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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, : C14-0546
v. :
Donna J. Lecuivre, : 91 7199 9991 7032 8200 5373
Respondent. :

NA28754

DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Hearing Notice dated July 14, 2015 and issued to Donna J. Lecuivre ("Respondent") by the Department of Health ("Department"). The Respondent holds a registration ("License") as a certified nursing assistant ("CNA") pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* The Respondent's License as a CNA had previously been subject of an Immediate Compliance Order ("Order") issued on July 7, 2014 to the Respondent by the Department. Said Order ordered Respondent to immediately cease and desist from acting as a CNA. The Respondent requested a hearing on said Order and after a hearing was held, a decision was issued maintaining the Immediate Compliance Order (e.g. the cease and desist order)¹ until the Nursing Assistants' Board ("Board") had a chance to meet and make a recommendation and any further administrative proceedings were concluded. The Respondent now seeks to be re-instated as a CNA and a hearing was held on this request on July 30, 2015. At the hearing, the Department represented that the Respondent's License had expired on June 30,

¹ Said decision has the same case caption and case number as above and was issued by the Department on August 15, 2014.

2015 so that the Department requested that the Respondent be barred from re-applying for at least five (5) years.² The Department was represented by counsel and the Respondent was *pro se*.

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 sanction should be imposed.

IV. TESTIMONY AND MATERIAL FACTS

Ashley Pietros testified on behalf of the Department. She testified that she is a CNA and in June, 2014 she was working for an agency and for two (2) years had been caring for a disabled boy (“Patient A”) in the morning at his home. She testified that her duties included setting up Patient A’s clothes, showering him, and getting him ready for school. She testified that also in the house where Patient A lived, there was another disabled child, Patient B. She testified that the Respondent was a CNA for a different agency and cared for Patient B. She testified that Patient B was helpless and could not control her limbs. She testified the Respondent and Patient B’s foster mother were very friendly and that the Respondent brought her own child to work while she took care of Patient B.

² Such a bar prohibits re-application for a set period of time, but does not guarantee that if the applicant in future chooses to apply for a new registration that the application would be granted.

Pietros testified on June 24, 2014, she arrived in the morning as did the Respondent. She testified that the mother was upset at Patient B because Patient B had been up all night crying. She testified that B had an accident so that the foster mother put a facecloth in her mouth to stop her crying and B also had vomited and since she could not sit up by herself, she had fallen face down in the vomit which the Respondent and the mother ignored. Pietros testified that she assumed that the Respondent would not be back the next morning after what had happened so she was surprised to see the Respondent the next day. She testified that the next day, Patient B had been up again all night crying and that the mother was very annoyed. She testified that B cannot control her arms or legs and the mother pulled and manipulated Patient's B's limbs and yelled at Patient B and the Respondent assisted her.

The Respondent testified that she recorded this interaction which she played at hearing and identified the speakers. On the recording, Jackie (the mother), the Respondent, Patient B, the Respondent's baby, and the television can be heard. The dialogue includes as follows:

Jackie: She needs to know she is yelling at nothing. Give her something.

Respondent: I'll tell her to straighten her arms out.

Jackie: That's the way I look at it.

Patient B is crying during this and then Jackie says "That's it . . . now you have something to yell about." The Respondent's baby is crying and Patient B is crying and the television is on and then Jackie mentions getting something and putting "her" somewhere "and be all done with her." And then Jackie says something about B needing to have a reason to yell as "she yells for nothing at all."

Pietros testified that after that interaction that she recorded, the mother and Respondent put Patient B in the electric chair which went down a stairway into the garage and then turned the

lights off and left Patient B there. She testified that when she left work, she went back to her agency and reported what she had seen to her employer and her employer informed the Department. See Department's Exhibits B and C (her statements about June 24 and June 25 respectively). There was no cross examination.

Donna Valletta, Manager for the Board, testified on behalf of the Department. She testified that initially the Respondent's License was suspended on July 8, 2014 and that was upheld after hearing and then on September 9, 2014, the Board recommended the License be revoked for five (5) years. She testified that this matter was set down for hearing, but since the Respondent's License expired on June 30, 2015, the Department is requesting that it not be reinstated. There was no cross-examination.

