

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

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Department of Health  
Health Services Regulation  
Board of Nursing Assistants,

DOH Case No.: C14-0048

91 7199 9991 7032 8093 6235

v.

Tammy King,  
Respondent.

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DECISION

I. INTRODUCTION

This matter arose pursuant to a notice of hearing ("Notice") issued to Tammy King ("Respondent") by the Department of Health ("Department") on September 12, 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 October 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* ("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

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<sup>1</sup> See Department's Exhibit Five (5) (notice sent by first class and certified mail). Donna Valletta, Nursing Assistant and Medication Board Administrator, testified that the address used for said Notice was the Respondent's address on record with the Department.

before the undersigned on October 29, 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 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

Sergeant Justin Hoffman, Narragansett Police Department, testified on behalf of the Department. He testified that in December 2013, he was a patrol officer and his duties included responding to emergency calls and investigating larcenies. He testified that he received a complaint from "JR" who was disabled and relied on CNA's to run errands. He testified that JR told him that she had just switched CNA's and her new CNA was Respondent who had worked there for four (4) days and now her (JR) debit card was missing. He testified that he obtained copies from JR of her bank statement and the three (3) fraudulent transactions. He testified that he contacted JR's bank and was able to obtain surveillance video of those withdrawals. He testified that JR identified the Respondent as the woman in surveillance video. See Department's

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

Exhibits Two (2) (Respondent's driver's license photograph) and Three (3) (photographs from video of the Respondent making the withdrawals). He testified that on December 5, 2013, the Respondent charged \$55.66 for gas on the debit card, withdrew \$602.50 from an ATM, tried twice to withdraw \$600 more but the card was declined, and the card was assessed a \$2.50 transaction fee. He testified that JR told him that Respondent had access to her debit card and had seen her use her PIN with the card when they were at the grocery store and that the Respondent did not have permission to use her card. See Department's Exhibits Two (2) (Narragansett Police report) and Four (4) (Providence Police report indicating Respondent admitted to thefts). He testified that the Respondent was charged by Providence with felonies.

Donna Valletta, Administrator of the Nursing Assistants Board, testified on the Department's behalf. She testified that the Respondent's theft from a patient constituted unprofessional conduct and 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:

(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

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(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:

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

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

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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 stealing from a patient in her care violated R.I. Gen. Laws 27-17.9-8 and Sections 6.1 of the Licensing Regulation.

The undisputed evidence shows that the Respondent stole her patient's ATM card and then used the ATM card to steal money from a patient in her care. The Respondent's action of stealing money from a patient in her care violated R.I. Gen. Laws § 23-17.9-8(1) (unfit by reason of habits (theft)); (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(a) (unfit by reason of habits

(theft)); (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 September 12, 2014 to the Respondent's address on record with the Department.
3. A hearing was scheduled for October 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), (2), (5), and (6) and violated Sections 6.1(a), (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 and the Respondent cannot re-apply for licensing for five (5) years.<sup>3</sup>

Entered this day 12<sup>th</sup> November, 2014.

  
Catherine R. Warren, Esquire  
Hearing Officer

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

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: 2/10/15

  
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 2/17/15 day of November, 2014 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Tammy King, 169 Duke Street, East Greenwich, RI 02818 and by hand-delivery to Amy Coleman, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

