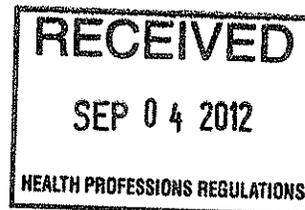


STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HEALTH
THREE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908



Department of Health
Health Services Regulation
Board of Nursing Assistants,

DOH Case No.: A.H. C12-255

v.

Ralph Germani, NA42507,
Respondent.

DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Hearing Notice issued to Ralph Germani ("Respondent") by the Department of Health ("Department") on June 8, 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 full hearing on this matter was held before the undersigned¹ on July 26, 2012. The Department was represented by counsel and the Respondent was *pro se*. The parties 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 *Rules and Regulations of the Rhode Island Department of Health Regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health.*

¹ Pursuant to a delegation of authority by the Director of the Department of Health.

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

Francine Murphy Brillon ("Brillon") testified on behalf of the Department. She testified that her father (Patient One) lives on a street ("Street") in Pawtucket and in the Spring of 2011, she hired Visiting Angels to provide a nursing assistant for her father. She testified that on March 8, 2012, there was a new caregiver, the Respondent, so she went to her father's in order to meet him.² She testified that she was there for an hour and a half and during that time the Respondent was not there. She testified that her father said the Respondent had gone to see his sister. She testified that a nurse showed up about a half hour after she did and she talked to the nurse and when she (Brillon) left, the Respondent had not appeared or telephoned.

Evelyn Ann Gillis ("Gillis") testified on behalf of the Department. She testified that she uses Visiting Angels for nursing assistants and the Respondent came to her home on September 20, 2011. She testified that the Respondent acted very unprofessionally. She testified that he sat on her couch, kept moving to sit closer to her, told her personal information about being single and apparently available and that he owned a lot of property. She testified it was hard to explain the Respondent's actions without sounding crass. She testified that she never had any issues with other nursing assistants including male nursing assistants. She testified that after he left, she called Mrs. McCaffrey at the agency and said she did not want the Respondent to return.

² Her testimony was that it was the morning but other testimony and the shift exhibit (Department's Exhibit Four (4)) shows that the relevant shift and activities were in during the afternoon.

On cross-examination, Gillis testified she did not notify the police of the Respondent's actions because there were no overt moves. She testified that she is not sure why she did not call the agency while he was there but she did not want him to know she was afraid of him and was trying to play it cool but she called the agency after he left.

Janice Renzi ("Renzi") testified on behalf of the Department. She testified that she has fibromyalgia so has mobility issues and has a home health care plan. She testified that the Respondent came the weekend of January 20, 2012 to assist her. She testified he was a fill-in. She testified that he spoke about his wife, that his goal was to sell the house, and move to North Carolina. She testified that the Respondent followed her around and tried to watch her undress. She testified that he kept talking about going to North Carolina and was very pesky and pushy. She testified that she needed him to drive her for errands but he kept saying strange things such as that her perfume was driving him crazy. She testified that she could not call the agency on Sunday after he left but she called on Monday. She also testified that he bragged about looking people up on the internet and after the weekend he was there, she received ghost calls (when the caller does not speak) and hang-up calls on her land line. She testified that she called the telephone number of the incoming calls and reached Mrs. Germani and she heard the Respondent in the background.

On cross-examination, Renzi testified that she did not ask him to leave that weekend because she needed help such as picking up her prescriptions and she did not call the police because the police need overt marks but she called the agency on Monday to let them know and she thought that was the appropriate way to handle the situation.

She testified that she talked to the Respondent during the weekend and would change the subject and turn the conversation to keep him occupied.

Robert Nordine ("Nordine")³ testified on behalf of the Department. He testified that in January, February, and March 2012, he used Visiting Angels and the Respondent came to his house several times. He testified that the Respondent shared too much of his personal information such as having fist fights with his sons that caused the police to be called. He testified that the Respondent would smoke inside all the time and leave cigarette butts everywhere and buy his lunch at a restaurant across the street and come back at eat it in his apartment. He testified that no other nursing assistants acted this way and he, himself, had been a nursing assistant and would not have acted that way. He testified that the Respondent told him about a client who lived on the Street and that he and the client would sit around and drink. He testified that Respondent also told him about another client.⁴ He testified that the Respondent did two (2) hour visits over three (3) months. He testified that the Respondent sold him two (2) 40 ounce bottles of beer which the Respondent told him he bought for a girlfriend. He testified that he decided he did not want the Respondent back and spoke to the agency.

