

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

Department of Health
Health Services Regulation
Board of Nursing Assistants,

C13-393

v.

Danielle Gibson,
Respondent.

DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Hearing Notice ("Notice") issued to Danielle Gibson ("Respondent") by the Department of Health ("Department") on April 29, 2014. The Respondent holds a license ("License") as a certified nursing assistant ("CNA") pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* A hearing was scheduled for May 20, 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.¹ Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on May 20, 2014.² Additionally, Section 12.9 of the Hearing Regulation

¹ See Department's Exhibits E (Notice). Donna Valletta, Nursing Assistant and Medication Board Administrator, testified that the address used for said Notice was the Respondent's address on record with the Department and that neither Notice was returned as undeliverable to the Department by the United States Postal Office.

² Pursuant to a delegation of authority by the Director of the Department of Health.

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 the *Rules and Regulations Pertaining to Rhode Island Certificates of Registration for Nursing Assistants, Medication Aides, and the Approval of Nursing Assistant and Medication Aide Training Program* ("Licensing Regulation") and if so, what is the appropriate sanction.

IV. TESTIMONY AND MATERIAL FACTS

Detective Susan Cormier, Pawtucket Police Department, testified on the Department's behalf. She testified that the Respondent was employed by a nursing placement agency and had been caring for an 88 year old woman ("Patient") who had reported to the police that she had ~~five (5) rings missing and provided a description of the rings.~~ She testified that it was determined that only the Respondent and the Patient's daughter had access to the rings. She testified that she found the Respondent's name on the online pawnshop tracking system and then spoke to the Respondent and read the Respondent her "Miranda rights." She testified that the Respondent admitted to taking the Patient's five (5) rings. She testified that the Respondent was charged with larceny to which the Respondent pled *nolo contendere*. She testified that the Providence police department is also investigating the Respondent for theft in the amount of \$19,900. See Department's Exhibits A (Pawtucket arrest report), B (charge of larceny over \$1,500 in regard to Patient), C (*nolo contendere* plea by Respondent dated November 20, 2013

for larceny over \$1,500; sentenced to five (5) years of probation), and D (Providence Police report indicating that the Respondent had been charged with larceny of over \$1,500 and had admitted to taking rings while working as a CNA from a patient and pawning the rings).

Donna Valletta, Nursing Assistant and Medication Board Administrator, testified on behalf of the Department. She testified that stealing from a client is unprofessional behavior and the Board recommended a five (5) year revocation of 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 (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:

(3) Upon proof that the nursing assistant has been convicted in a court of competent jurisdiction, either within or without this state, of a felony;

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

(6) Any other causes that may be set forth in regulations promulgated under this chapter.

Section 6 of the License Regulation provides as follows:

Pursuant to the statutory provisions of sections 23-17.9-8 and 23-17.9-9 of the Rhode Island General Laws, as amended, the Department may deny, suspend or revoke any registration issued hereunder or may reprimand, censure or otherwise discipline an individual who has been found guilty of violations of the Act or the rules and regulations herein, in accordance with section 23-17.9-8 of the Rhode Island General Laws, as amended, and upon decision and after hearing as provided pursuant to section 11.0 herein in any of the following cases:

c) upon proof that such nursing assistant and/or medication aide has been convicted in a court of competent jurisdiction, either within or without this state, of a felony

e) has engaged in conduct detrimental to the health, welfare, and safety of patients/residents in his/her care;

f) has engaged in unprofessional conduct including, but not limited to, departure from, or failure to conform to, the standards of acceptable and prevailing practice.

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

The Department argued that the Respondent used her position as a caretaker to gain access to and steal valuables which violates R.I. Gen. Laws 27-17.9-8 (3) and (5) and Sections 6.1(c), (e), and (f) of the Licensing Regulation.

Based on the testimony, the exhibits, and the pleadings, the evidence shows that the Respondent stole valuable rings from two (2) patients in her care.

The Respondent's thefts and *nolo contendere* plea to larceny over \$1,500 violated R.I. Gen. Laws § 23-17.9-8(3) (conviction of a felony), (5) (detrimental to the health and safety of a patient in her care), and (6) (violates Section 6.1 of Licensing Regulation). The Respondent's actions also violated Section 6.1(c) (conviction of a felony), (e) (detrimental to the health and safety of a patient in her care), and (f) (fails to conform to the standards of acceptable and prevailing practice) of the Licensing Regulation.

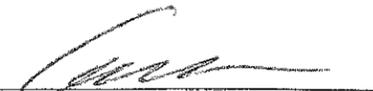
VI. FINDINGS OF FACT

1. The Respondent is licensed as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.*
2. A notice of hearing was sent by the Department to the Respondent on April 29, 2014 to the Respondent's address on record with the Department.
3. A hearing was scheduled for May 20, 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(3), (5), and (6) and violated Sections 6.1(c), (e), and (f) of the Licensing Regulation and pursuant to R.I. Gen. Laws § 23-17.9-8, the undersigned recommends that Respondent's License be revoked and the Respondent cannot re-apply for licensing for five (5) years.³

Entered this day 11th June, 2014.

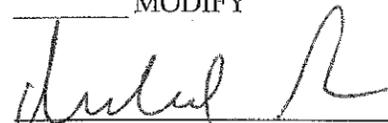

Catherine R. Warren, Esquire
Hearing Officer

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: June 19 2014


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.

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

CERTIFICATION

I hereby certify on this 23 day of June, 2014 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Danielle Gibson, 187 Prospect Street, Pawtucket, RI 02860 and by hand-delivery to Amy Coleman, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

ARLINE MAROLI