

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,	:	Nursing Assistant
	:	
v.	:	
	:	
Monique Jillson,	:	
Respondent.	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to a notice of hearing (“Notice”) issued to Monique Jillson (“Respondent”) by the Department of Health (“Department”) on February 18, 2014. 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 March 4, 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* (“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 sent to the Respondent’s last known address by first class and certified mail.¹ Since the Respondent was adequately noticed of hearing, a hearing

¹ See Department’s Exhibits C and D (two (2) notices of hearing were sent on the same day of February 18, 2014 and both were by certified mail and first class mail). Donna Valletta, Nursing Assistant and Medication Board Administrator, testified that the address used for said notices was the Respondent’s

was held before the undersigned on March 4, 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 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

Joanne Dursin ("Dursin") testified on behalf of the Department. She testified that she is a Registered Nurse and a Nurse Manager at South County Hospital. She testified that she has been there since 2002 and she has overseen and managed CNA's since 2009. She testified that the Respondent was a CNA there and in June of 2012, it was reported that the Respondent had hung a continuous bladder irrigation bag which is a three-way foley catheter for a patient which is not a duty allowed to be performed by a CNA. She testified that she asked the Respondent if she had hung the bag for a patient and the

address on record with the Department and that none of the notices were returned by the United States Postal Office to the Department.

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

Respondent admitted she had. She testified that the Respondent was given a written corrective action plan. See Department's Exhibit A (June 8, 2012 corrective action form).

Dursin testified that a blood sugar test might be ordered by a doctor or physician's assistant and if the order is unclear about how frequently the test should be given, the order should be clarified with the person who wrote the order. She testified that in June of 2012, she discovered that Respondent had entered the frequency for a blood sugar test ordered for a patient rather than clarifying the frequency with the person who made the order for said test. She testified that the Respondent was terminated from employment. See Department's Exhibit B (June 15, 2012 corrective action form).

Donna Valletta, Administrator of the Nursing Assistants Board, testified on the Department's behalf. She testified that Appendix One (1) and Two (2) of the Licensing Regulation lists the duties that allowed and not allowed to be performed by a CNA and the Respondent performed duties beyond the scope of her License. She testified that since the Respondent performed duties outside her license as a CNA, the Board recommended that her License be revoked 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 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:

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

The Department argued that the Respondent's actions of changing the irrigation bag and changing an order violated R.I. Gen. Laws 27-17.9-8(2), (5), and (6) and Sections 6.1(b), (d), and (e) of the Licensing Regulation.

The evidence shows that the Respondent changed a three-way foley catheter continuous bladder irrigation bag for a patient and that is not a duty of a CNA as set forth in Appendix One (1) and Two (2) of the Licensing Regulation.

The Respondent's action of changing three-way foley catheter continuous bladder irrigation bag for a patient 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 action 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.

The evidence shows that the Respondent changed a blood sugar test order and that is not a duty of a CNA as set forth in Appendix One (1) and Two (2) of the Licensing Regulation.

The Respondent's action of changing an order issued for a blood sugar test for a patient 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 action 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 of hearing was sent by the Department to the Respondent on February 18, 2014 to the Respondent's address on record with the Department.

3. A hearing was scheduled for March 4, 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(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.

Entered this day 18th March, 2014.

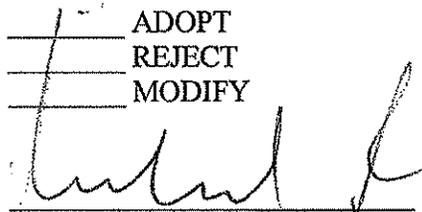

Catherine R. Warren, Esquire
Hearing Officer

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:

Dated: 3/19/14

ADOPT
 REJECT
 MODIFY


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 20 day of March, 2014 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Monique Jillson, 182 Log Bridge Road, Coventry, RI 02816 and by hand-delivery to Amy Coleman, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

ARLINE MARONI