

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

In the Matter of the Statement of Issues  
Against:

JESUS HERMIDA CRUZ, aka JESUS CRUZ  
aka JESUS ADALIT ANDRADE aka  
ADALIT ANDRADE,

Respondent.

Case No. 5508

OAH No. 2016050575

**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted  
by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective at 5:00 p.m. on March 16, 2017.

It is so ORDERED on February 14, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.  
Board President

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**PROPOSED DECISION**

Irina Tentser, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on December 22, 2016, at Los Angeles, California.

Heather Vo, Deputy Attorney General, represented Executive Officer Virginia Herold (Complainant) of the Board of Pharmacy (Board).

Jesus Hermida Cruz, also known as Jesus Cruz, also known as Jesus Adalit Andrade, also known as Adalit Andrade (Respondent) was present and represented herself.<sup>1</sup>

The Board denied Respondent's application for registration as a Pharmacy Technician based on allegations that Respondent suffered twelve convictions of substantially related crimes. Respondent presented evidence that she was entitled to registration as a Pharmacy Technician.

Oral and documentary evidence was received.

The record was closed and the matter was submitted at the conclusion of the hearing.

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<sup>1</sup> Respondent's gender is legally male. Respondent indicated at hearing she identifies as female and requested to be referred to, and was referred to, by feminine pronouns at hearing. Respondent is, therefore, referred to herein in the feminine.

## FACTUAL FINDINGS

1. Complainant made the Statement of Issues in her official capacity as the Executive Officer of the Board, an agency within the Department of Consumer Affairs.

2. On August 7, 2014, Respondent<sup>2</sup> filed an application for registration as a Pharmacy Technician with the Board. The application was denied and this hearing took place.

3. Respondent's application was denied by the Board based on her twelve misdemeanor convictions, as described below in chronological order.

### *Respondent's Convictions*

4. a. On November 9, 1995, Respondent plead guilty and was convicted of one misdemeanor count of violating Penal Code section 242 (battery), (*The People of the State of California v. Jesus Adalit Andrade*, Mun. Ct., El Monte Courthouse Judicial Dist., L.A. County, 1995, No. 95M01113.) The court sentenced Respondent to serve 60 days in jail and placed her on three years' probation. On October 16, 2013, the court dismissed the case pursuant to Penal Code section 1203.4.

b. Neither party offered evidence of the facts and circumstances underlying Respondent's November 9, 1995 conviction.

5. a. On November 9, 1995, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Penal Code section 273.5, subdivision (a) (inflict corporal injury to spouse or cohabitant), (*The People of the State of California v. Adalit Andrade*, Mun. Ct., El Monte Courthouse Judicial Dist., L.A. County, 1995, No. 95M10514.) The court sentenced Respondent to serve 10 days in jail, placed her on three years' summary probation, and ordered her to attend domestic violence counseling and alcohol abuse counseling sessions. On October 16, 2013, the court dismissed the case pursuant to Penal Code section 1203.4. (Exh. 23 at p. AGO-247.)

b. Neither party offered evidence of the facts and circumstances underlying Respondent's November 9, 1995 conviction.

6. a. On August 5, 1998, Respondent plead guilty and was convicted of one misdemeanor count of violating Penal Code section 273.5, subdivision (a) (inflict corporal injury to spouse or cohabitant), (*The People of the State of California v. Adalit Andrade*, Mun. Ct., El Monte Courthouse Judicial Dist., L.A. County, 1998, No. 8FC00433.) The court sentenced Respondent to serve eight days in jail, placed her on three years' summary probation, ordered her to complete 24 hours of community service and 52

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<sup>2</sup> Respondent stipulated at hearing that she is known as Jesus Hermida Cruz, Jesus Cruz, JesusAdalit Andrade, and/or Adalit Andrade.

sessions of domestic violence counseling, and ordered her to attend at least 52 Alcoholics Anonymous meetings. On October 16, 2013, the court dismissed the case pursuant to Penal Code section 1203.4. (Exh. 21 at p. AGO-227.)

b. Neither party offered evidence of the facts and circumstances underlying Respondent's August 5, 1998 conviction.

7. a. On March 20, 2000, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) (driving while having a blood alcohol content (BAC) of 0.08 percent or higher) (*The People of the State of California v. Adalit Andrade*, Super. Ct. L.A. County, 2000, No. OMT02658.) The court placed Respondent on 36 months' summary probation, ordered her to attend a three-month first-offender alcohol and other drug education and counseling program, restricted her driving for 90 days, and ordered her to pay fines. On or about February 18, 2014, the court dismissed the case pursuant to Penal Code section 1203.4.

b. The facts and circumstances underlying Respondent's March 20, 2000 conviction occurred on February 28, 2000, when Respondent was observed committing multiple traffic violations by a Los Angeles Police Department (LAPD) officer. After stopping Respondent, the LAPD officer smelled a strong odor of alcohol coming from Respondent and her clothing. Respondent failed to satisfactorily complete a field sobriety test. Respondent's blood alcohol content was 0.18 percent at the time of her arrest.

