

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. C13-491-A
	:	
v.	:	
	:	
Yolanda Pelliccia,	:	
Respondent.	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing (“Notice”) issued to Yolanda Pelliccia (“Respondent”) by the Department of Health (“Department”) on February 21, 2014 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 March 28, 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.¹ Since the Respondent was adequately noticed of hearing, a hearing was held

¹ See Department’s Exhibit 18 (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 also testified that the first class Notice was not returned to the Department. She also testified that the Respondent did not

before the undersigned on March 28, 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 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

Catherine Mainville (“Mainville”) testified on behalf of the Department. She testified that she is the Director of Quality and Education for a home care agency (“Agency”). She testified that the Agency provides homecare assistance such as help with daily living arrangements or skilled care. She testified that she is responsible for training CNA’s for the Agency. She testified that in May, 2103, Patient One³ told her that the Respondent was supposed to be purchasing cleaning supplies for her at the Dollar Store but instead spent a check that was for \$150 at the Dollar Store causing Patient One to have an overdraft. Mainville testified that she spoke to the Respondent who explained that she (Respondent) had actually been buying personal supplies for herself and got confused with the checks so used her (Respondent)

claim the certified mail Notice but was notified of its delivery. See Department’s Exhibit 19 (United States Post Office online tracking print out).

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

³ The Department identified the two (2) patients in this matter as Patient One and Patient Two.

own check for the Patient One's items and used Patient One's check for her (Respondent) personal supplies. Mainville also testified that the Respondent said she had offered to Patient One to reimburse her. Mainville testified that if Respondent's explanation was true, it would have been a violation of company policy to be spending client time on her own personal business. However, Mainville testified that there was a disconnect in the Respondent's explanation as the Respondent claimed to have told Patient One about the check mix-up and offered to reimburse her but the Patient One had no knowledge of Patient One spending \$150. Mainville testified that the Respondent was terminated for using client funds and for stealing client time both of which are unprofessional actions. See Department's Exhibits One (1) (agency client visit report for Patient One); Two (2) (referral to Department); Three (3) (Agency discipline form for Respondent); Four (4) (referral to Department of Elderly Affairs); Five (5) (referral to Department of Elderly Affairs); Six (6) (Agency notes on Patient One's complaint to Agency); Seven (7) (Agency termination letter to Respondent); and Eight (8) (Agency termination form for Respondent).

Mainville testified that after the Respondent was terminated, she (Mainville) received another complaint from a CNA who worked for the Agency and who usually cared for Patient Two but had been out on leave and the Respondent had cared for Patient Two in her absence. See Department's Exhibit 10 (Agency complaint form). Mainville testified that Patient Two discovered about \$1,500 worth of checks written to people that she (Patient Two) had not written checks to. Mainville testified that Patient Two reviewed the checks and found that there was also a check made out to Respondent signed by the Respondent. She testified that there would be no reason for Patient Two to give a check to Respondent as Respondent would be paid by the Agency. Mainville also testified that there was a check for a Stop and Shop that she (Patient

Two) did not go to and a check made out to a "Thomas Murphy" for landscaping and Patient Two lives in elderly housing with no need for landscaping and did not know a Thomas Murphy.

Mainville testified that she had copies of the Respondent's checks with the dubious ones circled. See Department's Exhibit 11 (copies of checks). She testified that she reviewed the Respondent's Facebook page which she identified by a picture of Respondent on the page and one of Respondent's friends was named Thomas Murphy. See Department's Exhibit 12 (screenshot of Respondent's Facebook page). She testified that she and the Agency bookkeeper assisted Patient Two in providing an affidavit for the bank in order for Patient Two to be reimbursed for the bad checks. See Department's Exhibit 13 (affidavit). See also Department's Exhibits 14 (Mainville's investigatory notes) and Nine (9) (referral to Department).

Officer Matthew Barrows, North Providence Police Department, testified on behalf of the Department. He testified that he was involved in investigating the complaint from Patient Two about her checks. He testified that five (5) checks were pinpointed that had not been made out (endorsed) by Patient Two and instead were made out by Respondent. These checks were made out to Respondent, Stop & Shop, and three (3) to Tom Murphy. See Department's Exhibits 15 (check copies) and 16 (police report).

Donna Valletta, the Board Administrator for Nursing Assistants, testified on the Department's behalf. She testified that the Board reviewed these two (2) complaints about Respondent in September, 2013 and recommended revocation of her License for five (5) years. She testified that she reviewed the online court records which indicate that the Respondent has been charged with forgery and counterfeiting but there has been no disposition. See Department's Exhibit 20 (online printout). She testified that stealing is considered unprofessional conduct for a CNA.

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:

(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;

(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

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 from two (2) different patients that were in her care.

The Respondent's action of stealing from Patient One by using Patient One's check for her (Respondent) personal use violated R.I. Gen. Laws § 23-17.9-8(1) (incompetent by reason of habits (theft)), (2) (act inconsistent with regulation; act in manner inconsistent 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 reasons of habits (theft)); (b) (inconsistent with the health and safety of a patient), and (f) (fails to conform to the standards of acceptable and prevailing practice) of the Licensing Regulation.

The Respondent's actions of stealing from Patient Two by using Patient Two's checks for her (Respondent) personal use violated R.I. Gen. Laws § 23-17.9-8(1) (incompetent by reason of habits (theft)), (2) (act inconsistent with regulation; act in manner inconsistent to the health and safety of a patient in her care), and (6) (violates Section 6.1(f) of Licensing Regulation). The Respondent's actions also violated Section 6.1(a) (unfit by reasons of habits (theft)); (b) (inconsistent with the health and safety of a patient), 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 of Hearing was sent by the Department to the Respondent on February 21, 2014 to the Respondent's address on record with the Department.

3. A hearing was scheduled for March 28, 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), and (6) and sections 6.1(a), (b), 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.⁴

Dated: April 18, 2014

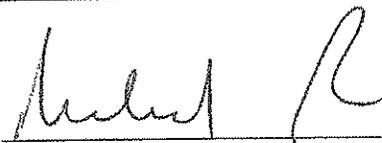

Catherine R. Warren, Esquire
Hearing Officer

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: April 23 2014


Michael Fine, M.D.
Director

⁴ Needless to say, there is no guarantee that a license would issue after application.

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 April, 2014 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Yolanda Pelliccia, 19 Woonasquatucket Avenue, Providence, RI 02911 and by hand-delivery to Amy Coleman, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

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