On cross-examination, Nordine testified that he complained to the Visiting Angels about the Respondent and that he was not up to him to terminate him and for the most part the Respondent did his job. On redirect, he testified the Respondent did not do the job of a nursing assistant very well.

³ Both Renzi and Nordine testified by telephone because of mobility issues. The Respondent did not object to telephonic testimony but then expressed concern that the witnesses would not be who they stated to be. However, at hearing, the Respondent did not object and clearly knew both witnesses.

⁴ Nordine testified that Respondent said he saw the second client on a Saturday. The Respondent saw Renzi on a Saturday. Renzi testified that she needed massages for her mobility issues. Nordine testified that the Respondent told him he massaged the Saturday client. Nordine's testimony about the second client corresponded to Renzi.

Nadine McCaffrey ("McCaffrey") testified on behalf of the Department. She testified that she is the General Manager of Visiting Angels which provides non-medical at-home care to those who need assistance with daily living. She testified that the Respondent started with Visiting Angels on July 18, 2011 and was terminated in March, 2012. She testified that on March 8, 2012, Donna Clark ("Clark"), a nurse, made an unannounced visit to Patient One (1) and the Respondent was not there. She testified that the nursing assistants use a telephone, usually the client's, to log on with an ID and then log out by telephone when they leave. She testified that the Respondent was scheduled for a 1:30 to 4:30 p.m. shift for Patient One and logged in a few minutes before 1:30. She testified that Patient One's care plan includes errands but the stores are close by and usually the CNA is back in 30 minutes if they an errand.

McCaffrey testified that Clark called at 2:30 p.m. to say the Respondent was not there and he did not show up until a few minutes before the shift ended essentially to clock-out. She testified Clark told her that she left a message with the Respondent to call the office and the Respondent called her seven (7) or eight (8) times and then Mrs. Germani called her and wanted to know where the Respondent was and was he at the bar so she (McCaffrey) said he left to see his sister and Mrs. Germani said that he did not have a sister. She testified that when she met with Respondent the next day, he claimed he left the house to get laundry detergent and gave her a "sworn statement" (Department's Exhibit Three (3)) that she found irrelevant as it accused Patient One of drinking. She testified that based on all the incidents, the Respondent was discharged. She testified that after the two (2) women clients complained, he had only been placed with men. She testified that the agency filed a report on him with the Department. See

Department's Exhibit Five (5). She testified that Nordine had called several times with questions and eventually wanted to talk in person about the Respondent and they were to meet on March 9 but when she told him that the Respondent had been terminated, Nordine said there was no longer a need for a meeting.

On cross-examination, McCaffrey testified that the Respondent worked for the agency from July 11, 2011 to March, 2012 and she verbally discussed with him the two (2) female clients and the agency uses progressive discipline. She testified that she did not call the police in March when he was fired because there is no need to and in 20 years in management, she has never had to call the police.

Clark testified on behalf of the Department. She testified she is the Nurse Administrator of Visiting Angels and makes supervisory visits to ensure the CNA's perform their jobs and that on March 8, 2012 she made a visit to a Patient One where the Respondent had a 1:30 to 4:30 p.m. shift. She testified that she arrived about 2:45 p.m. and the daughter had been there a half an hour and about 4:15 p.m. the Respondent returned and she found him in the kitchen and he was dressed in dress shoes and pants and was not dressed like a CNA in scrubs. She testified that she asked him where he was and he said he had gotten milk and she said there was no milk in the refrigerator so he said had gotten laundry detergent which was near the washing machine but then he said he had to see his sister in the hospital. She testified that she wrote a statement about the incident since he lied and showed poor judgment. See Department's Six (6) (statement).

