

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.: C15-665

v.

Lindel E. Belanger,
Respondent.

91 7199 9991 7032 8201 2937

DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Hearing Notice (“Notice”) issued to Lindel E. Belanger (“Respondent”) by the Department of Health (“Department”) on February 10 and March 16, 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 May 19, 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 May 19, 2016.² Additionally, Section 12.9 of the Hearing Regulation

¹ See testimony below.

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

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

Denise Souci, manager of Summer Villa, testified on behalf of the Department. She testified that she is a manager at Summer Villa, an assisted living facility in Rhode Island, and that she is in charge of hiring and firing staff. She testified that she hired the Respondent to be a medication aide at the facility. She testified that the Respondent submitted an application indicating that she was licensed as a medication aide and attached her resume indicating she was licensed as a medication aide. See Department's Exhibit Two (2) (Respondent's application and resume). She testified that the Respondent also submitted a Department on-line printout indicating that she had a medication aide license with the license number. She testified that the Respondent was interviewed on June 18, 2015 and started shortly after that. She testified that she and two (2) other licensed medication aides trained the Respondent and they found that the Respondent did not seem^{to} know simple medical abbreviations that would be used by medication aides. She testified that after talking with the other trainers, she tried to verify the Respondent's medication aide

license at the Department's website and did not find anything. She testified that she spoke with the nursing manager who also checked the Department website and found that the medication aide license number that the Respondent had given was the medication aide license number for another person. She testified that she spoke to the Respondent who said she was a medication aide. She testified that the Respondent had given her the Department on-line printout, rather than a copy of her licenses because the Respondent said she had renewed her licenses online and was waiting for the hard copies. She testified that when she asked the Respondent about medication aide classes, the Respondent indicated that she did not know about classes and thought the employer would be responsible for classes. She testified that the system used to be the employer would sign off for an individual to become a medication aide, but that is no longer required. She testified that she submitted a complaint to the Department regarding this issue. See Department's Exhibits One (1) and Two (2).

Robert O'Donnell, investigator, testified on behalf of the Department. He testified that he investigated the complaint received from Summer Villa and that the medication aide license number used by the Respondent is for a different person, who was licensed prior to 2015 as a medication aide. See Department's Exhibit Eight (8). He testified that the Respondent is licensed as a CNA and there is no evidence that she has ever been licensed as a medical technician. See Department's Exhibit Nine (9).

Arlene Hartwell, CNA board manager, testified on behalf of the Department. She testified that an initial notice of hearing was sent to the Respondent's most recent address on the record. She testified that this matter was initially scheduled for a hearing in March, 2016, but the Respondent contacted the Department and requested a continuance and the matter was rescheduled for May 19, 2016 so a second notice of hearing was forwarded to the Respondent's most recent

address on record with the Department. See Department's Exhibits Three (3) (first notice of hearing); Four (4) (United States Post Office tracking print-out for first notice showing delivery of notice); Five (5) (second notice of hearing); and Six (6) (United States Post Office tracking print-out for second notice showing delivery of notice). She testified that during the investigation of this complaint, the Respondent submitted a letter saying that she knew she was not a medication aide and she believed it would be the employer who would handle that process and this must be a clerical error on the part of the Department. See Department's Exhibit Seven (7) (letter). She testified that the application and resume given by the Respondent to Summer Villa indicated that the Respondent held a license as a "CMT," which stands for "Certified Medication Technician" which is another acronym for medication aide. She testified that the Board and Department recommended revocation of the Respondent's CNA License for five (5) years.

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 is a licensed as a CNA but in applying for a job, she claimed to be licensed as a medication aide when she is not and misrepresented her licensing status by representing that she was licensed as a medication aide using a number of an actually licensed person. The Department argued that the Respondent violated R.I. Gen. Laws § 23-7.9-8 and sought revocation of License and a bar on the Respondent from re-applying for five (5) years.

Based on the pleading and the undisputed evidence, the Respondent applied for a job as a medication aide and claimed to be licensed as a medication aide and presented false documents indicating that she was licensed as a medication aide when she is not. The Respondent's actions violated R.I. Gen. Laws § 23-17.9-8(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 actions also violated Section 6.1 (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.

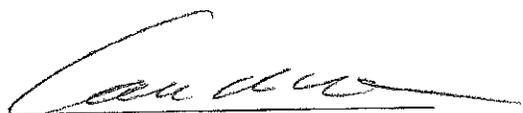
VI. FINDINGS OF FACT

1. The Respondent is licensed as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.*
2. A Notice was sent by the Department to Respondent on February 10 and March 16, 2016 to the Respondent's most recent address on record with the Department.
3. A hearing was scheduled for May 19, 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.³

Entered this day 3rd June, 2016.


Catherine R. Warren, Esquire
Hearing Officer

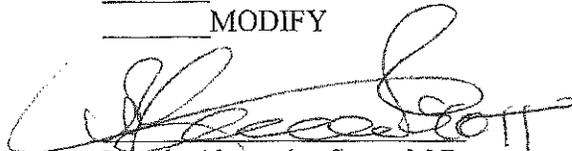
³ Naturally, there is no guarantee that a license would issue after application.

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: 6/14/16


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 §42-15-15, 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 15 day of June, 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. Lindel E. Belanger, 3 McTeers Court, West Warwick, RI 02893 and by hand-delivery to Colleen McCarthy, Esquire, and Arlene Hartwell, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.

