

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. C13-0878

v.

Zaira Bello
Respondent.

DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Hearing Notice ("Notice") issued to Zaira Bello ("Respondent") by the Department of Health ("Department") on July 21, 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 August 14, 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 mail.¹ Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on

¹ See Department's Exhibit Two (2) (Administrative Hearing 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. She testified that the first class notice sent to the address was not returned.

August 14, 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

Zaira Bello
DEPARTMENT OF HEALTH
8/14/14

The issue here is whether or not the Respondent stole 5 (five) gold rings, 8 (eight) pairs of earrings, and 2 (two) charm bracelets from the victim of Bayada Home Health Care. The evidence at the hearing indicated that on or about September 13th and October 5th, Respondent pawned the stolen jewelry at two different locations of Fall River Pawn Brokers. During questioning by police, Respondent admitted to stealing the jewelry and pawning it. See Department of Health's Exhibit One (1) – Bristol Police Department Investigation and Police Reports. Detective Adam Clifford from the Bristol Police Department appeared on the State's behalf and testified to the authenticity of the Police Reports. Detective Adams also testified that the victim stole 14 items in total from the victim. Some of the items he listed were a 1 karate diamond engagement ring, a gold wedding band, and a dinner ring. The victim's son estimated

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

the value at \$13,000. Detective Adams testified that on or about 10/22/2013, Ms. Bello came into the Bristol Police Department and admitted to stealing the jewelry while the victim went to the bathroom.

On or about October 28, 2014, Respondent was arrested by Bristol Police and charged with Larceny in an amount greater than \$1,500 in violation of R.I.G.L. § 11-41-1. This Hearing Officer finds these facts as proof of unprofessional conduct pursuant to RIGL § 23-17.9-8 and Section 6.1 f) of the Rules and Regulations of the Department of Health.

Donna Valletta, the Board Administrator for Nursing Assistants, testified on the Department's behalf. She testified that the Board recommended revocation of her License 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. 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:

(3) Upon proof that the nursing assistant has been convicted in a court of competent jurisdiction, either within or without this state, of a felony;

(5) Has engaged in conduct detrimental to the health, welfare and safety of patients/residents in his or her care;

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 jewelry from a patient in her care.

The Respondent's action of stealing from a patient in her care violated R.I. Gen. Laws § 23-17.9-8(1) and (2) (admitted to stealing patients jewelry) and R.I. Gen. Laws § 23-17.9-8(5) (detrimental to the health and safety of a patient in her care). The Respondent's action also violated Section 6.1(a) (unfit by reasons of habits (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 July 21, 2014 to the Respondent's address on record with the Department.
3. A hearing was scheduled for August 14, 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 (2) and sections 6.1(e) and (f) of the Licensing Regulation, the undersigned recommends that Respondent's License be revoked and the Respondent cannot re-apply for licensing for five (5) years.³

Entered this day _____ August, 2014.


Patricia J. Petrella, Esquire
Hearing Officer

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

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

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 22nd day of August, 2014 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Zaira Bello, 27 Burrows Street, Providence, RI 02907 and by hand-delivery to Donna Valetta, Department of Health and Amy Coleman, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