8. a. On April 25, 2000, Respondent plead guilty and was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol or drugs), one misdemeanor count of violating Vehicle Code section 31 (false statements or information to a peace or police officer), and one misdemeanor count of violating Vehicle Code section 14601.5, subdivision (a) (driving with a suspended license), (*The People of the State of California v. Jesus Hermida Cruz*, Super. Ct. L.A. County, 2000, No. OPM02894.) The court sentenced Respondent to serve 150 days in county jail, placed her on three years' summary probation and ordered her to pay fines. On April 1, 2015, the court dismissed the case pursuant to Penal Code section 1203.4.

b. The facts and circumstances of Respondent's April 25, 2000 conviction occurred on April 24, 2000, when Respondent's vehicle was observed swerving by a Pomona Police Department officer. After stopping Respondent, the officer smelled an odor of alcohol on Respondent's breath. Respondent submitted, but failed a field sobriety test. Respondent's blood alcohol content was 0.10 percent at the time of her arrest.

9. a. On April 2, 2001, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) (driving while having BAC of 0.08%, of weight, or higher), and one misdemeanor count of violating Vehicle Code section 14601.1, subdivision (a) (driving with a suspended license) (*The People of the State of California v. Adalit Andrade*, Super. Ct. L.A. County, 2001, No. 1SA00987.) The court

sentenced Respondent to serve 45 days in jail, placed her on three years' summary probation and suspended her driver's license for two years. On February 13, 2014, the court dismissed the case pursuant to Penal Code section 1203.4.

b. Neither party offered evidence of the facts and circumstances underlying Respondent's April 2, 2001 conviction.

10. a. On April 28, 2004, Respondent was convicted of one misdemeanor count of violating Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon), and one misdemeanor count of violating Vehicle Code section 14610, subdivision (a)(1) (display fraudulently altered or fraudulently obtained driver's license), (*The People of the State of California v. Jesus Hermida Cruz*, Super. Ct. L.A. County, 2004, No. 4PM03035.) The court sentenced Respondent to serve 45 days in jail and placed her on three years' formal probation. On April 1, 2015, the court dismissed the case pursuant to Penal Code section 1203.4.

b. The facts and circumstances of Respondent's April 28, 2004 conviction occurred on April 9, 2004, when Pomona Police Department officers were dispatched to a disturbance call. Upon arrival, the officers observed Respondent hit a male victim with her vehicle. The victim informed the officers that Respondent intentionally hit him because he ended their romantic relationship. Respondent informed the officers that the victim used a garden tool to break Respondent's rear windshield. During booking, the officers discovered that the driver's license Respondent provided to the officers did not belong to her. Respondent admitted her driver's license was suspended and she was using someone else's license with her picture on it.

11. a. On February 22, 2005, Respondent was convicted of one misdemeanor count of violating Penal Code section 242 (battery) and one misdemeanor count of violating Penal Code section 602, subdivision (k) (trespassing), (*The People of the State of California v. Jesus Hermida Cruz*, Super. Ct. L.A. County, 2005, No. 5PM01291.) The court sentenced Respondent to serve 90 days in jail and placed her on three years' summary probation. On April 1, 2015, the court dismissed the case pursuant to Penal Code section 1203.4.

b. The facts and circumstances of Respondent's February 22, 2005 conviction occurred on February 17, 2005, when a Pomona Police Department officer responded to a report of battery at a market. Respondent was a former employee of the market who had been told numerous times not to come on the market's premises. Respondent came to the market and was told to leave by an employee. Respondent did not leave. She went to the market's bathroom and closed the door behind her. The employee kicked the door open. Respondent then struck the employee with a plunger causing the employee to sustain a bloody nose.

12. a. On or about August 16, 2005, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 14601.2, subdivision (a) (driving with a suspended license), (*The People of the State of California v. Jesus Hermida Cruz*, Super.

Ct. L.A. County, 2005, No. 5PM05994.) The court sentenced Respondent to serve 365 days in jail, and ordered her to pay a fine. On April 1, 2015, the court dismissed the case pursuant to Penal Code section 1203.4.

b. The facts and circumstances of Respondent's August 16, 2005 conviction occurred on August 12, 2005 when a Pomona Police Department officer stopped Respondent for a traffic violation. Respondent did not have any form of identification and was driving on a suspended license.

13. a. On July 24, 2009, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 14601.5, subdivision (a) (driving with a suspended license), (*The People of the State of California v. Adalit Andrade*, Super. Ct. L.A. County, 2009, No. 7PK04881.) The court sentenced Respondent to serve 10 days in jail, placed her on three years' summary probation and ordered her to pay fines. On December 13, 2013, the court dismissed the case pursuant to Penal Code section 1203.4.

b. The facts and circumstances of Respondent's July 24, 2009 conviction occurred on June 26, 2007, when a Claremont Police Department officer heard loud music coming from Respondent's vehicle and observed the vehicle speeding. The officer followed Respondent's vehicle and turned on his siren several times in an attempt to gain Respondent's attention to stop the car, but Respondent continued driving. When Respondent finally stopped his vehicle, she identified himself as "Jesus Hermida-Cruz" and admitted that she did not have a driver's license. Fingerprinting revealed Respondent's identity as "Adalit Andrade" and that her driver's license was suspended.

