

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,

File No. C13-363

v.

Victoria Dubai,
Respondent.

DECISION

I. INTRODUCTION

This matter arose pursuant to a notice of hearing (“Notice”) issued to Victoria Dubai (“Respondent”) by the Department of Health (“Department”) on April 4, 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 April 15, 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 was held before the undersigned on April 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

¹ See Department’s Exhibit H. 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.

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

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

Nancy Cresser (“Cresser”) testified on behalf of the Department. She testified that due to illness her mother (“Mother”) had difficulty walking and using her hands so needed assistance in day-to-day tasks. She testified that the Respondent started as a caregiver for her Mother in January, 2013 and at first the Respondent performed many duties but began to isolate her Mother in different ways such as not giving her privacy when visitors came. She testified that the Respondent used her Mother’s car and had an accident and right after the accident, the Respondent’s agency called her (Cresser) to see if she had concerns about the Respondent since the agency had concerns and she did. She testified that the agency let the Respondent go.

Cresser testified that about a week after the Respondent was let go, she went online to look at her Mother’s bank statement. She testified that her Mother had her ATM (bank) card (“Card”) but all bank statements for her Mother were sent to her (Cresser). She testified that there should have be only one withdrawal from the ATM using the Card when she (Cresser) had

made a withdrawal for her Mother but instead there were many Card transactions that her mother had not done. See Department's Exhibit A (fraudulent transactions using the Card as a debit card or for withdrawals). She testified her Mother did not give the Respondent permission to use her Card. She testified that on Easter, 2013, the Respondent in violation of her agency's policy accepted from her Mother, a \$100 gift card, two (2) stuffed animals for her children, and a plant but then on the same day the Respondent used her Mother's Card to withdraw \$800. See also Exhibits B and C (Respondent scheduled shifts and time worked at Mother's).

Detective Derek Carlino, Jamestown Police Department, testified on behalf of the Department. He testified that he investigated the Respondent's theft from Cresser's mother. He testified that he obtained the financial documents from Cresser and reviewed the incidents and the total loss was over \$7,500. See Department's Exhibits D (police report) and E (spreadsheet of unauthorized transactions). He testified that he interviewed the Respondent on April 19, 2013 and she claimed that the Mother had given her permission to use the Card at least 99.9% of the time. He testified that the Mother had not given permission to Respondent to use her Card. He testified he obtained video surveillance from two (2) stores where the Respondent used said Card and recognized the Respondent in the videos using the Card. See Department's Exhibits F and G (copy of photographs from videos). He testified that on March 29, 2013, the Respondent had worked for the Mother from 8:00 a.m. to 1:00 p.m. and then at 1:11 p.m., Respondent used the Card at a store. He testified that the Attorney General's office filed two (2) felony charges against the Respondent that are still pending.

Donna Valletta, Board Administrator of Nursing Assistance testified on behalf of the board. She testified that stealing is unprofessional as a CNA and the Board recommended that the Respondent's 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:

(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:

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 evidence shows that the Respondent stole a total of \$7,561.39 from a patient who was in her care. See Department's Exhibit E.

The Respondent actions in stealing from a patient in her care violated R.I. Gen. Laws § 23-17.9-8(5) (detrimental to the health and safety of a patient in her care) and (6) (violates

Section 6.1(e) and (f) of Licensing Regulation). The Respondent also violated Section 6.1(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.

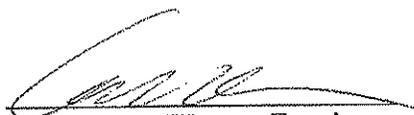
VI. FINDINGS OF FACT

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 April 4, 2014 to the Respondent's address on record with the Department.
3. A hearing was scheduled for April 15, 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(5) and (6) and violated Sections 6.1(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 ten (10) years.³

Entered this day 24th April, 2014.


Catherine R. Warren, Esquire
Hearing Officer

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

