

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,

DOH Case No.: C14-0018

v.

91 7199 9991 7032 8093 6228

Gina Stone,  
Respondent.

DECISION

I. INTRODUCTION

This matter arose pursuant to a notice of hearing (“Notice”) issued to Gina Stone (“Respondent”) by the Department of Health (“Department”) on September 12, 2014. The Respondent holds a license as a certified nursing assistant (“CNA”) pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* and also holds an endorsement as a medication aide (“Aide”) pursuant to the *Rules and Regulations Pertaining to Rhode island Certificates of Registration for Nursing Assistants, Medication Aides, and their Approval of Nursing Assistant and Medication Aide Training Programs* (“Licensing Regulation”). A hearing was scheduled for October 27, 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 was held before the undersigned on October 27, 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 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 Timothy Grant, Warwick Police Department, testified on behalf of the Department. He testified that he was contacted by an East Greenwich police detective regarding larcenies involving the Respondent with four (4) victims who are in their early 90's and live in an assisted living facility in East Greenwich where the Respondent worked as a CNA. He testified the East Greenwich detective had spoken to the Respondent about the thefts and had confirmed on the Rhode Island precious metals database that the stolen jewelry had been sold to a pawnshop in Warwick. He testified that he met the East Greenwich detective and the pawn

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<sup>1</sup> See Department's Exhibit Four (4) (notice sent by first class and certified mail). 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.

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

shop owner at the shop in Warwick and that the owner was able to identify the Respondent as the person who pawned the jewelry as she provided an identification and they were able to seize the jewelry from the pawn shop. He testified the owner also identified a Michael Stone as selling jewelry and he was later identified as the Respondent's son. He testified that three (3) of the victims were able to identify the seized jewelry (two (2) rings and a necklace). See Department's Exhibit One (1) (photographs of the returned jewelry). He testified the fourth victim did not receive any of the recovered stolen jewelry. He testified that the Respondent was charged with receiving stolen goods and obtaining money under false pretenses and entered an Alford plea. See Department's Exhibits Two (2) (Warwick police report); Three (3) (East Greenwich police report); and Five (5) (online criminal records print-out).

Donna Valletta, Administrator of the Nursing Assistants Board, testified on the Department's behalf. She testified that prior to the notice of hearing being sent to the Respondent, the Respondent left a telephone message stating that she was not a thief, it was a setup, she had thrown out her licenses, and not to bother her anymore. She testified that stealing from a patient is unprofessional conduct and the Board recommended a revocation of License of at least five (5) years. She testified that the Respondent is also endorsed as a medication aide but in order to be a medication aide, one needs to be licensed as a CNA.

## 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;

(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

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(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:

a) upon proof that such nursing assistant and/or medication aide is unfit or incompetent by reason of negligence, habits or other causes;

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

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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**

In closing, the Department argued that the Respondent's actions of stealing jewelry from four (4) of her patients in her care violated R.I. Gen. Laws 27-17.9-8 and Section 6.1 of the Licensing Regulation.

The undisputed evidence shows that the Respondent stole jewelry from patients in her care. The Respondent's action of stealing money from a patient in her care violated R.I. Gen. Laws § 23-17.9-8(1) (unfit by reason of habits (theft)); (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 action also violated Section 6.1(a) (unfit by reason of habits (theft)); (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 with a medication aide endorsement 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 September 12, 2014 to the Respondent's most recent address on record with the Department.
3. A hearing was scheduled for October 27, 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), (2), (5), and (6) and violated Sections 6.1(a), (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.<sup>3</sup>

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

Entered this day 12<sup>th</sup> November, 2014.

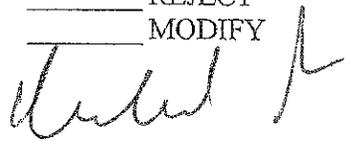
  
Catherine R. Warren, Esquire  
Hearing Officer

**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: 2/10/15

  
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 2-17-15 day of November, 2014 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 Ms. Gina Stone, Apt 24-302, 3595 Post Road, Warwick, RI 02886 and by hand-delivery to Amy Coleman, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