14. a. On or about August 5, 2010, Respondent was convicted of one misdemeanor count of violating Penal Code sections 242-243, subdivision (a) (battery) (*The People of the State of California v. Adalit Andrade*, Super. Ct. L.A. County, 2010, No. 0DV00285.) The court sentenced Respondent to serve 5 days in jail, placed her on 36 months summary probation, ordered her to perform 24 hours of community service, and ordered her to complete a 26 week parenting skills program. On October 16, 2013, the court dismissed the case pursuant to Penal Code section 1203.4.

b. The facts and circumstances of Respondent's August 5, 2010 conviction occurred on August 3, 2010, when a Los Angeles County Sheriff's Department deputy responded to a disturbance and battery report. Respondent and her ex-girlfriend engaged in a verbal argument regarding Respondent's use of the ex-girlfriend's residence. During the argument, Respondent used her hands to push her ex-girlfriend's neck against a wall.

15. a. On March 19, 2012, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 12500, subdivision (a) (driving without a license), (*The People of the State of California v. Jesus Cruz*, Super. Ct. L.A. County, 2011, No. 1JB05628.) The court placed Respondent on three years' summary probation and ordered

her to pay fines. On or about January 16, 2014, the court dismissed the case pursuant to Penal Code section 1203.4.

b. The underlying facts and circumstances of Respondent's March 19, 2012 conviction are that on May 21, 2011, a Los Angeles County Sheriff's deputy stopped Respondent for a traffic violation. Respondent did not have her driver's license and her license was suspended.

#### *Duties of Pharmacy Technician*

16. Michael Capili (Inspector Capili), a Board inspector, testified regarding the duties of a pharmacy technician. A pharmacy technician acts as a "second hand" of a pharmacist in performing daily tasks that don't require clinical judgment. Pharmacy technicians have access to personal patient and insurance billing information when receiving prescriptions from patients; and are involved in pulling, counting, pouring into bottles, labeling, receiving, and processing drug inventory. The Board cannot monitor a licensee's daily activities in a pharmacy setting. Accordingly, it is critical that a pharmacy technician be honest and truthful.

17. Inspector Capili further testified that while a pharmacist is required to supervise a pharmacy technician, the reality is that a pharmacist cannot guarantee a pharmacy technician will not divert or steal drugs. He reviewed the basis of the Board's denial of Respondent's license application and determined that Respondent's convictions evidenced a concerning lack of good judgment and an inability to follow rules which potentially puts the safety of patients and the public at risk.

18. In addition, Respondent's convictions for battery and assault affect her licensee qualifications because they evidence her inability to be even-tempered, a quality needed to deal with stressed and impatient pharmacy customers. Respondent's convictions describing her use of fraudulent identity information are concerning because pharmacy technicians have access to patients' personal information which can be easily diverted and used for selfish and illegal reasons.

#### *Matters in Aggravation, Mitigation, Rehabilitation*

19. Respondent did not provide evidence regarding the circumstances of her convictions, testifying that she did not know why she suffered her convictions. Respondent submitted no evidence regarding whether she had a problem with the use of alcohol and/or had sought treatment related to her dangerous use of alcohol, as indicated by her multiple driving under the influence convictions.

20. Respondent minimized her extended criminal past and focused her testimony on her efforts to improve herself as a person and become a better member of society. She submitted evidence in support of her licensure in the form of letters attesting to her hard work and good character from teachers, counselors, and friends; a copy of her 2014 high school diploma from El Monte Union High School completed on partial scholarship; the

classes, curriculum and transcript of courses completed by Respondent at El Monte-Rosemead Adult School between 2011 and 2014; and evidence that she satisfied her obligations to the Internal Revenue Service by paying her taxes.

21. Respondent stated she had been the victim of a hate crime without providing details and submitted letters from mental health professionals indicating she had been receiving mental health services since 2014. She testified she continued to see her psychologist once a week based on the lingering resultant crime trauma, but denied her ongoing mental health issues would affect her ability to effectively function as a pharmacy technician.

22. For the past year and a half, Respondent has been supporting herself by working as an Uber driver. She indicated that she had saved enough money to buy her own home.

23. Respondent is seeking a pharmacy technician registration because she wants to work in a profession that offers her more economic opportunity. Respondent described her past experience as a pharmacy technician intern working with the lesbian, gay, bisexual, transgender (LGBT) community as satisfying and rewarding.

24. Respondent asserted she immigrated to the United States from Mexico because of the discrimination she experienced based on her LGBT status in Mexico.

25. No other evidence was provided in explanation, mitigation or rehabilitation from her criminal conduct.

## LEGAL CONCLUSIONS

1. Business and Professions Code<sup>3</sup> section 4300 authorizes the Board to refuse an application for registration as a Pharmacy Technician. After refusal of the application, the burden of proof is on the license applicant to show that he or she is qualified to hold the license. To prevail in this matter, Respondent must demonstrate by a preponderance of the evidence that she is entitled to a Pharmacy Technician license. (Evid. Code, §§ 115, 500.)

