusation was effective as a matter of law under the provisions of
9 Government Code section 11505, subdivision (c).

10 5. On or about May 4, 2011, the Board received a U.S. Postal Service return receipt
11 indicating that Respondent received the documents on or about May 2, 2011. A true and correct
12 copy of the return receipt is attached as **Exhibit C**, and is incorporated herein by reference.

13 6. Government Code section 11506 states, in pertinent part:

14 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
15 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
16 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
17 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 06-
20 2009-200309. Although he received actual service nearly a year ago, Respondent has failed to
21 file a notice of defense or give any notice to Complainant of his intent to contest the accusation.

22 8. Government Code section 11520 states, in pertinent part:

23 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
24 agency may take action based upon the respondent's express admissions or upon other evidence
25 and affidavits may be used as evidence without any notice to respondent."

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. Based on Respondent's express admissions by way of default and the
28

1 evidence before it contained in Exhibits A through E, the Board finds that the allegations in
2 Accusation No. 06-2009-200309 are true. The Board will take action without further hearing.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent Bayardo Cruz, M.D. has
5 subjected his Physician's and Surgeon's Certificate No. A 63740 to discipline.

6 2. True and correct copies of Respondent's licensing history, Accusation and related
7 documents and declaration of service, U.S. Postal return receipt and Declaration of Deputy
8 Attorney General Beneth A. Browne (**Exhibit D**) are attached as Exhibits A through D,
9 respectively.

10 3. The Board has jurisdiction to adjudicate this case by default.

11 4. The Medical Board of California is authorized to revoke Respondent's Physician's
12 and Surgeon's Certificate based upon the following violations alleged in the Accusation:

13 a. Business and Professions Code section 2234, subdivision (e), dishonest or
14 corrupt acts that are substantially related to the qualifications, functions and /or duties of a
15 physician. Paragraphs 18 through 24 of the Accusation, **Exhibit B**, are incorporated here
16 by Reference.

17 b. Business and Professions Code section 2261, presentation of false documents
18 directly or indirectly related to his practice of medicine which falsely represented the
19 existence or nonexistence of a state of facts. Paragraphs 18 through 24 and 27 of the
20 Accusation, **Exhibit B**, are incorporated here by reference.

21 c. Business and Professions Code section 2238, violation of state statute
22 regulating dangerous drugs. Paragraphs 18 through 24 and 31 of the Accusation, **Exhibit**
23 **B**, are incorporated here by reference.

24 d. Business and Professions Code section 2238, violation of federal statute
25 regulating dangerous drugs. Paragraphs 18 through 24, 35 and 36 of the Accusation,
26 **Exhibit B**, are incorporated here by reference.

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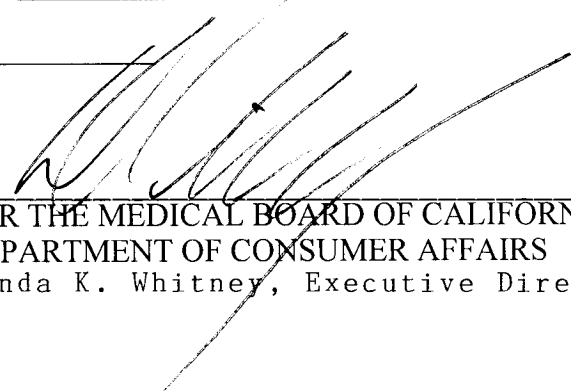
ORDER

IT IS HEREBY ORDERED that Physicians and Surgeon's Certificate No. A 63740 issued to Respondent Bayardo Cruz, M.D., is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of this Decision and Order on Respondent. The Board in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on June 13, 2012.

It is so ORDERED May 14, 2012



FOR THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
Linda K. Whitney, Executive Director

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8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 BAYARDO CRUZ, M.D.
13 Post Office Box 6570
14 Buena Park, California 90622
15 Physician's and Surgeon's Certificate A 63740,
16 Respondent.

