

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. C13-0565

v.

Shakeila Harley,  
Respondent.

**DECISION**

**I. INTRODUCTION**

This matter arose pursuant to an Administrative Hearing Notice ("Notice") issued to Shakeila Harley ("Respondent") by the Department of Health ("Department") on May 1, 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 May 29, 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 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, the Notice was sent to the Respondent's last known address by first class and certified mail.<sup>1</sup> Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on

<sup>1</sup> See Department's Exhibit Seven (7) (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 and that neither the first class nor certified mail were returned as undeliverable.

May 1, 2014.<sup>2</sup> 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/or the Licensing Regulation and if so, what is the appropriate sanction.

## IV. TESTIMONY AND MATERIAL FACTS

Donna Valletta, the Board Administrator for Nursing Assistants, testified on the Department's behalf. She testified to the circumstances and information received during the investigation of the Respondent that the Board conducted and that on that basis, the Board recommended revocation of the Respondent's License for five (5) years.

The evidence at hearing demonstrated that the Respondent had used another person's credit card number to pay for two (2) payments that the Respondent made to the Department for her CNA License and she also used that person's credit number to pay her own National Grid bill. See Department's Exhibits One (1) and Four (4) (complaints made by the victim to the Department about Respondent's unauthorized use of credit card number); Two (2) (print out of the victim's credit card statement showing the unauthorized charges for Respondent's Department payments and National Grid bill); and Three (3) (screen shot of Respondent's June 27, 2013 payments to Department using victim's credit card number). The evidence also shows that when the police investigated the Respondent's unauthorized charges on the victim's credit

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<sup>2</sup> Pursuant to a delegation of authority by the Director of the Department of Health.

card that she tried to alter her own bank statements to make it look like she had made the payments to the Department and National Grid. See Department's Exhibit Six (6) (copy of complete police investigation). The evidence further showed that the Respondent was arrested in Connecticut for illegal use of credit card, identity theft in the third degree, and interfering with an officer, non-assaultive. See Department's Exhibit Five (5). See also Department's Exhibit Seven (7) (Notice).

## 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 and Licensing Regulation

R.I. Gen Laws § 23-17.9-8 provides in part 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;

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Section 6 of the License Regulation provides in part 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:

a) Upon proof that such nursing assistant and/or mediation aide is unfit or incompetent by reason of negligence, habits or other causes

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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 and/or the Licensing Regulation**

Based on the testimony and evidence at hearing and the pleadings, the Respondent used the victim's credit card number without his permission to make two (2) payments to the Department and to pay her National Grid bill and altered her own bank record to try to conceal her actions.

The Respondent's actions of stealing a credit card number and trying to cover up her theft violated R.I. Gen. Laws § 23-17.9-8(1) (unfit by reasons of habits and other reasons (dishonesty/theft)). The Respondent's actions also violated Section 6.1(a) (unfit by reasons of habits and other reasons (dishonesty/theft)) and (f) (fails to conform to the standards of acceptable and prevailing practice) of the Licensing Regulation.

**VI. FINDINGS OF FACT**

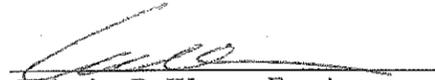
1. The Respondent is licensed as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* and Licensing Regulation.
2. A Notice was sent by the Department to the Respondent on May 1, 2014 to the Respondent's address on record with the Department.
3. A hearing was scheduled for May 29, 2014 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(1) and sections 6.1(a) 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.<sup>3</sup>

Entered this day 11<sup>th</sup> June, 2014.

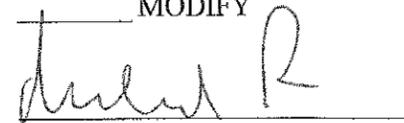
  
Catherine R. Warren, Esquire  
Hearing Officer

**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: June 19 2014

  
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 23 day of June, 2014 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Shakeila Harley, 145 Tower Street, Apt. 4, Westerly, RI 02891 and by hand-delivery to Amy Coleman, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

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<sup>3</sup> Needless to say, there is no guarantee that a license would issue after application.