2. As one court explained, "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it." (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

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<sup>3</sup> All further statutory references are to the Business and Professions Code unless otherwise indicated.



3. Section 480 addresses the Board's authority to deny a license application. It states:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

“(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

“(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

“(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

“(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

“(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

“(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

“(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.”

4. Section 490 provides, in pertinent part, that a board may suspend or revoke a license on the grounds that the licensee has been convicted of a crime if that crime is

substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

5. Section 4300, subdivision (c), provides, in pertinent part:

“The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy.”

6. Section 4301 states, in pertinent part:

“The Board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

“(g) . . . [g]

“(f) The commission of an act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

“(g) . . . [g]

“(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

“(i) . . . [i]

“(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

“(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . . The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving a controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The

board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.”

7. California Code of Regulations, title 16, section 1770, states:

“For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

8. Respondent’s multiple convictions, as described in factual findings 4 through 15, evidence a pattern of crimes and criminal conduct which are substantially related to the qualifications, functions or duties of a registrant because they evidence a potential unfitness of a registrant to perform the functions authorized by her registration in a manner consistent with the public, health, safety or welfare, as described in factual findings 16 through 18.

9. Respondent’s actions in providing a false identity to police during her June 26, 2007 arrest, as described in factual finding 13, and displaying a fraudulent driver’s license to police during her April 28, 2004 arrest, as described in factual finding 10, were dishonest, fraudulent, and deceitful.

10. Respondent used alcoholic beverages to an extent or in a manner dangerous to herself, or injurious to herself, any person, or the public, in violation of section 4301, subdivision (h), as evidenced by her alcohol related convictions, described in factual findings 7 through 9.<sup>4</sup>

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<sup>4</sup> Complainant alleged that Respondent’s August 5, 1998 and November 9, 1995 convictions for infliction of corporal injury to spouse or cohabitant support a finding that Respondent used alcohol in an injurious manner in violation of section 4301, subdivision (h), without providing the facts and circumstances underlying the convictions. (Exh. 1 at pp. 10 – 11.) Presumably, Complainant asks this administrative law judge to make the inference that because the terms of Respondent’s probation for the convictions included the requirement that Respondent attend 52 alcoholics anonymous meetings, she used alcohol in an injurious manner in the course of committing the crimes. However, absent additional evidence regarding the circumstances of the convictions, insufficient evidence is presented to support Complainant’s allegation.

11. Respondent sustained more than one conviction involving the consumption of alcohol in violation of section 4301, subdivision (k), as described in factual findings 7 through 9.

12. Cause does not exist to deny Respondent's application for registration under section 480, subdivisions (a)(1) and (c) in that Respondent's convictions of substantially related crimes were dismissed pursuant to Penal Code section 1203.4, as described in factual findings 4 through 15 and legal conclusions 3, 4, 6, and 7.

13. Cause exists to deny Respondent's application under section 480, subdivision (a)(2), in that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, as described in factual findings 10 and 13 and legal conclusions 3, 5, 7, and 9.

14. Cause exists to deny Respondent's application under sections 480, subdivisions (a)(3)(A) and (a)(3)(B), 490, and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent did an act which, if done by a Board licensee, would constitute cause for discipline, namely, she suffered convictions of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician, as described in factual findings 4 through 15 and legal conclusions 3, 4, 6 through 8.

15. Cause exists to deny Respondent's application under section 480, subdivisions (a)(3)(A) and (a)(3)(B), and section 4301, subdivision (h), in that Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself, any person, or the public, as described in factual findings 7 through 9 and legal conclusions 3 through 7, and 10.

16. 15. Cause exists to deny Respondent's application under section 480, subdivisions (a)(3)(A) and (a)(3)(B), and section 4301, subdivision (k), in that Respondent sustained more than one conviction involving the consumption of alcoholic beverages, as described in factual findings 7 through 9 and legal conclusions 3 through 7, and 11.

17. The Board enacted a regulation • California Code of Regulations, title 16, section 1769 • which sets forth certain criteria that should be considered in evaluating the rehabilitation of an applicant and his or her present eligibility for registration. These criteria include: (1) The nature and severity of the acts or offenses under consideration; (2) evidence of any acts committed subsequent to the acts or crimes under consideration; (3) the time that has elapsed since commission of such acts or crimes; (4) whether the applicant complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant; and (5) evidence, if any, of rehabilitation submitted by the applicant.

18. Applying the rehabilitation criteria, Respondent suffered twelve misdemeanor convictions spanning 17 years that were related to or arose out of her excessive use of alcohol, driving without a license, battery and infliction of corporal injury, and providing false identity to the police. Respondent was compliant with terms and conditions of

probation and all of the convictions against her have been dismissed pursuant to Penal Code section 1203.4. At hearing, Respondent minimized her extensive criminal past and focused on her steps towards becoming a productive member of society. While Respondent has taken positive steps towards rehabilitation, no testimony or documentary evidence provided any evidence in explanation or mitigation of her criminal past. No evidence was presented to show rehabilitation related to her alcohol related convictions.