On cross-examination, Clark testified that Patient One (1) was not the type of patient to complain and prior to March 8, 2012 she had not popped in on him so she had not known there was a problem with the Respondent before that date and after she did

know, the Respondent was removed. On redirect, Clark testified that the Respondent showed no remorse and he never showed her a receipt for the laundry detergent or the receipt of change that the patient should have signed.

Donna Valletta, Administrator of the Nursing Assistant and Medication Aide Advisory Board, testified on behalf of the Department. She testified that the Board investigated the Respondent and he responded to the Board. See Department's Exhibits Seven (7) and Eight (8). She testified that he was first licensed on April 22, 2011 and the Board recommends revocation of license.

The Respondent testified on behalf on his behalf. He testified that if Renzi was scared of him, why did she let him in his vehicle? He testified that he brought a claim to DLT about the Visiting Angels not paying him for Patient One's March 8th shift and that DLT awarded him the wages. See Respondent's Exhibit Two (2). He testified that Visiting Angels filed its complaint with the Department because he won the unpaid wages claim. He testified that the allegations are ridiculous and there are no tape recordings or video of anything that happened. He testified why was he not terminated earlier by the agency if he had a problem. He testified that when he was hired by the Visiting Angels, he was told he would receive \$10 an hour but his first paycheck was for \$9.50 an hour so he was mad about that and now the agency is out for revenge. He testified that he took a ten (10) week class to train as a CNA and did very well and has had other happy clients including a patient for 73 days straight without issue. He testified that DLT found he was wrongly terminated by the Visiting Angels. See Respondent's Exhibit One (1) (unemployment decision). He testified that he was allowed to go on

errands for Patient One so there was no abandonment of said patient by him. He testified that the agency set him up by sending him as a fill-in.

On cross examination, Respondent testified that after he got the laundry detergent for Patient One, he left the receipt on the counter and gave the change the patient. He testified that the errand took an hour and 50 minutes because his car broke down and he did not have a cell phone to call and he did not tell Clark about milk or a sister and this is a conspiracy. He testified that he had no idea why the witnesses would testify the way they did but one of them could have been in cahoots with McCaffrey. He testified that Nordine probably found out about his other clients by looking in his appointment book.

Tammi Germani testified on the Respondent's behalf. She testified that they have been married for almost 30 years and she has had no problems with him. On cross-examination, she testified she has never been at any of his job sites and is not familiar with his work.

V. DISCUSSION

A. **Arguments**

The Respondent argued McCaffrey lied about his pay rate and he was wrongfully terminated and that he had eleven (11) months with the agency and if he was not a good employee, why was he there so long? He argued that he was responsible and worked hard for his License and the complaints are a set up by the agency and the agency only filed the complaint because DLT fined the agency.

The Department argued that the Respondent was not truthful and failed to take any responsibility for his actions. It argued that there were four (4) different complaints about four (4) different clients and it is alarming that within one (1) year of receiving his

License, there were so many complaints about Respondent. The Department argued that two (2) clients spoke to the agency and did not want him back for which he received a verbal warning from the agency. The Department argued that the different witnesses' testimony was similar in regards to Respondent's acts as a nursing assistant. The Department argued that the behavior displayed by Respondent is not the type one wants in a nursing assistant who cares for vulnerable clients.

B. 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.*

C. 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).

D. 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:

(1) Upon proof that the nursing assistant is unfit or incompetent by reason of negligence, habits, or other causes;

(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.

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

Gillis’ testimony was credible regarding the Respondent’s inappropriate behavior and sharing of personal information. She explained that she just wanted the Respondent out of her home and there was no reason to call the police. She most likely felt it would be safer to call the agency after he left rather than while he was still there. Renzi’s

testimony was also credible regarding Respondent's inappropriate behavior and sharing of information. She needed his services to obtain her medication and she engaged him in conversation until the weekend was over and then called the agency.

Like Gillis and Renzi, Nordine testified to the Respondent's over familiarity when speaking with him. All three (3) witnesses testified to similar types of over-sharing of personal information. Nordine also testified that Respondent spoke to him about his other clients including Patient One⁵ and Renzi. The Respondent's explanation is that Nordine looked in his appointment book. However, Nordine's testimony about the other clients included information that would not be in an appointment book. For example, the Respondent told Nordine that he drank with Patient One which matches the Respondent's "statement" to Visiting Angels wherein he claimed Patient One drank all day. Presumably, that type of "information" would not be in an appointment book.

