

STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HEALTH
PROFESSIONAL REGULATION

vs

A.H. FILE NO. PR 98-8

JOHN K. WILLIAMS, CNA

ORDER

This matter came on to be heard on the 11th day of June 1998 upon the determination of the Department of Health, Division of Professional Regulation (DOH) that John Williams (Williams), a Certified Nursing Assistant (CNA), had forfeited his registration as a CNA as the result of his conviction of the offense of simple assault. Williams had a Judgement of Conviction entered against him on 17 February 1998 and the DOH cited Section 23-17.8-10.1 as reason for forfeiture. Williams was offered an opportunity for hearing and availed himself of that opportunity. The allegations were presented to Williams by a letter dated 28 April 1998.

The DOH was represented by Mary Ellen McCabe, Esquire, and Williams was represented by Susan T. Perkins, Esquire. The hearing was conducted under the provisions of Chapters 23-17.8, 23-17.9 and 42-35 of the R.I.G.L.

Based upon the testimony and exhibits presented and the argument heard the following FINDINGS OF FACT have been determined;

1. Under the provisions of Chapters 23-17.9 of the R.I.G.L. the DOH has the authority and responsibility to regulate and certify nursing assistants in this state.
2. Williams is a certified nursing assistant in this state and has been employed at Briarcliffe Nursing Home.
3. Under the provisions of 23-17.8-10(a) "Any person who knowingly commits any act of abuse, as that term is defined by subsection 23-17.8-1(a)(1)(i), (ii), (iii), or (iv), mistreatment, or neglect against a patient or resident of a facility shall be fined not more than three thousand dollars (\$3,000) or imprisoned not more than three (3) years, or both."...
4. Under 23-17.8-1(a)(1) "Abuse" means:
 - (i) Any assault as defined in chapter 5 of title 11, including, but not limited to, hitting, kicking, pinching, slapping, or the pulling of hair, provided, however, unless such is required as an element of the offense charged, it shall not be necessary to prove that the patient or resident was injured thereby, or;
 - (ii) Any assault as defined in chapter 37 of title 11, or ;
 - (iii) Any offense under chapter 10 of title 11, or;
 - (iv) Any conduct that harms or is likely to physically harm the patient or resident except where the conduct is part of the care and treatment, and in furtherance of the health and safety of the patient or resident, or;...
5. Section 23-17.8-10+1 provides that "Any person who is convicted of a violation of this chapter, except the posting requirement, shall forfeit any professional license or certification. Provided, further, that nothing herein shall be construed to prevent the revocation or suspension of any professional license or certification whose plea or sentence shall not constitute a conviction under the laws of this state."
6. Under the provisions of 23-17.9-8;
"The DOH 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 hearing as provided by chapter 35 of title 42, as amended, in any of the following cases, as specified by 23-17.9-8 entitled Disciplinary proceedings-:

(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 willfully or repeatedly violated any of the provisions of this chapter or the rules enacted in accordance therewith; or willfully or repeatedly 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;

(3) Upon proof that the nursing assistant has been convicted in a court of competent jurisdiction, either within or without this state, of a felony;

(4) Otherwise violate any of the provisions of this chapter;

(5) Has engaged in conduct detrimental to the health, welfare and safety of patients/residents in his/her care; called (6) Such other causes as may be set forth in regulation promulgated under this chapter.

7. Williams was charged with sexual assault in the 2nd degree on the 16th day of November 1996 and pleaded nolo to an amended charge of simple assault/battery on the 17th day of February 1998 and was sentenced to a one year suspended sentence and probation for one year. (exhibit 1)

8. Williams is not contesting the fact that he was accused and convicted of assault while he was employed at Briarcliffe, (Trans P 9 L 12 to 15) but do contest the fact that under the provisions of 23-17.8-10.1 a "professional" license or certification shall be forfeited and Williams certification as a CNA does not fit into the "professional" requirement of the statute. His argument is that a CNA is a "paraprofessional" and therefore not covered by the forfeiture requirement of the statute. (Trans P 10 L 7 to P 14 L 8)

9. In Black's Law Dictionary, revised fourth edition, the word profession is defined as;

" A vocation, calling, occupation or employment involving labor, skill, education, special knowledge and compensation or profit, but the labor and skill involved is predominantly mental or intellectual, rather than physical or manual. Maryland Casualty Co. v. Crazy Water Co., Tex.Civ.App., 160 S.W.2d 102,104."