19. Given the pattern of alcohol-related, violent, and fraudulent identity related convictions, and Respondent's unwillingness to provide evidence in mitigation, the Board's ability to be assured that Respondent is rehabilitated is limited. In the absence of independent evidence to establish that Respondent has taken any steps to address a potential alcohol problem, it cannot be concluded that Respondent has sufficiently rehabilitated herself so that her registration would not jeopardize the public health, education, and welfare. The public interest requires that her application for registration be denied. No evidence was introduced to justify the granting of a pharmacy technician registration, even on a probationary basis.

### ORDER

The application of Respondent Jesus Hermida Cruz, aka Jesus Cruz, aka Jesus Adalit Andrade, aka Andalit Andrade, for a registration to act as a Pharmacy Technician is denied.

DATED: January 19, 2017

DocuSigned by:  
*Irina Tentser*  
ADD1484FB193489...

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Irina Tentser  
Administrative Law Judge  
Office of Administrative Hearings

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

12 In the Matter of the Statement of Issues Against:

Case No. 5508

13 **JESUS HERMIDA CRUZ,**  
14 **aka JESUS CRUZ**  
15 **aka JESUS ADALIT ANDRADE**  
16 **aka ADALIT ANDRADE**

**STATEMENT OF ISSUES**

17 Pharmacy Technician Registration Applicant

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold ("Complainant") brings this Statement of Issues solely in her official  
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs  
23 ("Board").

24 2. On or about August 7, 2014, the Board received an application for a Pharmacy  
25 Technician Registration from Jesus Hermida Cruz, aka Jesus Crus, aka Jesus Adalit Andrade aka  
26 Adalit Andrade ("Respondent"). On or about July 21, 2014, Jesus Hermida Cruz certified under  
27 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
28 application. The Board denied the application on May 29, 2015.

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4. Section 4300 of the Code states:

• • • •

5. Section 480 of the Code states, in pertinent part:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

## STATEMENT OF ISSUES

1 (c) Notwithstanding any other provisions of this code, a person shall not be  
2 denied a license solely on the basis of a conviction that has been dismissed pursuant  
3 to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a  
conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41  
of the Penal Code shall provide proof of the dismissal.

4 (d) A board may deny a license regulated by this code on the ground that the  
5 applicant knowingly made a false statement of fact that is required to be revealed in  
the application for the license."

6 7. Section 490 provides, in pertinent part, that a board may suspend or revoke a license  
7 on the ground that the licensee has been convicted of a crime substantially related to the  
8 qualifications, functions, or duties of the business or profession for which the license was issued.

9 6. Section 4301 of the Code states, in pertinent part:

10 The board shall take action against any holder of a license who is guilty of  
11 unprofessional conduct or whose license has been procured by fraud or  
misrepresentation or issued by mistake. Unprofessional conduct shall include, but  
12 is not limited to, any of the following:

13 . . . .

14 (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
deceit, or corruption, whether the act is committed in the course of relations as a  
15 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

16 . . . .

17 (h) The administering to oneself, of any controlled substance, or the use of any  
dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
18 dangerous or injurious to oneself, to a person holding a license under this chapter,  
or to any other person or to the public, or to the extent that the use impairs the  
19 ability of the person to conduct with safety to the public the practice authorized  
by the license.

20 (k) The conviction of more than one misdemeanor or any felony involving the  
21 use, consumption, or self-administration of any dangerous drug or alcoholic  
beverage, or any combination of those substances.

22 (l) The conviction of a crime substantially related to the qualifications,  
23 functions, and duties of a licensee under this chapter. The record of conviction of  
a violation of Chapter 13 (commencing with Section 801) of Title 21 of the  
24 United States Code regulating controlled substances or of a violation of the  
statutes of this state regulating controlled substances or dangerous drugs shall be  
25 conclusive evidence of unprofessional conduct. In all other cases, the record of  
conviction shall be conclusive evidence only of the fact that the conviction  
26 occurred. The board may inquire into the circumstances surrounding the  
commission of the crime, in order to fix the degree of discipline or, in the case of  
27 a conviction not involving controlled substances or dangerous drugs, to determine  
if the conviction is of an offense substantially related to the qualifications,  
28



1 functions, and duties of a licensee under this chapter. A plea or verdict of guilty  
2 or a conviction following a plea of nolo contendere is deemed to be a conviction  
3 within the meaning of this provision. The board may take action when the time  
4 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal  
5 or when an order granting probation is made suspending the imposition of  
6 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal  
Code allowing the person to withdraw his or her plea of guilty and to enter a plea  
of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
information, or indictment.

7 ...

### 8 REGULATORY PROVISIONS

9 7. California Code of Regulations, title 16, section 1770, states, in pertinent part:

10 For the purpose of denial, suspension, or revocation of a personal or facility license  
11 pursuant to Division 1.5 (commencing with Section 475) of the Business and  
12 Professions Code, a crime or act shall be considered substantially related to the  
13 qualifications, functions or duties of a licensee or registrant if to a substantial  
degree it evidences present or potential unfitness of a licensee or registrant to  
perform the functions authorized by his license or registration in a manner  
consistent with the public health, safety, or welfare.