The Respondent testified on her behalf. She testified that on that first day, Patient B was crying, but they got her dressed and nothing happened with a facecloth. She testified that the next day, Patient B did not have school as she had doctor's appointment. She testified that they did not put her downstairs by herself and that nothing happened. She testified that in February, 2015, the mother informed her that she had gone to Court and was cleared by DCYF. The Respondent testified that DCYF had not done anything to her (Respondent). She testified that during the recording, they were just lifting Patient B's arms to get her in the chair.

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:

(2) Upon proof that the nursing assistant has violated any of the provisions of this chapter or the rules enacted in accordance with this chapter; or acted in a manner inconsistent with the health and safety of the patients of the home in which he or she is providing nursing assistant services;

(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 Licensing 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:

b) upon proof that such nursing assistant and/or medication aide has violated any of the provisions of the Act or the rules and regulations herein; or acted in a manner inconsistent with the health and safety of the patients of the agency/home in which he or she is providing nursing assistant and/or medication aide services

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. Arguments

The Department argued that the recording demonstrates that the mother was manipulating Patient B's arms, that Patient B was yelling in pain and the Respondent was suggesting what to do to cause additional pain. The Department argued that Pietros had no reason to lie and based on the recording, the Respondent should not be providing care especially home care to

vulnerable patients. The Department argued that the Respondent violated R.I. Gen. Laws § 23-17.9-8(2), (5), and (6) and Sections 6.1(b), (e), and (f) and the Licensing Regulation.

During her closing argument, the Respondent indicated that she no longer wanted her License and was withdrawing her request for hearing. The Department requested that since the hearing had been completed a decision be issued.³

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

While the Respondent's action may not have fallen under the DCYF definition of institutional abuse, the issue is whether the Respondent's actions violated her statutory and regulatory obligations as a CNA.

The testimony at hearing was that Jackie stuffed a facecloth into her foster daughter's mouth to stop her crying and that Jackie and the Respondent ignored Patient B when she vomited and her face fell into the vomit. The Respondent denied those events happened. In terms of the recording, the Respondent testified that they were lifting Patient B's arms to get her out of her chair. However, the recording does not indicate that was what was happening. Rather Jackie yelled that she was going to give Patient B something to cry about, the Respondent suggested moving her arms, and Jackie did that saying that she was giving Patient B something to cry about and Jackie commented favorably when Patient B was crying. The only explanation that can be inferred from the recording was that Jackie was mistreating Patient B and Respondent participated and failed to report it.

The Respondent's actions of watching how Jackie treated Patient B in terms of the facecloth and the vomit and then the next day suggesting the arms be straightened so that Patient B had something to cry about and watching Jackie and participating in the actions that were recorded and not reporting these incidents violates R.I. Gen. Laws 27-17.9-8(2), and (5) and (6)

³ As the hearing was completed, the undersigned chose to issue the decision.

and Sections 6.1(b), (e), and (f) of the Licensing Regulation. The Respondent's actions violated the statute and Licensing Regulation because they are inconsistent with her patient's health and safety and are detrimental to her patient's health, welfare, and safety and fail to conform to the standards of acceptable and prevailing practice.

VI. FINDINGS OF FACT

1. The Respondent was licensed as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* but her License expired on June 30, 2015.
2. A hearing was held on July 30, 2015. The parties rested on the record.
3. 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(2), (5), and (6) and violated Sections 6.1(b), (e), and (f) of the Licensing Regulation. The Respondent shall be barred from applying for a new License for five (5) years.⁴

Entered this day 2nd September, 2015.

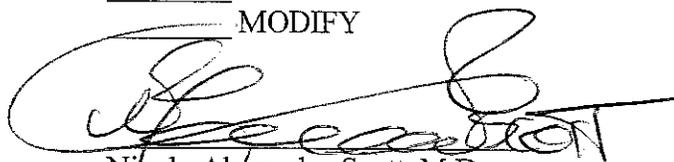

Catherine R. Warren, Esquire
Hearing Officer

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: 10/13/15


Nicole Alexander-Scott, M.D.
Director

⁴ As indicated above, any future application is not guaranteed to be granted.

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 October ²⁰¹¹~~September~~, 2015 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Donna Lecuire, 13 McNiff Street, West Warwick, RI 02893 and by hand-delivery to Amy Coleman, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

Arlene Hardwell