

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

IN THE MATTER OF:

Glenn Andrew Ahern,
Lic. No. ALRA00278

Respondent.

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 Glenn Andrew Ahern ("Respondent") on or about March 30, 2012. 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 May 1, 2012. At hearing, the Respondent did not appear. The Board was represented by counsel.

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 and Access to Public Records of 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

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

known address by first class and certified mail. The certified mail was unclaimed but the first class mail was not returned. See Department's Exhibits One (1), Two (2), and Three (3) (Notice, unclaimed certified mail, U.S. Post Office tracking sheet). 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 § 23-17.4-21.2 by acting in a manner inconsistent with the health and safety of the residents of the residence and if so, what is the appropriate sanction.

IV. MATERIAL FACTS AND TESTIMONY

Donna Valletta ("Valletta") Administrator for the Assisted Living Residence Board ("Board"), testified on behalf of the Department. She testified that the Department's Office of Facilities performed an inspection of Golden Years Retirement Home ("Golden Years"), an assisted living residence, for which the Respondent was the administrator at the time of the survey. See Department's Exhibit Four (4) (facility survey). She testified that the Respondent is currently licensed as an assisted living residence administrator and was first licensed on November 20, 2008 but his License was

expired from July 1, 2010 to January 23, 2011 and during the time that the Respondent's License was expired, he was listed as administrator for Golden Years. She testified that an active administrator license is required to act as an administrator of an assisted living facility. She testified that she spoke with the Respondent on December 27, 2011 about the survey and also requested proof of his continuing education units but he never provided such documentation to her. She testified that at the time of the inspection the assisted living facility had not been sold but it now has been sold.

Valletta testified that the Respondent did not appear for a meeting with the Board that was scheduled for February 3, 2012. She testified that after the Board's review of this matter and further review by the Department, the Department is seeking revocation of License based the variety of deficiencies found in the survey regarding access, quality, supervisory, and safety as well as the Respondent's failure to be licensed as an administrator while acting as the administrator of Golden Years.

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;

e) Neglect or misconduct in professional practice.

R.I. Gen. Laws § 23-17.4-4 states in part as follows:

License required for assisted living residence operation. – (a) No person, acting severally or jointly with any other person, shall establish, conduct, or maintain an assisted living residence in this state without a license under this chapter.

Section 2.2 of the ALRA Regulation states as follows:

2.2 No person shall act as an assisted living residence administrator unless he or she is the holder of an assisted living residence administrator's certification in accordance with the statutory provisions of the Act and the rules and regulations herein.

D. Whether the Respondent Violated his Statutory and Regulatory Obligations

The Respondent failed to appear at hearing and failed to meet with the Board to discuss the survey and his failure to maintain his License while acting as administrator of Golden Years. Said survey found that there were deficiencies in the organization and management of personnel records, resident service plans, and the administration of medication. See Department's Exhibit Four (4). These deficiencies directly relate to patient health care and safety. Not only is the Respondent responsible for said deficiencies, he failed to maintain licensing as required by law for his position as administrator; and therefore, he violated R.I. Gen. Laws § 23-17.4-21.2 and Sections 8 and 2.2 of the ALRA Regulation.

E. Sanction

On the basis of the forgoing, the Respondent's License shall be revoked for his statutory and regulatory violations.

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 May 1, 2012.
3. The Respondent was properly notified of the hearing in this matter and failed to appear.
4. A survey by the Department of the assisted living facility for which the Respondent was acting as administrator found deficiencies regarding organization and management of personnel records, resident service plans, and the administration of medication that directly related to patient health care and safety.

5. The Respondent's License was expired while he was working as an administrator of an assisted living residence.

6. 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 § 23-17.4-21.2 and Sections 8 and 2.2 of the ALRA Regulation and pursuant to said statute and regulation, the Respondent's License is revoked

Entered this 16th day of May, 2012.

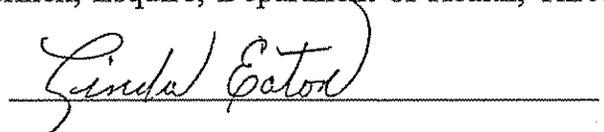

Catherine R. Warren, Esquire
Hearing Officer

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.

CERTIFICATION

I hereby certify on this 16th day of May, 2012 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 Mr. Glenn Andrew Ahern, 2 Overlook Drive, Ashaway, RI 02808 and by hand-delivery to Jennifer Sternick, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.


Linda Ector