The Respondent did not offer an explanation of his actions with any of these three (3) witnesses. Instead, he argued that there were no recordings or video to show that he acted the way the witnesses testified. While the Respondent appeared to believe that a recording or video was needed to prove the Department's allegations, there is no requirement that a recording or video is needed to show he acted inappropriately. Instead, three (3) credible witnesses testified to his inappropriate behavior including being a peeping Tom, over-sharing personal information about himself to his patients, making hang-up and ghost telephone calls to a client, expressing inappropriate interest in his clients to his clients, and discussing other clients with clients. He failed to rebut any of these three (3) witnesses testimony with any credible testimony of his own regarding his interactions with them.

⁵ He identified Patient One by the street he lived on.

In terms of Patient One, the Respondent testified that his car broke down which is why it took so long for him to buy the laundry detergent. He denied saying he had gone to see his sister or for milk. Brillon testified that her father said that Respondent told him that he was at his sister's. Clark testified that Respondent returned dressed in dress shoes and pants. Clark testified that the Respondent did not provide a receipt for the laundry detergent (as required by the agency) and did not provide her with a receipt for change for the purchase (as required by the agency). Clark testified that the Respondent gave her three (3) explanations about her absence: buying milk or laundry detergent or visiting his sister (and he does not have a sister). Clark testified there was no milk and when she asked where the laundry detergent was the Respondent changed his explanation.

If the Respondent had completed the errand, he would have returned with laundry detergent and a receipt and would not have given three (3) different reasons for his long absence. Instead, he went somewhere "nice" in dress pants and shoes after clocking in and telling Patient One that he was seeing his sister and changing his story when he realized that Clark was there on an unannounced visit. The Respondent's explanation about his "errand" was not credible.

The Respondent interpreted the DLT decision (See Respondent's Exhibit One (1)) that he should receive unemployment as meaning the Visiting Angels wrongfully terminated him and thus there was no basis for the Department's action against him. The DLT decision only discusses the March 8, 2012 incidence and not the other three (3) clients for whom the Respondent also worked and who testified at the hearing. The decision only relates to the Rhode Island Employment Security Act, R.I. Gen. Laws § 28-44-18, and whether the Respondent's discharge falls under the statute. The decision does

not relate to the Respondent's statutory duties on March 8, 2012 as a nursing assistant. Interestingly, Patient One's daughter did not testify at the DLT hearing, but did testify at the Department hearing. The issue at this hearing relates to the Respondent's actions as a nursing assistant. The fact DLT found he should receive unemployment compensation does not address his actions to the other three (3) clients and does not address his actions as a nursing assistant to Patient One. The DLT decision is irrelevant to the licensing proceedings against the Respondent.

The Respondent argued that the Visiting Angels only filed a complaint with the Department about him because he filed a wage claim against the agency for the three (3) hours at Patient One's for which he had not been paid.⁶ Even if the agency filed the complaint because of the Respondent's wage claim, the motivations of someone filing a complaint are irrelevant since the filing of a complaint does not prove that any of the alleged conduct occurred. Instead, the Department investigated the complaint. See Department's Exhibit Seven (7). On the basis of the investigation, the Department brought an action against the Respondent and numerous witnesses appeared at hearing to testify about the Respondent. The reason for filing a complaint has no bearing on whether the Respondent did or did not engage in the alleged conduct. The Department relied on the evidence at hearing to demonstrate the Respondent's violations of his statutory duties as a nursing assistant. The Respondent's argument that Visiting Angels was engaged in revenge by filing a complaint, even if proved, is irrelevant.

The Respondent also argued that there was a conspiracy against him by the Visiting Angels and somehow all the witnesses were in on this conspiracy. The basis for the conspiracy was either the pay issue or because he filed a complaint with DLT. His

⁶ The DLT letter to Visiting Angels is dated April 4, 2012 and the complaint was filed on April 10, 2012.

speculation does not demonstrate that McCaffrey engaged in an elaborate conspiracy to get him in trouble. Indeed, the Respondent argued it was a “set-up” by the agency but also argued the agency only filed the complaint because of the DLT wage issue. If the agency engaged in a set-up (over the pay issue or something else), it would have filed the complaint against the Respondent regardless of the DLT wage finding. The Respondent’s conspiracy theories have no basis and no logic.

