

**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.: C15-170

v.

**Jeffrey Leite,
Respondent.**

DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Notice of Hearing (“Notice”) issued to Jeffrey Leite (“Respondent”) by the Department of Health (“Department”) on October 26, 2015. 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 November 18, 2015 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,

¹ Arlene Hartwell, Board Manager for Certified Nursing Assistants, testified that the Notice was sent to the Respondent’s address on record with the Department and that under the regulation, licensees are required to update their address. She testified that the Respondent also provided an address by letter when he had requested a hearing on this matter. See Department’s Exhibits 11 and 12. She testified that the Notice was sent to both addresses with the Rhode Island address being the one on record with the Department and the Maine address being the one provided by Respondent. See Order to Show Cause and Department’s Exhibit Eight (8). She testified that the United States Postal Service left the Notice at the Rhode Island address and the Maine certified mail was unclaimed. See

a hearing was held before the undersigned on November 18, 2015.² 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 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 E. O’Donnell, Medical Legal Administrator, testified on behalf of the Department. He testified that he is a lead investigator for several boards for the Department including the CNA Board and prior to that he had been a police officer for twenty (20) years. He testified that the Department received information from the temporary staffing agency that the Respondent had been sent to a nursing home and while there had been perceived to be under the influence. See Department’s Exhibit Two (2). He testified that witnesses had observed the Respondent appearing to be intoxicated. See Department’s Exhibits Three (3) (statement from a LPN) and Four (4) (statement from a CNA). He testified that the police had been called and an ambulance which

Department’s Exhibit Nine (9) (USPS tracking sheet). The Notice was also sent by first class mail to both addresses which were not returned to the Department by the United States Post Office.

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

transported the Respondent to the hospital. See Department's Exhibits Five (5) (ambulance run report) and Six (6) (police report). He testified that the Respondent refused treatment at the hospital and did not return to work. The hospital report indicated that the Respondent informed staff that he took anti-anxiety medication, but had taken that day more than had been prescribed. See Department Exhibit's Seven (7).

Arlene Hartwell, CNA Board Manager, testified on behalf of the Board. She testified that the hospital report indicated that the Respondent had lost consciousness at the nursing home. She testified that the Board had recommended a three (3) year suspension of license. On questioning from the undersigned, she testified any licensee who has not practiced as a CNA for two (2) years under the regulation needs to complete licensing requirements prior to being relicensed. She testified that the Board would expect that a licensee whose license has been suspended to re-train when required by regulation.

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

(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

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 based on the exhibits and the testimony, the Respondent was unfit to work and to perform his professional duties and his behavior was unprofessional so that his License should be suspended for three (3) years.

The evidence entered at hearing was undisputed by the Respondent since he did not appear at hearing. Based on the testimony, the exhibits, and the pleadings, the evidence showed that the Respondent was intoxicated on duty and unable to perform his duties.

The Respondent's actions violated R.I. Gen. Laws § 23-17.9-8(1) (unfit by reason of other causes (intoxication)); (2) (inconsistent with the health and safety of a patient); (5) (detrimental to the health and safety of a patient in his care); and (6) (violates Section 6.1(f) of Licensing Regulation). The Respondent's actions also violated Section 6.1(a) (unfit by reason of other causes

(intoxication)); (b) (inconsistent with the health and safety of a patient); (e) (detrimental to the health and safety of a patient in his 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 certified nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.*

2. A Notice was sent by the Department to the Respondent on October 26, 2015 to the Respondent's most recent address on record with the Department.

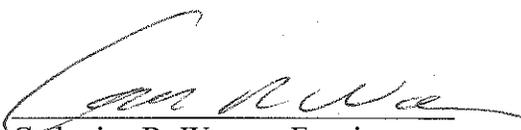
3. A hearing was scheduled for November 18, 2015 at which time the Respondent did not appear. As the Respondent had adequate notice of hearing, the undersigned held the hearing that day.

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 suspended and when and if, he applies to re-instate his License, he shall have to provide proof that he has addressed any pertinent medical issues.

Entered this day 3rd December, 2015.

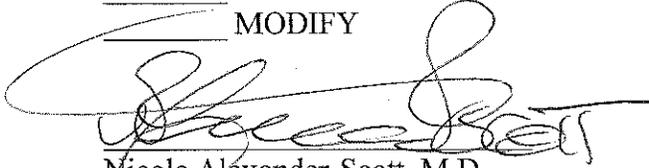

Catherine R. Warren, Esquire
Hearing Officer

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: 12/4/15


Nicole Alexander-Scott, 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 _____ day of December, 2015 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 Mr. Jeffrey Leite, 88 Preble Street, Portland, ME 04101 and 29 Hopeworth Avenue, Bristol, RI 02809 and by hand-delivery to Colleen McCarthy, Esquire, and Arlene Hartwell, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.