

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HEALTH
HEALTH PROFESSIONS REGULATION
THREE CAPITOL HILL
PROVIDENCE, RI 02908**

IN THE MATTER OF:

Elizabeth Luis, License No. 00351,

Respondent.

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File No.: C14-0516

File No.: C14-0773

DECISION

I. INTRODUCTION

The above-entitled matter came for a hearing before the undersigned¹ pursuant to an Administrative Notice of Hearing (“Notice”) issued by the Department of Health (“Department”) to Elizabeth Luis (“Respondent”) on or about May 5, 2015. Pursuant to R.I. Gen. Laws § 23-17.4-1 *et seq.*, the Respondent is licensed (“License”) as an Assisted Living Residence Administrator. The hearing was held on June 4, 2015. The Respondent did not appear at hearing. The Board was represented by counsel who rested on the record.

Prior to the hearing, the Respondent had not contacted the Department, the Department’s counsel, or the undersigned. Pursuant to Section 5.6 of the *Rules and Regulations of the Department of Health Regarding Practices and Procedures Before the Department of Health* (“Hearing Regulation”), service may be made by hand-delivery or first class mail and service is complete upon mailing, even if unclaimed or returned, when sent to the last known address of the party. In this matter, the Notice was sent to the Respondent’s last known address by first class

¹ The undersigned was sitting as a designee of the Director.

and certified mail.² As the Respondent was adequately notified of the time and date of the hearing, the hearing went forward. See also R.I. Gen. Laws § 23-17.4-8. Additionally, Section 12.9 of the Hearing Regulation provides that a judgment may be entered based on pleadings and/or evidence submitted at hearing by a non-defaulting party.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-18-1 *et seq.*, R.I. Gen. Laws § 23-17.4-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and the Hearing Regulation.

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 23-17.4-21.3 and/or the Department's *Rules and Regulations for the Certification of Administrators of Assisted Living Residences* ("Administrator Regulation") and if so, what is the appropriate sanction.

IV. MATERIAL FACTS AND TESTIMONY

Sandra M. Cullen ("Cullen") testified on behalf of the Department. She testified that she is licensed as an Assisted Living Administrator and works for the United Methodist Elder Care ("Elder Care") and is the regional director of three (3) assisted living homes. She testified that she oversees two (2) homes and runs a home. She testified that the Respondent worked as the Administrator at one of the homes ("Home") that she (Cullen) oversees. She testified that the Respondent's duties as an Assistant Living Administrator included overseeing staff and ensuring residents received their services. She testified that Woonsocket Housing is the landlord of the building where the Home is located and that Elder Care also provides services to the Home. She

² Donna Valletta, Board Manager for Assisted Living Administrator Certification Board, testified that the address used for said Notice was the Respondent's address on record with the Department and neither the certified nor first class mail was returned to the Department. See Department's Exhibit L (Notice). She also testified that all licensees are obligated to inform the Department of any change of address.

testified that a Home resident (“Resident A”) reported to a medical technician that someone had used her (Resident A) ATM card. She testified an investigation determined that the Respondent was holding the Resident A’s ATM card and the Respondent used said ATM card for her (Respondent) personal cell phone bill. She testified that the Respondent was fired for this incidence. See Department’s Exhibit G (Cullen’s report to Department of ATM incidence); H (Resident’s A bank statement showing unauthorized payment for Respondent’s cell phone); and I (Resident’s A statement on the incident).

Cullen testified that after the Respondent was fired, she (Cullen) was put in charge of the Home and another resident (“Resident B”) approached her as he had received a notice that he would be evicted as he owed approximately \$2,300. She testified that Resident B told her that the Respondent had taken his money in cash and had been supposedly paying his rent and services in money orders and when he had received the notice about his overdue bill, the Respondent had told him that it took a while to process money orders. Cullen testified that the Respondent should never have taken money from the Resident to help with the bills. She testified that Resident B’s rent and bill for services from Elder Care had not been paid. See Department’s Exhibit A (Cullen’s report to Department of Resident B incident); B (billing statement showing Resident B owed money); C (Resident B’s statement); and D (a nurse’s statement that she saw Resident B give Respondent money). She also testified that there was a nurse at the Home that kept in contact with the Respondent after the Respondent left and the Respondent gave the nurse an envelope to put in the payment lock box at the home and she (Cullen) and the nurse opened the envelope and it was a money order for the amount still owed by Resident B. See Department’s Exhibit E (nurse’s statement about envelope); and F (copy of said money order). She testified that the police were called about Respondent.

Detective Sergeant Kevin Greenough, Woonsocket Police Department, testified on behalf of the Department. He testified that he investigated the complaint regarding both residents. He testified that the Respondent was given her Miranda rights and she waived her right to counsel and she admitted to him that she received the money from Resident B and did not purchase the money orders and that she had paid her own cell phone bill with Resident A's ATM card. He testified that she was charged with obtaining money under false pretenses. See Department's Exhibit K (incidence report and arrest report for Respondent).