The Respondent also argued that if he was so bad, why had the agency not terminated him sooner. However, the issue of the agency’s disciplinary process is irrelevant to a determination on whether the Respondent violated his statutory licensing duties as a nursing assistant. Nonetheless, McCaffrey testified that she spoke to the Respondent after the women complained and then assigned him only to men. He was terminated by Visiting Angels within eight (8) months of hiring which is not a long term employment situation. The Respondent’s arguments about the agency’s disciplinary actions are irrelevant to the issue of his statutory licensing obligations.

F. Sanctions

The Respondent argued that he had been licensed for a long time without an issue. However, the Respondent was licensed in April, 2011 and hired in July, 2011 by Visiting Angels and by September, 2011, he had already acted inappropriately with Gillis. The fact is that shortly after being licensed, the Respondent engaged in inappropriate behavior with four (4) clients within six (6) months.⁷ Such a history does not demonstrate a history of good behavior by the Respondent prior to any complaints.

⁷ September, 2011 to March, 2012 is six (6) months. The Respondent worked at the agency for eight (8) months. The four (4) complaints related to incidents all within a span of six (6) months.

The Respondent actions as detailed above with the four (4) patients in a period of six (6) months include being a peeping Tom, over-sharing personal information about himself with his clients, expressing inappropriate interest in his clients to them, discussing other patients with a patient, pretending to go on an errand for almost two (2) hours and leaving his patient alone, and making hang-up and ghost telephone calls to a client. Such behavior by a nursing assistant is not appropriate to the care of patients. A nursing assistant cannot discuss other patients with patients. A nursing assistant should not be expressing personal and inappropriate interest in clients. A nursing assistant should not make hang-up and ghost telephone calls to a client. A nursing assistant should not clock-in for work and then leave for almost the entire shift for reasons that have nothing to do with the care of a patient. A nursing assistant should act professionally with a client and not be over-familiar in discussing personal details (or alleged personal details) with clients. A nursing assistant is to care for his or her patients. The Respondent's failure to care for his patients was detrimental to their health and safety. His actions demonstrate an unfitness and incompetence as a nursing assistant by reason of negligence and habits.

The Respondent's conduct violates R.I. Gen. Laws § 23-17.9-8(1) (unfit and incompetent by reason of negligence, habits, and other causes), R.I. Gen. Laws § 23-17.9-8(2) (act in manner inconsistent with health and safety of patients at home), and R.I. Gen. Laws § 23-17.9-8(5) ((conduct detrimental to the health, welfare, safety of patients). The Respondent's repeated inappropriate actions with his patients caused him to violate said statutes numerous times.

The Respondent failed to demonstrate any understanding of why the Department brought this action against him. He failed to demonstrate that he understood why his behavior was inappropriate. Instead, he denied the allegations and accused the agency and witnesses of being in a conspiracy and argued that there was no proof of his behavior since there were no recordings or video of his behavior. He offered no explanation of his behavior or why he should change his behavior or how he could change his behavior. The Respondent cared for people who need assistance within their homes. He failed to grasp the basic nature of this important responsibility since he engaged in numerous statutory violations with four (4) different patients within six (6) months.

R.I. Gen. Laws § 23-17.9-8 provides that the Department may revoke a CNA license for violations of statute. The Respondent's numerous violations in such short period justify the revocation of his License.

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. An Administrative Hearing Notice was sent by the Department to the Respondent on June 8, 2012.
3. A full hearing was held on July 26, 2012. The parties rested on the record.
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 (1), (2), and (5) numerous times and pursuant to R.I. Gen. Laws § 23-17.9-8, the Respondent's License is revoked.

Entered this day 4th September, 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 4th day of September, 2012 that a copy of the within Decision and Notice of Appellate Rights was sent by certified mail, receipt requested and first class mail to Mr. Ralph Germani, 17 Third Street, North Providence, RI 02911 and by hand-delivery to Jennifer Sternick, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

