

**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. :
Leishla F. Delacruz a/k/a Leishla Ortiz, :
Respondent. :

DOH Case No.: C16-166

91 7108 2133 3939 5564 4546

DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Hearing Notice (“Notice”) issued to Leishla F. Delacruz (“Respondent”) by the Department of Health (“Department”) on October 13, 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 November 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 November 17, 2016.² Additionally, Section 12.9 of the Hearing

¹ See testimony below.

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

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 § 23-7.9-8 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, investigator, testified on behalf of the Department. He testified that he received a complaint from a nursing home about the Respondent who worked there as a CNA. He testified that the complaint was that the Respondent had filmed residents at the home and put the video on Snapchat. See Department’s Exhibits One (1) (complaint to the Department); Two (2) (nursing home’s investigation); Three (2) (Department’s investigation); and Four (4) (police report).

Sarah Ledger testified on behalf of the Department. She testified that she was friends on Snapchat with the Respondent. She testified that her friend, Jaqueline Bartlett (“Bartlett”), worked at the nursing home with the Respondent. She testified that she was on break from her job and saw a video that the Respondent has posted to Snapchat and when she viewed it, it looked like it was of residents at the nursing home. She testified that she called her friend Bartlett to tell her.

She testified that she and Bartlett met with Joyce Corsi ("Corsi"), Director of Nursing at the nursing home, to look at the video and she also made a statement to the police regarding the video.

Bartlett testified on behalf of the Department. She testified that after Ledger called her, she looked at the video and recognized the elderly man and the bathroom in the video as being at the nursing home. She testified that the elderly male patient who was shown naked in the video is a dementia patient and is over the age of 60.

Corsi testified on behalf of the Department. She testified that as well as being Director of Nursing, she is a registered nurse. She testified that Bartlett called her to tell her that her friend had seen the video and she met with Bartlett and Ledger the day after Ledger had seen the video. She testified that they made a film of the video in order to preserve it.³ She testified that both people in the video are residents with dementia at the nursing home who are over 60. She testified that the Respondent was trained as a CNA and the nursing home's policy is not to make recordings of the patients and not to put any residents on social media. She testified that she made a report to the police and made a statement to the police. She testified that on February 2, 2016, the day after she saw the video, the Respondent was terminated.

The video was shown at hearing. Ledger, Bartlett, and Corsi all watched the video and testified that was the video. See Department's Exhibit Eight (8) (video).⁴ The video is of two (2) older people. The woman is clothed, but the man is naked with a bra covering his genitals. Bartlett also testified that she recognized the Respondent's voice in the video.

Arlene Hartwell, CNA board manager, testified on behalf of the Department. She testified that the Notice was sent by first class and certified mail to the Respondent's most recent address on the record. She testified that both Notices were returned to the Department. She testified that

³ Videos on Snapshot only stay on the "app" for a short time period.

⁴ Exhibit Eight (8) is ordered sealed.

the Board recommended a revocation of Respondent's License and no reinstatement for at least five (5) years. See Department's Exhibits Five (5) (Notice); Six (6) (February 10, 2016 Department letter forwarding the nursing home complaint to her); and Seven (7) (email dated September 6, 2016 to Respondent from Department indicating that the Department had tried to contact her by telephone, first class mail, and certified mail).

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). 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 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 two (2) filmed patients in her care including one naked and posted them on social media for viewing and by those actions the Respondent violated R.I. Gen. Laws § 23-7.9-8. The Department sought revocation of License and a bar on the Respondent from re-applying for five (5) years.

Based on the pleadings and the undisputed evidence, the Respondent filmed and posted to social media a video of two (2) patients with dementia and both over age 60 with one naked except for a bra covering his genitals. Such actions by the Respondent violated the patients' privacy. The Respondent's actions violated R.I. Gen. Laws § 23-17.9-8(2) (inconsistent with the health and safety of patients); (5) (detrimental to the health and safety of patients 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 patients); (e) (detrimental to the health and safety of patients 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 October 13, 2016 to the Respondent's most recent address on record with the Department.

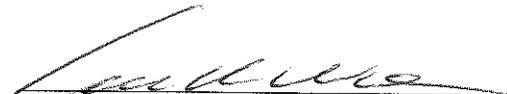
3. A hearing was scheduled for November 17, 2016 at which time the Respondent did not appear. As the Respondent had adequate notice of hearing, the undersigned held the hearing that day.

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 violated 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.⁵

Entered this day 6th December, 2016.

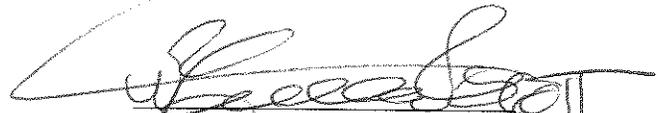

Catherine R. Warren, Esquire
Hearing Officer

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: 12/9/16


Nicole Alexander-Scott, M.D.
Director

⁵ 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 12th day of December, 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. Leishla Delacruz, 39 Nursery Avenue, Apt. 1R, Woonsocket, RI 02895 and by hand-delivery to Colleen McCarthy, Esquire, and Arlene Hartwell, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.