Donna Valletta, Board Manager for Assisted Living Administrator Certification Board testified on behalf of the Department. She testified that stealing money from residents is unprofessional and the Department was seeking revocation of the License.

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047, 1049 (R.I. 1994). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (internal citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*,

711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Standard of Review for an Administrative Hearing

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council* 94, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

C. Relevant Statutes and Regulation

R.I. Gen. Laws § 23-17.4-21.2 provides in part as follows:

Functions of the department of health. – It is the function of the department of health to:

(2) Establish and carry out procedures designed to insure that individuals certified as assisted living administrators will, during any period that they serve as assisted living administrators, comply with the requirements of those standards;

(3) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the department to the effect that any individual certified as an assisted living administrator has failed to comply with the requirements of those standards.

As required by R.I. Gen. Laws § 23-17.4-21.2, Section 8 of the Department’s *Rules and Regulations for the Certification of Administrators of Assisted Living Residences* (“ALRA

Regulation”) sets forth the grounds for denial, revocation, and suspension of an assisted living administrator license. Section 8 provides in part as follows:

Section 8 Grounds for Denial, Revocation or Suspension of Certificate

8.2 The Department may deny issuance of a certification, suspend, revoke, or refuse to renew any certification issued under the provisions of the Act and the regulations herein, or may reprimand, censure or otherwise discipline, or may require participation in continuing education or professional mentoring or may place an administrator on probation, upon decision and after hearing in accordance with section 10.0 upon proof that the licensee engaged in unprofessional conduct which includes but is not limited to:

b) Is in violation of any of the provisions of the Act or the rules herein, or acted in a manner inconsistent with the health and safety of the residents of the residence in which he or she is the administrator;

c) Has engaged in fraud or deceit in the practice of assisted living residence administration or in his or her admission to such practice;

e) Neglect or misconduct in professional practice;

f) Any departure from or failure to conform to the minimal standards of acceptable and prevailing practice in assisted living residence administration. Actual injury to a resident need not be established.

R.I. Gen. Laws § 23-17.4-3(3) states as follows:

Functions of assisted living certification board. – It is the function of the board to:

(3) Recommend to the department the issuance of licenses and registrations to individuals determined, after application of those techniques, to meet those standards; and to recommend to the director the revocation or suspension of licenses or registrations previously issued in any case where the individual holding that license or registration is determined substantially to have failed to conform to the requirements of those standards.

D. Whether the Respondent Violated her Statutory and Regulatory Obligations

In closing, the Department argued that the evidence clearly showed that the Respondent used her position as an Assisted Living Administrator to systemically steal money from Resident B on monthly occasions and once from Resident A and that such theft was premeditated. The

Department argued that the Respondent violated R.I. Gen. Laws § 23-17.4-21.3(3) and Sections 8.2(b), (c), (e), and (f) of the Administrator Regulation and sought a revocation of License for at least five (5) years.

It was undisputed that the Respondent used Resident A's ATM card to pay her own cell phone bill. It was undisputed that the Respondent took cash from Resident B and failed to pay his bills as promised.

Based on the evidence, exhibits, and the pleadings regarding the Respondent's thefts, the Respondent's actions violated R.I. Gen. Laws § 23-17.4-21.3(3) (failure to conform to standards) and Sections 8.2(b) (inconsistent with the health and safety of residents), 8.2(c) (engaged in fraud and deceit in the practice of assisted living residence administration), 8.2(e) (professional misconduct), and 8.2(f) (failure to conform to minimum standards of acceptable and prevailing practices) of the Administrator Regulation.

E. Sanction

On the basis of the forgoing, the Respondent's License shall be revoked for her statutory and regulatory violations. The Respondent is prohibited from applying for a new License for five (5) years.

VI. FINDING OF FACTS

1. The Respondent holds an assisted living residence administrator license pursuant to R.I. Gen. Laws § 23-17.4-1 *et seq.*
2. A hearing was held in this matter of June 4, 2015.
3. The Respondent was properly notified of the hearing in this matter and failed to appear. As the Respondent was properly notified of the hearing, the hearing was held.
4. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the forgoing, the Respondent violated R.I. Gen. Laws § 23-17.4-21.3(3) and Sections 8.2(b), (c), (e), and (f) of the Administrator Regulation and pursuant to said statute and regulation, it is recommended that the Respondent's License shall be revoked and that the Respondent be prohibited from applying for a new License for five (5) years.³

Entered this 7th day of July, 2015.


Catherine R. Warren, Esquire
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: 7/14/15


Nicole Alexander-Scott, M.D.
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF HEALTH PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

³ Needless to say, there is no guarantee that a license would issue after application.

CERTIFICATION

I hereby certify on this 14th day of July, 2015 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail, return receipt requested to Ms. Elizabeth Luis, 79 Walnut Street, East Providence, RI 02914, and by hand-delivery to Amy Coleman, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.