### 14 FIRST CAUSE FOR DENIAL OF APPLICATION

#### 15 (Conviction of Substantially Related Crime)

16 8. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
17 that Respondent has been convicted of a crime substantially related to the qualifications,  
18 functions or duties of a pharmacy technician, as follows:

19 a. On or about March 19, 2012, Respondent was convicted of one interlineated  
20 misdemeanor count for violating Vehicle Code section 12500, subdivision (a) [driving without a  
21 license], in the criminal proceeding entitled *The People of the State of California v. Jesus Cruz*  
22 (Super. Ct. L.A. County, 2011, No. 1JB05628). The court placed Respondent on three years  
23 summary probation and ordered him to pay fines. On or about January 16, 2014, the court  
24 dismissed the case pursuant to Penal Code section 1203.4.

25 b. The circumstances surrounding the conviction occurred or about May 21, 2011, when  
26 a Los Angeles County Sheriff's Department deputy stopped Respondent for a traffic violation.  
27 Upon contact, the deputy learned that Respondent did not have his driver's license and the license  
28 was suspended.

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1 him on three years summary probation, and ordered him to pay fines. On or about December 13,  
2 2013, the court dismissed the case pursuant to Penal Code section 1203.4.

3 b. The circumstances surrounding the conviction occurred on or about June 26, 2007,  
4 when a Claremont Police Department officer heard loud music coming from Respondent's  
5 vehicle and observed he was speeding. The officer followed Respondent and turned on his siren  
6 several times trying to get Respondent's attention to stop but Respondent continued driving.  
7 When Respondent finally stopped and was contacted by the officer, he verbally identified himself  
8 as "Jesus Hermida-Cruz" and admitted that he did not have a driver's license. Fingerprints  
9 revealed Respondent's identity as "Adalit Andrade" and that his driver's license was suspended.

#### 10 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

##### 11 **(Conviction of Substantially Related Crime)**

12 12. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
13 that Respondent has been convicted of a crime substantially related to the qualifications,  
14 functions or duties of a pharmacy technician, as follows:

15 a. On or about August 16, 2005, Respondent was convicted of one misdemeanor count  
16 of violating Vehicle Code section 14601.2, subdivision (a) [driving with a suspended license], in  
17 the criminal proceeding entitled *The People of the State of California v. Jesus Hermida Cruz*  
18 (Super. Ct. L.A. County, 2005, No. 5PM05994). The court sentenced Respondent to 365 days in  
19 jail, and ordered him to pay a fine. On or about April 1, 2015, the court dismissed the case  
20 pursuant to Penal Code section 1203.4.

21 b. The circumstances surrounding the conviction occurred on or about August 12, 2005,  
22 when a Pomona Police Department officer stopped Respondent for a traffic violation. Upon  
23 contact, the officer found out that Respondent did not have any form of identification and was  
24 driving on a suspended license.

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1 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of Substantially Related Crime)**

3 13. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
4 that Respondent has been convicted of a crime substantially related to the qualifications,  
5 functions or duties of a pharmacy technician, as follows:

6 14. On or about February 22, 2005, Respondent was convicted of one misdemeanor count  
7 of violating Penal Code section 242 [battery], and one misdemeanor count of violating Penal  
8 Code section 602, subdivision (k) [trespassing], in the criminal proceeding entitled *The People of*  
9 *the State of California v. Jesus Hermida Cruz* (Super. Ct. L.A. County, 2005, No. 5PM01291).  
10 The court sentenced Respondent to 90 days in jail, and placed him on three year summary  
11 probation. On or about April 1, 2015, the court dismissed the court pursuant to Penal Code  
12 section 1203.4.

13 b. The circumstances surrounding the conviction occurred on or about February 17,  
14 2005, when a Pomona Police Department officer responded to a report of battery at a market.  
15 Respondent was a former employee and was told numerous times not to come on the premise of  
16 the market. An employee told the Respondent to leave; Respondent entered the bathroom and  
17 closed the door behind him. The employee kicked the door open and Respondent armed himself  
18 with a plunger and struck the employee in the face which caused a bloody nose.

19 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

20 **(Conviction of Substantially Related Crime)**

21 15. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
22 that Respondent has been convicted of a crime substantially related to the qualifications,  
23 functions or duties of a pharmacy technician, as follows:

24 a. On or about April 28, 2004, Respondent was convicted of one misdemeanor count of  
25 violating Penal Code section 245, subdivision (a)(1) [assault with a deadly weapon], and one  
26 misdemeanor count of violating Vehicle Code section 14610, subdivision (a)(1) [display  
27 fraudulently altered, or fraudulently obtained driver's license], in the criminal proceeding entitled  
28 *The People of the State of California v. Jesus Hermida Cruz* (Super. Ct. L.A. County, 2004, No.

1 4PM03035). The court sentenced Respondent to 45 days in jail, and placed him on three years  
2 formal probation. On or about April 1, 2015, the court dismissed the case pursuant to Penal Code  
3 section 1203.4.