Case No. 06-2009-200309

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Director of the Medical Board of California ("Board").
22 2. On or about October 24, 1997, the Board issued Physician's and Surgeon's Certificate
23 number A 63740 to Bayardo Cruz, M.D. (Respondent). That license was in full force and effect
24 at all times relevant to the charges brought herein and will expire on October 31, 2011, unless
25 renewed.

26 **JURISDICTION**

- 27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2004 of the Code states:

2 “The board shall have the responsibility for the following:

3 “(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
4 Act.

5 “(b) The administration and hearing of disciplinary actions.

6 “(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
7 administrative law judge.

8 “(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
9 disciplinary actions.

10 “(e) Reviewing the quality of medical practice carried out by physician and surgeon
11 certificate holders under the jurisdiction of the board.

12 “(f) Approving undergraduate and graduate medical education programs.

13 “(g) Approving clinical clerkship and special programs and hospitals for the programs in
14 subdivision (f).

15 “(h) Issuing licenses and certificates under the board's jurisdiction.

16 “(i) Administering the board's continuing medical education program.”

17 5. Section 2227 of the Code provides that a licensee who is found guilty under the
18 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
19 one year, placed on probation and required to pay the costs of probation monitoring, or such other
20 action taken in relation to discipline as the Division¹ deems proper.

21 6. Section 2228 of the Code states:

22 “The authority of the board or a division of the board or the California Board of Podiatric
23 Medicine to discipline a licensee by placing him or her on probation includes, but is not limited
24 to, the following:

25 ¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008,
26 provides that, unless otherwise expressly provided, the term “board” as used in the State Medical Practice Act (Cal.
27 Bus. & Prof. Code, §§2000, et seq.) means the “Medical Board of California,” and references to the “Division of
28 Medical Quality” and “Division of Licensing” in the Act or any other provision of law shall be deemed to refer to the Board.

1 “(a) Requiring the licensee to obtain additional professional training and to pass an
2 examination upon the completion of the training. The examination may be written or oral, or
3 both, and may be a practical or clinical examination, or both, at the option of the board or division
4 or the administrative law judge.

5 “(b) Requiring the licensee to submit to a complete diagnostic examination by one or more
6 physicians and surgeons appointed by the division. If an examination is ordered, the board or
7 division shall receive and consider any other report of a complete diagnostic examination given
8 by one or more physicians and surgeons of the licensee's choice.

9 “(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including
10 requiring notice to applicable patients that the licensee is unable to perform the indicated
11 treatment, where appropriate.

12 “(d) Providing the option of alternative community service in cases other than violations
13 relating to quality of care, as defined by the Division of Medical Quality.”

14 7. Section 2032 of the Code states:

15 “‘Person’ means any individual, partnership, corporation, limited liability company, or other
16 organization, or any combination thereof, except that only natural persons shall be licensed under
17 this chapter [Chapter 5, the Medical Practice Act].”

18 8. Section 2410 of the Code states:

19 “A medical or podiatry corporation shall not do or fail to do any act the doing of which or
20 the failure to do which would constitute unprofessional conduct under any statute or regulation
21 now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such
22 statutes and regulations to the same extent as a licensee under this chapter [Chapter 5, the Medical
23 Practice Act].”

24 9. Welfare and Institutions Code section 14107 states:

25 “(a) Any person, including any applicant or provider as defined in Section 14043.1, or
26 billing agent, as defined in Section 14040.1, who engages in any of the activities identified in
27 subdivision (b) is punishable by imprisonment as set forth in subdivisions (c) , (d), and (e), by a
28 fine not exceeding three times the amount of the fraud or improper reimbursement or value of the

1 scheme or artifice, or by both this fine and imprisonment.

2 “(b) The following activities are subject to subdivision (a):

3 “...”

4 “(4) A person knowingly and willfully executes, or attempts to execute, a scheme or artifice
5 to do either of the following:

6 “(A) Defraud the Medi-Cal program or any other health care program administered by the
7 department or its agents or contractors.

8 “...”

9 10. Section 2234 of the Code states:

10 "The Division of Medical Quality shall take action against any licensee who is charged with
11 unprofessional conduct. In addition to other provisions of this article, unprofessional conduct
12 includes, but is not limited to, the following:

13 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
14 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical
15 Practice Act]. . . .”

