

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.: A.H. C12-669

v.

Iris Mayorga NA30922,
Respondent.

DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Hearing Notice issued to Iris Mayorga (“Respondent”) by the Department of Health (“Department”) on April 24, 2013 and an Amended Administrative Hearing Notice issued by the Department on April 29, 2013 to the Respondent. 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, 2013 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 and Access to Public Records of 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, both notices were 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, 2013.² 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

The Respondent admitted to the North Smithfield Police Department that she stole jewelry from three (3) patients while working at a hospice facility and pawned the jewelry. See Department's Exhibit Three (3) (North Smithfield Police Department arrest report for Respondent). The Respondent was charged with larceny under \$1,500 and pled *nolo contendere* to that charge. See Department's Exhibit Four (4). The Respondent had been previously disciplined by the Department; though the Department vacated the Respondent's probation. See Department's Exhibits Five (5), Six (6), and Seven (7).

¹ See Department's Exhibits One (1) and Two (2) (initial notice and amended notice). The first class mail for the initial notice was returned to the Department as not deliverable and unable to forward. The first class mail and certified mail for the amended notice were returned as being unable to forward. *Id.* Donna Valletta, Nursing Assistant and Medication Board Administrator, testified that the address used for the notices were the Respondent's address on record with the Department.

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

Donna Valletta (“Valletta”), Administrator for the Nursing Assistant and Medication Aide Board (“Board”), testified on behalf of the Department. She testified that in September, 2012, she received a complaint about Respondent’s theft from patients at the long term facility at which she worked. She testified that in the pertinent police report, the Respondent admitted to taking the jewelry. She testified that the Board recommended revocation of Respondent’s License because of the theft.

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. Statutes

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:

(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 stole from three (3) different patients. She admitted the thefts to the police. She pled *nolo contendere* to the charges. Her behavior violates R.I. Gen. Laws § 23-17.9-8(5) because she stole from patients in her care which is obviously detrimental to the health, welfare, and safety of a patient.

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.* and Licensing Regulation.
2. An Administrative Hearing Notice was sent by the Department to the Respondent on or about April 24, 2013 and April 29, 2013 to the Respondent's address on record with the Department.
3. A hearing was scheduled for May 20, 2013 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(5) 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 ten (10) years.³

Entered this day 31st May, 2013.


Catherine R. Warren, Esquire
Hearing Officer

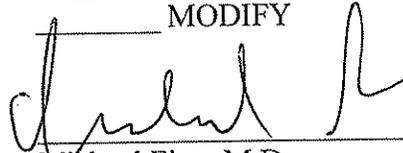
³ Needless to say, there is no guarantee that a license would issue after application.

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: 5/31/2013



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 6 day of June, 2013 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Iris Mayorga, 334 Carrington Avenue, Woonsocket, RI 02895 and by hand-delivery to Jennifer Sternick, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