4 b. The circumstances surrounding the conviction occurred on or about April 9, 2004,  
5 when Pomona Police Department officers were dispatched to a disturbance call. Upon arrival, the  
6 officers observed Respondent hit a male victim with his vehicle. The victim informed the officers  
7 that Respondent intentionally hit him because he ended their romantic relationship. Respondent  
8 informed the officers that the victim used a garden tool to break Respondent's rear windshield.  
9 During booking, the officers found out that the Respondent's driver's license belonged to  
10 someone else. Respondent admitted that his driver's license was suspended and he was using  
11 someone else's driver's license with his picture on the license.

#### 12 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

##### 13 **(Conviction of Substantially Related Crime)**

14 16. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
15 that Respondent has been convicted of a crime substantially related to the qualifications,  
16 functions or duties of a pharmacy technician, as follows:

17 a. On or about April 2, 2001, Respondent was convicted of one misdemeanor count of  
18 violating Vehicle Code section 23152, subdivision (b) [driving while having BAC of 0.08%, of  
19 weight, or higher], and one misdemeanor of violating Vehicle Code section 14601.1, subdivision  
20 (a) [driving with a suspended license], in the criminal proceeding entitled *The People of the State*  
21 *of California v. Adalit Andrade* (Super. Ct. L.A. County, 2001, No. 1SA00987). The court  
22 sentenced Respondent to 45 days in jail, placed him on three years summary probation and  
23 suspended his driver's license for two years. On or about February 13, 2014, the court dismissed  
24 the case pursuant to Penal Code section 1203.4.

25 b. The circumstances surrounding the conviction occurred on or about March 18, 2001.

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1 **EIGHTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of Substantially Related Crime)**

3 17. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
4 that Respondent has been convicted of a crime substantially related to the qualifications,  
5 functions or duties of a pharmacy technician, as follows:

6 a. On or about April 25, 2000, Respondent plead guilty and was convicted of one  
7 misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under the  
8 influence of alcohol or drugs], one misdemeanor count of violating Vehicle Code section 31  
9 [false statements or information to a peace or police officer], and one misdemeanor count of  
10 violating Vehicle Code section 14601.5, subdivision (a) [driving with a suspended license], in the  
11 criminal proceeding entitled *The People of the State of California v. Jesus Hermida Cruz* (Super.  
12 Ct. L.A. County, 2000, No. 0PM02894). The court sentenced Respondent to 150 days in county  
13 jail, placed him on three years on summary probation and ordered him to pay fines. On or about  
14 April 1, 2015, the court dismissed the case pursuant to Penal Code section 1203.4.

15 b. The circumstances surrounding the conviction occurred on or about April 24, 2000,  
16 when a Pomona Police Department officer observed Respondent's vehicle swerving. Upon  
17 contact, the officer smelled an odor of alcohol on Respondent's breath. Respondent was asked to  
18 perform field sobriety tests which he failed to satisfactorily perform as explained and  
19 demonstrated. Respondent's blood alcohol content was 0.10%.

20 **NINTH CAUSE FOR DENIAL OF APPLICATION**

21 **(Conviction of Substantially Related Crime)**

22 18. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
23 that Respondent has been convicted of a crime substantially related to the qualifications,  
24 functions or duties of a pharmacy technician, as follows:

25 a. On or about March 20, 2000, Respondent was convicted of one misdemeanor count  
26 of violating Vehicle Code section 23152, subdivision (b) [driving while having a BAC of 0.08%,  
27 of weight, or higher], in the criminal proceeding entitled *The People of the State of California v.*  
28 *Adalit Andrade* (Super. Ct. L.A. County, 2000, No. 0MT02658). The court placed Respondent on

1 36 months summary probation, ordered him to attend a 3-month first-offender alcohol and other  
2 drug education and counseling program, restricted his driving for 90 days, and order him to pay  
3 fines. On or about February 18, 2014, the court dismissed the case pursuant to Penal Code  
4 section 1203.4.

5 b. The circumstances surrounding the conviction occurred on or about February 28,  
6 2000, when a Los Angeles Police Department officer observed Respondent committing multiple  
7 traffic violations. Upon contact, the officer smelled a strong odor of an alcoholic beverage  
8 coming from him and his clothing. Respondent submitted, but failed to satisfactorily complete  
9 field sobriety tests. Respondent's blood alcohol content was 0.18%.

10 **TENTH CAUSE FOR DENIAL OF APPLICATION**

11 **(Conviction of Substantially Related Crime)**

12 19. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
13 that Respondent has been convicted of a crime substantially related to the qualifications,  
14 functions or duties of a pharmacy technician, as follows:

15 a. On or about August 5, 1998, Respondent plead guilty and was convicted of one  
16 misdemeanor count of violating Penal Code section 273.5, subdivision (a) [inflict corporal injury  
17 to spouse or cohabitant], in the criminal proceeding entitled *The People of the State of California*  
18 *v. Adalit Andrade* (Mun. Ct., El Monte Courthouse Judicial Dist., L.A. county, 1998, No.  
19 8FC00433). The court sentenced Respondent to eight days in jail, placed him on three years  
20 summary probation, ordered him to complete 24 hours of community service and 52 sessions of  
21 domestic violence counseling, and ordered him to attend at least 52 alcoholics anonymous  
22 meetings.

