

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. C13-066

v.

Maria DaGrace Cardoso DiSarro
Lic. # NA27076,
Respondent.

91 7108 2133 3938 6854 8153

DECISION

I. INTRODUCTION

This matter arose pursuant to a notice of hearing ("Notice") issued to Maria DaGrace Cardoso DiSarro ("Respondent") by the Department of Health ("Department") on December 20, 2013. The Respondent holds a license ("License") as a certified nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* A hearing was scheduled for January 9, 2014 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*, 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

¹ See Department's Exhibit 1 (copy of Notice). Donna Valletta, Nursing Assistant and Medication Board Administrator, testified that the address used for the Notice was the Respondent's address on record with the Department. She testified that the Respondent did not pick up the certified mail from the U.S. Post Office but the first class Notice was not returned to the Department.

It would be the Respondent's burden to provide the Department with her new address. See *Castro v. Employees Retirement System of Rhode Island*, C.A. No. PC08-7573 (4/5/12). The due process

the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on January 9, 2014.² 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

Donna Valletta, Administrator of the Nursing Assistant Board ("Board"), testified on behalf of the Department. She testified that the Board received a complaint from one of Respondent's patients that he was a patient ("Patient") of the Respondent and she had stolen property from him. She testified that the Board recommended that the Respondent's License be suspended for three (3) years. She testified that stealing from a patient is not the standards of acceptable and prevailing practice for nursing assistants.

The Respondent pled *nolo contendere* to misdemeanor larceny under \$1,500 in relation to the theft of the Patient's property. See Department's Exhibit Two (2).

requirements of the United States and the Rhode Island constitutions are met by mailing notice by first class mail to the last known address. *Quinn Trust v. Ruiz*, 723 A.2d 1127 (R.I. 1999). The mailing of the notice to the Respondent constituted "actual notice." Receipt of notice is not required for actual notice. See *Castro*. See also *Koslow v. Rhode Island Department of Business Regulation*, 2002 WL 31749518.

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

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:

(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 6.1((f)) of 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 Programs* (“Regulation”) provides that a certified nursing assistant license may be revoked for engaging 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 evidence was that the Respondent stole property from her patient and pled *nolo contendere* to said theft. Her behavior violates R.I. Gen. Laws § 23-17.9-8(5) because she stole from her patient which is obviously detrimental to the health, welfare, and safety of a patient. Her behavior violates Section 6.1(f) of the Regulation because she failed to conform to the standards of acceptable and prevailing practice. She also violated R.I. Gen. Laws § 23-17.9-8(6) because she violated Section 6.1(f) by her theft.

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 of hearing was sent by the Department to the Respondent on December 20, 2013 to the Respondent's address on record with the Department.
3. A hearing was scheduled for January 9, 2014 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 (6) and Section 6.1(f) of the Regulation and pursuant to R.I. Gen. Laws § 23-17.9-8, the undersigned recommends that Respondent's License be revoked.

Entered this day 23rd January, 2014.

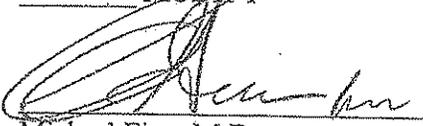

Catherine R. Warren, Esquire
Hearing Officer

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: 1/24/14


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 27 day of January, 2014 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Maria DaGrace Cardoso DiSarro, 22 RoseMary Street, Cranston, RI 02920 and by hand-delivery to Amy Coleman, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

ARLINE MARONI