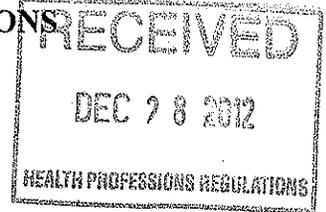


STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HEALTH
THREE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908



Department of Health
Health Services Regulation
Board of Nursing Assistants,

DOH Case No.: A.H. C12-292

v.

Melissa Nelligan Lic. # NA22755,
Respondent.

DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Hearing Notice (“Notice”) issued to Melissa Nelligan (“Respondent”) by the Department of Health (“Department”) on November 13, 2012. 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 December 5, 2012 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 and Access to Public Records of 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, notice was sent to the Respondent’s last known address by first class and certified mail.¹

¹ See Department’s Exhibits One (1), Two (2), Three (3) (Notices including the certified mail returned as not deliverable and first class mail returned as not deliverable as addressed). Donna Valletta, Nursing Assistant and Medication Board Administrator, testified that the address used for the Notice was the Respondent’s address on record. See below.

Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on December 5, 2012.² 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

Linda Martin ("Martin"), RN, Clinical Quality Assurance Executive Administrator for the Village at Waterman Lake ("Village") testified on behalf of the Department. She testified that she is employed by the Village and the Respondent was an employee of Home and Hospice ("Home") but the Respondent was working with residents at the Village. She testified that the Respondent had worked at the Village before and on the day in question (February 2, 2012) she, Martin, was notified that the Respondent had completed paperwork indicating that she provided care that she did not provide. Martin testified that the Village has video cameras in the facility including one in the day room where the residents were seated and where the Respondent should have

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

been working. She testified that she reviewed the video of the day room and that based on the video, the Respondent arrived between 9:00 and 10:00 a.m. and left by lunch time. She testified that the Respondent only provided care only for one (1) resident and that she should have provided care for other residents.

Part of the video was shown at hearing and in testifying Martin identified the Respondent on the video and testified that care was given to one (1) resident by the Respondent but that the Respondent did not give care to other residents. See Department's Exhibit Five (5) (DVD).

In addition, after this incident, the Village provided a statement to the Department reporting this incident and indicating that Martin reviewed the video and the Respondent did not provide care to a resident for whom the Respondent signed paperwork stating she had provided care. See Department's Exhibit Four (4) (Martin statement).

Donna Valletta, Administrator for the Nursing Assistant and Medication Aide Board ("Board"), testified on behalf of the Department. She testified that the Home also filed a report with the Department about the Respondent. See Department's Exhibit Six (6) (the Home's report stating that the Respondent did not provide care to a resident). She testified that the Home included its own investigation with its report to the Department. See Department's Exhibit Seven (7) (the Home's investigation report states that the Respondent indicated in her paperwork that she had provided skin care, toileting, peri-care, mouth care, and assistance with activities to said resident, but the video showed that the Respondent did not even speak to said resident). She testified that the Board forwarded said complaint to the Respondent on May 11, 2012 and received a response in

June of 2012. See Department Exhibit Eight (8) (Respondent's letter indicating it was a mix-up on her part).

Valletta testified that the Board is seeking a three (3) year suspension of the Respondent's License which would result in the Respondent having to retrain and retest to become licensed again because the result would be she would not have worked within a two (2) year period.

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. Statutes

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.

D. Whether the Respondent Violated R.I. Gen. Laws § 23-17.9-8

The testimony and exhibits at hearing demonstrate that the Respondent arrived approximately at 10:00 a.m. to the Village, gave care to one (1) resident but not others including one (1) resident for who she signed paperwork indicating she had given care.

The evidence also demonstrates that the Respondent left at 12:00 noon and did not return

for the rest of her shift and she was also not on the camera before 10:00 a.m. so she was not at the Village for her entire shift.

The Respondent had written to the Board that there was a mix-up that day and she was confused over her patients but she did not appear at hearing and did not give any testimony or explanation regarding her confusion or why she did not care for a patient she had claimed to care for in her paperwork and why she was not at the Village for her entire shift.

It is uncontested that the Respondent failed to provide care to her patient(s), signed paperwork indicating that she had provided care for a specific patient when she had not, and failed to complete her assigned shift without explanation or notice to management. Her behavior violates R.I. Gen. Laws § 23-17.9-8(5) as a failure to provide care to her patients during her shift and failing to provide care to a patient and signing paperwork indicating that she had when she had not is obviously detrimental to the health, welfare, and safety of a patient.

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.* and Licensing Regulation.

2. An Administrative Hearing Notice was sent by the Department to the Respondent on November 13, 2012 to the Respondent's address on record with the Department.

3. A hearing was scheduled for December 5, 2012 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 and pursuant to R.I. Gen. Laws § 23-17.9-8, the Respondent's License is suspended for three (3) years.

Entered this day 27th December, 2012.

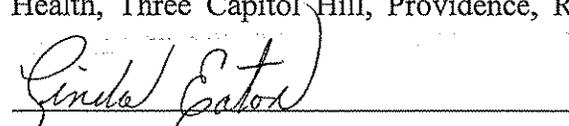

Catherine R. Warren, Esquire
Hearing Officer

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 28th day of December, 2012 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Melissa Nelligan, 311 Logee Street, Woonsocket, RI 02895 and by hand-delivery to Jennifer Sternick, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.


Linda Eaton

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Department of Administration
DIVISION OF LEGAL SERVICES
One Capitol Hill
Providence, RI 02908 - 5890

CONFIDENTIAL MAIL



7003 2260 0004 4569 8091

*Mailed
12-28-12*

Ms. Melissa Nelligan
311 Logee Street
Woonsocket, RI 02895

CONFIDENTIAL

DO NOT WRITE ON THIS LABEL
DO NOT REMOVE THIS LABEL FROM THE ENVELOPE TO THE RIGHT

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Ms. Melissa Nelligan
311 Logee Street
Woonsocket, RI 02895*

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by: (Printed Name)

Agent
 Addressee

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail

Registered

Insured Mail

Express Mail

Return Receipt for Merchandise

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number

(Transfer from service label)

7003 2260 0004 4569 8091

PS Form 3811, February 2004

Domestic Return Receipt

(02908-02-11-540)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Department of Administration
DIVISION OF LEGAL SERVICES
One Capitol Hill
Providence, RI 02908 - 5890

CONFIDENTIAL

Ms. Melissa Nelligan
311 Logee Street
Woonsocket, RI 02895

M. Nelligan
12-28-12