

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, :
v. :
Evalinda Adames a/k/a Evalinda Zucco, :
Respondent. :
_____ :

DOH Case No.: C14-0633
C15-151

91 7199 9991 7032 8168 4203
91 7199 9991 7032 8168 4210

PO 807
10 George St

DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Hearing Notice (“Notice”) issued to Evalinda Adames (a/k/a Evalinda Zucco) (“Respondent”) by the Department of Health (“Department”) on February 17, 2016. The Respondent holds a license as a certified nursing assistant (“CNA”) pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* A hearing was scheduled for March 17, 2016 at which time the Respondent did not appear at the 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 delivered to 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 March 17, 2016.² Additionally, Section 12.9 of the Hearing Regulation provides that a judgment may be entered based on pleadings and/or

¹ See testimony below.

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

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 § 32-18-1 *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 § 23-7.9-8 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

Robert O'Donnell ("O'Donnell"), Medical Legal Administrator and Lead Investigator, testified on behalf of the Department. He testified that he received information from the Cranston Police Department regarding the Respondent. He testified that he learned the Respondent had been arrested on two (2) charges of fraudulent use of credit cards. He testified that the information was that the Respondent obtained the credit card from a 95 year old patient in her care and used it to make unauthorized transactions and was identified by police on video using the credit card. See Department's Exhibits One (1) (Cranston Police Department arrest report and police report regarding the investigation of the fraudulent charges and the identification of the Respondent on the video making an unauthorized transaction) and Three (3) (criminal background information showing arrests). He also testified that he received information from the East Providence Police Department regarding the several unauthorized uses of a patient's debit card by Respondent and that she was identified on video making such transactions. See Department's Exhibit Two (2) (police report including investigation report identifying the unauthorized charges and video

identification of the Respondent purchasing an Xbox and games and withdrawing money from a bank ATM and a victim statement from the Respondent's patient including a statement from the victim that she never authorized the purchase of an Xbox and games).

Arlene Hartwell, Nursing Assistant Board Manager, testified on behalf of the Department. She testified that the Notice was sent to the Respondent's most recent address on record with the Department as well as the address listed in the arrest report by first class and certified mail and that the United States Post Office online tracking sheet indicated that the certified mail had been delivered. She testified that licensees are required to update their addresses with the Department. She testified that the Board and the Department recommended revocation of the Respondent's License for at least 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 and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2s 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.2s 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).

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 130m 34 (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 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:

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

The Department argued that the Respondent violated R.I. Gen. Laws § 23-17.9-8 and sought revocation of License and a bar on the Respondent from re-applying for five (5) years.

Based on the undisputed testimony, the exhibits, and the pleadings, the evidence showed that the Respondent stole money from two (2) patients in her care.

The Respondent's actions of stealing from patients in her care violated R.I. Gen. Laws § 23-17.9-8(2) (inconsistent with the health and safety of a patient); (5) (detrimental to the health and safety of a patient in her care); and (6) (violates Section 6.1(f) of Licensing Regulation). The Respondent's actions also violated Section 6.1 (b) (inconsistent with the health and safety of a patient); (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 was sent by the Department to Respondent on February 17, 2016 to the Respondent's most recent address on record with the Department.

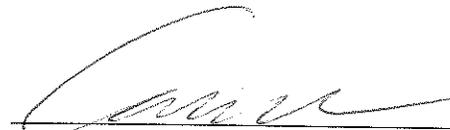
3. A hearing was scheduled for March 17, 2016 at which time the Respondent did not appear. As the Respondent had adequate notice of hearing, the undersigned held the hearing that day.

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 § 23-7.9-8(2), (5) and (6) and Sections 6.1(b), (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 29th March, 2016.

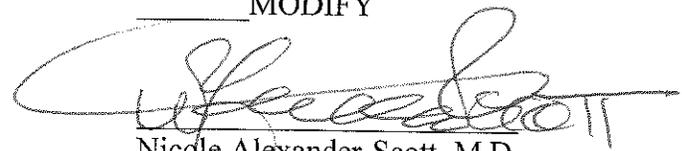

Catherine R. Warren, Esquire
Hearing Officer

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: 3/31/16


Nicole Alexander-Scott, M.D.
Director

³ Naturally, there is no guarantee that a license would issue after application.

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 §42-15-15, 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 31 day of March, 2016 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail, return receipt request to Ms. Evalinda Adames, PO Box 72878, Providence, RI 02907 and 10 George Street, Apt. 31, Pawtucket, RI 02860 and by hand-delivery to Colleen McCarthy, Esquire, and Arlene Hartwell, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.