

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

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Department of Health  
Health Services Regulation  
Board of Nursing Assistants,

DOH Case No.: A.H. C12-089

v.

Amanda Ashley Borden Lic. # NA42829,  
Respondent.

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DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Hearing Notice ("Notice") issued to Amanda Ashley Borden ("Respondent") by the Department of Health ("Department") on December 20, 2013. The Respondent holds a license ("License") as a certified nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* A hearing was scheduled for January 6, 2014 at which time the Respondent did not appear at hearing. 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 and certified mail.<sup>1</sup> Since the Respondent was adequately noticed of hearing, a hearing

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<sup>1</sup> See Department's Exhibits C and D (notice sent by certified mail and notice sent by first class mail respectively). Donna Valletta, Nursing Assistant and Medication Board Administrator, testified that the address used for the Notice was the Respondent's address on record with the Department and that both Notices were returned to the Department as undeliverable.

was held before the undersigned on January 6, 2014.<sup>2</sup> 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. The Department was represented by counsel who rested on the record.

## II. JURISDICTION

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-18-1 *et seq.*, R.I. Gen. Laws § 23-17.9-1 *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 § 23-17.9-8 and if so, what is the appropriate sanction.

## IV. TESTIMONY AND MATERIAL FACTS

Lynne Deguilio testified on behalf of the Department. She testified she is the director of human resources at Nursing Placement which hired the Respondent as a nursing assistant on July 18, 2012 and terminated her employment on October 23, 2012. She testified that the termination was based on two (2) incidents. She testified that in October, 2012, the Respondent was taking care of "Patient A," a 12 year old non-verbal child who needed constant supervision, in said patient's home. She testified that Patient A's mother's niece went to check on Patient A and found the Respondent sleeping on the couch rather than caring for said patient. See Department's Exhibit A (photograph of

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It would be the Respondent's burden to provide the Department with her new address. See *Castro v. Employees Retirement System of Rhode Island*, C.A. No. PC08-7573 (4/5/12). The due process requirements of the United States and the Rhode Island constitutions are met by mailing notice by first class mail to the last known address. *Quinn Trust v. Ruiz*, 723 A.2d 1127 (R.I. 1999). The mailing of the notice to the Respondent constituted "actual notice." Receipt of notice is not required for actual notice. See *Castro*. See also *Koslow v. Rhode Island Department of Business Regulation*, 2002 WL 31749518.

<sup>2</sup> Pursuant to a delegation of authority by the Director of the Department of Health.

sleeping Respondent). She testified in September 30, 2012, she received a complaint from "Client B" that her ring had been stolen the day before by the Respondent. She testified that Nursing Placement reported this information to the Department and Client B reported it to the police.

Detective Russell Ridge testified on behalf of the Department. He testified that he has been with the North Smithfield Police Department for 11 years. He testified that he investigated the complaint against the Respondent and pawn shop records indicated that she pawned a ring on September 29, 2012 and the pawn shop had taken a copy of her driver's license and given her a receipt. He testified that he spoke to the Respondent at her home and then took a formal written statement at the station after she was advised of her rights. He testified that she admitted orally and then in writing that she took the ring from Client B. He testified she was charged with a felony larceny and that case is still pending. See Department's Exhibit B (police narrative about investigation of Respondent's theft of ring).

Donna Valletta, Administrative of the Nursing Assistant Board testified on behalf of the Department. She testified that the Nursing Assistant Board recommended a revocation of Respondent's License for five (5) 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 (R.I. 1994). 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. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (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. Statute**

R.I. Gen Laws § 23-17.9-8 provides as follows:

Disciplinary proceedings. – The department may suspend or revoke any certificate of registration issued under this chapter or may reprimand,

censure, or otherwise discipline or may deny an application for registration in accordance with the provisions of this section upon decision and after a hearing as provided by chapter 35 of title 42, as amended, in any of the following cases:

(1) Upon proof that the nursing assistant is unfit or incompetent by reason of negligence, habits, or other causes

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(5) Has engaged in conduct detrimental to the health, welfare and safety of patients/residents in his or her care.

**D. Whether the Respondent Violated R.I. Gen. Laws § 23-17.9-8**

The evidence shows that the Respondent fell asleep while caring for a patient who needed supervision. The evidence shows that the Respondent stole a ring from a patient and she admitted the theft to the police. Her behavior violates R.I. Gen. Laws § 23-17.9-8(5) because she stole from a patient and failed to care for a patient which is obviously detrimental to the health, welfare, and safety of a patient. Her behavior violates R.I. Gen. Laws § 23-17.9-8(1) because she fell asleep (negligence) while caring for a patient in need of supervision.

**VI. FINDINGS OF FACT**

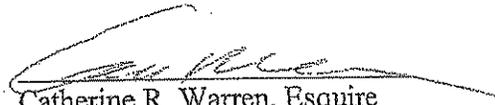
1. The Respondent is licensed as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.*
2. An Administrative Hearing Notice was sent by the Department to the Respondent on December 20, 2013 to the Respondent's address on record with the Department.
3. A hearing was scheduled for January 6, 2014 at which time the Respondent did not appear. As the Respondent had adequate notice of hearing, the undersigned held the hearing that day.

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 § 23-17.9-8(1) and (5) and pursuant to R.I. Gen. Laws § 23-17.9-8, the undersigned recommends that Respondent's License be revoked.

Entered this day 23<sup>rd</sup> January, 2014.

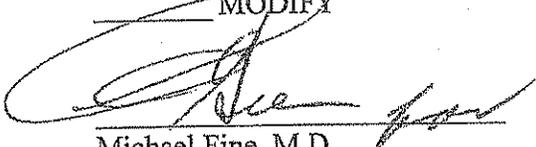
  
Catherine R. Warren, Esquire  
Hearing Officer

**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: 1/24/14

  
Michael Fine, 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.

CERTIFICATION

I hereby certify on this 21 day of January, 2014 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Amanda Borden, 411 Lacolle Lane, Coventry, RI 02816 and 222 Lacolle Lane, Coventry, RI 02816 and by hand-delivery to Amy Coleman, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

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