16 “(e) The commission of any act involving dishonesty or corruption which is substantially
17 related to the qualifications, functions, or duties of a physician and surgeon.”

18 11. Section 2261 of the Code states:

19 “Knowingly making or signing any certificate or other document directly or indirectly
20 related to the practice of medicine or podiatry which falsely represents the existence or
21 nonexistence of a state of facts, constitutes unprofessional conduct.”

22 12. Section 2238 of the Code states:

23 “A violation of any federal statute or federal regulation or any of the statutes or regulations
24 of this state regulating dangerous drugs or controlled substances constitutes unprofessional
25 conduct ”

26 13. Title 21 United States Code section 331 states in part:

27 "The following acts and the causing thereof are hereby prohibited:

28 “...”

1 ParaGard IUD purchased.

2 20. In 2004, Universal Services, a local medical supply company approached Respondent
3 at his place of business and offered a Mexican manufactured IUD for approximately \$30 per IUD.
4 Universal Services claimed the Mexican IUD was the same product as a ParaGard, just under a
5 different brand name. Respondent examined the IUD, and concluded that it appeared similar to
6 the ParaGard.

7 21. Respondent also told the FDA investigators that he did not suspect anything wrong
8 with buying and using the Mexican IUDs, because he purchased them from a medical supply
9 company. After respondent began purchasing and using the Mexican IUDs, his office continued
10 to bill Medi-Cal using the "x1522" code (reserved by Medi-Cal for insertion of ParaGard IUDs)
11 and received the same reimbursement amount as he had received for the ParaGard. Respondent
12 told a Medical Board investigator that he compared the patients' charts with the bills before
13 submitting them to a billing company for processing. Respondent inserted approximately 110
14 Mexican IUDs in 2005 and 2006 in this way and Medi-Cal paid Respondent a total of \$38,321.12
15 based on his false claims that he inserted FDA-approved ParaGard intrauterine devices into those
16 patients.

17 22. Respondent worked as a solo practitioner and did business as B.A. Cruz, M.D., a
18 Medical Corporation. No person other than respondent held any legal interest in that corporation.

19 23. On or about May 7, 2009, in the action titled *People of the State of California v.*
20 *Bayardo A. Cruz; B. A. Cruz M.D., a Medical Corporation and Ana Patricia Rodas*, Sacramento
21 County Superior Court Case No. 07F1277, respondent pleaded guilty on behalf of B. A. Cruz,
22 M.D., a Medical Corporation to Count II of the Felony Complaint in that action. That count
23 alleged in part: "... defendants . . . did knowingly prepare, make, subscribe or aid, abet, solicit or
24 conspire with others to prepare, make or subscribe a writing in support of fraudulent claims, *to*
25 *wit*, defendants submitted fraudulent claims to the Medi-Cal program in . . . stating that patients
26 were receiving ParaGard intrauterine devices when, in fact, they were not" The sentence
27 following this plea of guilty required repayment of \$38,000 in victim restitution, three years of
28 formal probation and 150 hours of community service by respondent within nine months.

1 33. Respondent violated Title 21 of the United States Code, section 331, subdivision (c).
2 The circumstances are as follows:

3 34. The allegations of the First Cause for Discipline are incorporated herein as if fully set
4 forth.

5 35. The intrauterine devices were misbranded.

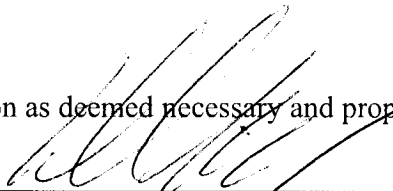
6 36. Respondent received the intrauterine devices in interstate commerce.

7 **PRAYER**

8 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Medical Board of California issue a decision:

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 63740,
11 issued to Bayardo Cruz, M.D..
- 12 2. Revoking, suspending or denying approval of his authority to supervise physician
13 assistants, pursuant to section 3527 of the Code;
- 14 3. Ordering him to pay the Medical Board of California, if placed on probation, the costs
15 of probation monitoring;
- 16 4. Taking such other and further action as deemed necessary and proper.

17 DATED: April 14, 2011


LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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