23 b. The circumstances surrounding the conviction occurred on or about July 29, 1998.

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1                                    **ELEVENTH CAUSE FOR DENIAL OF APPLICATION**

2                                    **(Conviction of Substantially Related Crime)**

3            20.    Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
4            that Respondent has been convicted of a crime substantially related to the qualifications,  
5            functions or duties of a pharmacy technician, as follows:

6            a.     On or about November 9, 1995, Respondent plead guilty and was convicted of one  
7            misdemeanor count of violating Penal Code section 242 [battery], in the criminal proceeding  
8            entitled *The People of the State of California v. Jesus Adalit Andrade* (Mun. Ct., El Monte  
9            Courthouse Judicial Dist., L.A. county, 1995, No. 95M01113). The court sentenced Respondent  
10           to 60 days in jail, placed him on three years probation. On or about October 16, 2013, the court  
11           dismissed the case pursuant to Penal Code section 1203.4.

12           b.     The circumstances surrounding the conviction occurred or on about February 5, 1995.

13                                    **TWELFTH CAUSE FOR DENIAL OF APPLICATION**

14                                    **(Conviction of Substantially Related Crime)**

15           21.    Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
16           that Respondent has been convicted of a crime substantially related to the qualifications,  
17           functions or duties of a pharmacy technician, as follows:

18           a.     On or about November 9, 1995, after pleading guilty, Respondent was convicted of  
19           one misdemeanor count of violating Penal Code section 273.5, subdivision (a) [inflict corporal  
20           injury to spouse or cohabitant], in the criminal proceeding entitled *The People of the State of*  
21           *California v. Adalit Andrade* (Mun. Ct., El Monte Courthouse Judicial Dist., L.A. county, 1995,  
22           No. 95M10514). The court sentenced Respondent to 10 days in jail, placed him on three years  
23           summary probation, and ordered him to attend domestic violence counseling and alcoholic  
24           counseling sessions.

25           b.     The circumstances surrounding the conviction occurred or on November 7, 1995.

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1 **THIRTEENTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Commission of Acts of Dishonesty, Fraud, or Deceit)**

3 22. Respondent's application is subject to denial under Code section 480, subdivision  
4 (a)(2), in that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to  
5 substantially benefit himself or another, or substantially injure another. Complainant refers to,  
6 and by this reference incorporates, the allegations set forth above in paragraphs 11, subparagraph  
7 (b), and 15, subparagraph (b), inclusive, as though set forth fully.

8 **FOURTEENTH CAUSE FOR DENIAL OF APPLICATION**

9 **(Acts Warranting Discipline of Licensure)**

10 23. Respondent's application is subject to denial under section 480, subdivisions (a)(3)A<sup>^</sup>  
11 and (a)(3)(B), in that Respondent committed acts which if done by a registered pharmacy  
12 technician would be grounds for suspension or revocation of the license as follows:

13 a. Respondent was convicted of crimes substantially related to the qualifications,  
14 functions, or duties of a pharmacy technician which to a substantial degree evidence his present  
15 or potential unfitness to perform the functions authorized by the license in a manner consistent  
16 with the public health, safety, or welfare, in violation Code of sections 4031, subdivision (l) and  
17 490, in conjunction with California Code of Regulations, title 16, section 1770. Complainant  
18 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 8  
19 through 22, and all subparagraphs as though set forth fully.

20 b. Respondent used alcoholic beverages to an extent or in a manner dangerous or  
21 injurious to himself, any person, or the public, in violation of Code section 4301, subdivision (h).  
22 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
23 paragraphs 16, subparagraph (b), 17, subparagraph (b), 18 subparagraph (b), 19 subparagraph (b),  
24 and 21 subparagraph (b), inclusive, as though set forth fully.

25 c. Respondent sustained more than one conviction involving the consumption of  
26 alcoholic beverages, in violation of Code section 4301, subdivision (k). Complainant refers to,  
27 and by this reference incorporates, the allegations set forth above in paragraphs 16, 17, and 18,  
28 and all subparagraphs inclusive, as though set forth fully.

1 d. Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit or  
2 corruption, in violation of Code section 4301, subdivision (f). Complainant refers to, and by this  
3 reference incorporates, the allegations set forth above in paragraphs 11, subparagraph (b), 15,  
4 subparagraph (b), 19, subparagraph (b), and 21, subparagraph (b), inclusive, as though set forth  
5 fully.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
8 and that following the hearing, the Board issue a decision:

- 9 1. Denying the application of Jesus Hermida Cruz, aka Jesus Crus, aka Jesus Adalit  
10 Andrade aka Adalit Andrade for a Pharmacy Technician Registration; and,  
11 2. Taking such other and further action as deemed necessary and proper.

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14 DATED: \_\_\_\_\_

4/15/16



VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

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