

✓D. BALLIRANO  
BON

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.: A.H. C12-830
	:	
v.	:	
	:	
Tiffany Johnson Lic. # NA39546,	:	
Respondent.	:	

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DECISION

I. INTRODUCTION

This matter arose pursuant to an Amended Notice of Charges and Administrative Hearing issued to Tiffany Johnson (“Respondent”) by the Department of Health (“Department”) on May 6, 2013 and a Second Amended Notice of Charges and Administrative Hearing issued by the Department on June 7, 2013 to the Respondent. 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 June 25, 2013 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, both notices were 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 June 25, 2013.<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 if so, what is the appropriate sanction.

## IV. TESTIMONY AND MATERIAL FACTS

The Respondent worked at a nursing home and used the credit card of a patient at the same nursing home to purchase items at various retailers. The Respondent told the North Smithfield police that she found the credit card at a gas station and knew it was wrong to use the card. She denied that she stole the credit card from the patient at the nursing home where she worked. The patient was at the nursing home because of medical issues and the patient's daughter had her power of attorney. The daughter reported the theft of the credit card to the police and provided the police with a bank statement showing the unauthorized charges. There was a series of unauthorized charges

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<sup>1</sup> See Department's Exhibits One (1) and Two (2) (amended notice and second amended notice). Donna Valletta, Nursing Assistant and Medication Board Administrator, testified that the address used for the notices was the Respondent's address on record with the Department. The amended notice's certified mail was returned marked "unable to forward."

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

on the card in the space of one (1) month. On or about April 8, 2013, the Respondent pled *nolo contendere* to credit card fraud of under \$100 and was ordered to pay restitution of \$1,830.30. See Department's Exhibits Three (3) (police investigation); Four (4); and Five (5).

Donna Valletta, Administrator for the Nursing Assistant and Medication Aide Board ("Board"), testified on the Department's behalf. She testified that the Board recommended revocation of the Respondent's License because of the charges.

## 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:

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(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 Respondent claimed to have found the credit card at a gas station. It is reasonable to assume that the patient was not driving to a gas station when she was in a nursing home. If the daughter was using the card and actually lost it at a gas station, she would have known and canceled the card immediately. Instead the evidence is that

unauthorized charges were made in the space of one (1) month with the daughter discovering the charges once she received the bank statement. See Department's Exhibit Three (3). The Department showed by a preponderance of evidence that the Respondent stole a credit card from a patient in her care and used it fraudulently. Her behavior violates R.I. Gen. Laws § 23-17.9-8(5) because she stole from a patient which 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 May 6, 2013 and June 7, 2013 to the Respondent's address on record with the Department.

3. A hearing was scheduled for June 25, 2013 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(5) 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 ten (10) years.<sup>3</sup>

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

Entered this day 8<sup>th</sup> July, 2013.

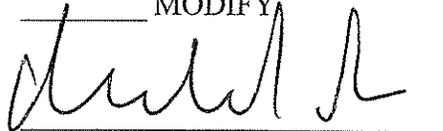
  
Catherine R. Warren, Esquire  
Hearing Officer

**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: 7/12/13

  
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.**

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**CERTIFICATION**

I hereby certify on this 29 day of July, 2013 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. 134 Rathbun Street, Apt. 7, Woonsocket, RI 02895 and by hand-delivery to Daniel Ballirano, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

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