10. Williams was originally charged with seven counts, five of sexual assault, two of simple assault that were amended to two counts of sexual assault and then amended to two counts of simple assault, in which he pleaded nolo to and was placed probation. (exhibit 1 and trans P 21 L 21 to P 22 L 6)

CONCLUSIONS OF LAW

I

Under the provision of Chapter 23-17.9 of the RIGL the DOH has the authority and responsibility to register and regulate nursing assistants in this state, and Williams is a nursing assistant and is therefore subject to said 23-17.9 so this matter is properly before the DOH.

II

Under Section 23-17.9-8 the department is authorized to revoke, suspend, reprimand, censure, or deny an application if there is proof that the person;

(a) is unfit or incompetent by reason of negligence, habits or other causes;

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

(c)***

(d)***

(e) has engaged in conduct that is detrimental to the health, welfare and safety of patients/residents in his or her care;

and because Williams has been convicted of simple assault upon a patient, that is proof that he is in violation of (a), (b), and (e) of said section and is therefore subject to being sanctioned under chapter 23-17.9 and chapter 23-17.8 of the RIGL.

III

Subsection 23-17.8-1(a)(1) defines abuse as any assault ... including, but not limited to, hitting, kicking, pinching, slapping, or the pulling of hair, ... any conduct that harms or is likely to physically harm the patient or resident... and in this matter Williams was convicted of abuse under 23-17.8-01.1.

IV

The intent of subsection 23-17.8-10.1, which provides that "Any person who is convicted of a violation of this chapter, except the posting requirement, shall forfeit any professional license or certification..." and Williams has been convicted of a violation of this chapter and, therefore, his certification as a CNA is forfeited.

V

Williams contends that his certification does not qualify him as a professional under 23-17.8-10.1 and therefore no automatic forfeiture takes place, however, in Black's Law Dictionary, revised 4th edition, "profession" is defined as "A vocation, calling, occupation or employment involving labor, skill, education, special knowledge and compensation or profit..." and Williams has an occupation which involves a skill obtained through special training and is compensated for the work, therefore, he is determined to be a Certified Nurse Assistant professional in this matter.

OPINION

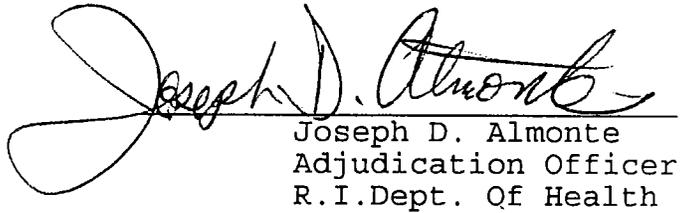
The ABUSE IN HEALTH CARE FACILITIES statute, chapter 23-17.8 of the RIGL is clear in its intent and meaning. Protect patients and or residents of health care facilities from any abuse, neglect or mistreatment. The violations even apply to verbal abuse which cause or is likely to cause emotional or psychological harm to the patient or resident and includes ridiculing, demeaning, making derogatory remarks, cursing or threatening. Williams claims that he is not covered by the provisions of 23-17.8-10.1 because he is not a professional and therefore does not need to surrender his certification. Unfortunately, he hasn't acted like a professional, but for purposes of the statute he is a professional and is subject to automatic forfeiture upon his conviction.

ORDERED

1. That the Certificate of Registration of John K. Williams as a Nursing Assistant is permanently forfeited.
2. That this Order is effective immediately.

YOU HAVE THIRTY DAYS IN WHICH TO APPEAL THIS ORDER, IF YOU SO DESIRE, TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND, HOWEVER, SAID APPEAL, BY AND OF ITSELF DOES NOT NEGATE THE AFFECT OF THIS ORDER

17 July 1998
date


Joseph D. Almonte
Adjudication Officer
R.I. Dept. Of Health

CERTIFICATION

I hereby certify that the within ORDER was sent by regular and certified mail to Susan Perkins, Esquire, C/O Moretti & Perlow, The Moretti Building, 1070 Reservoir Avenue, Cranston, RI 02910 this 17th day of July 1998.

Denise E. Dennis

CC Mary Ellen McCabe, Esquire
✓ Russell J. Spaight, Chief, Professional Regulation
Patricia A. Nolan, MD MPH, Director of Health