

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HEALTH
HEALTH SERVICES REGULATION
BOARD OF NURSE REGISTRATION AND NURSING EDUCATION
THREE CAPITOL HILL
PROVIDENCE, RI 02908**

In the Matter of:

Renee Pepin,

Respondent.

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Case No. RN11-088

CORRECTED DECISION

I. INTRODUCTION

The above-entitled matter came before the Board of Nurse Registration and Nursing Education (“Board”) pursuant to a Summary Suspension¹ issued on June 4, 2013 by the Board to Renee Pepin (“Respondent”). The Respondent is licensed as a registered nurse in the State of Rhode Island pursuant to R.I. Gen. Laws § 5-34-1 *et seq.* A hearing was held before the Board on June 10, 2013. The Board was represented by counsel and the Respondent was *pro se*. Both parties rested on the record.

II. JURISDICTION

The Board has jurisdiction over this matter pursuant to R.I. Gen. Laws § 5-34-1 *et seq.*, *Rules and Regulations for the Licensing of Nurses and Standards for the Approval of Basic Nursing Education Programs*, and 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*.

¹ See Board’s Exhibit One (1).

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 5-34-24 and if so, what is the appropriate sanction.

IV. TESTIMONY AND MATERIAL FACTS

The Respondent entered an Interim Consent Order with the Board on March 11, 2013 which provided that she was to be evaluated by a Board approved health professional within thirty (30) days.

Sylvester C. Sviokla ("Sviokla"), III, M.D. testified on behalf of the Board. He testified that he is a "board" certified in addiction medicine and owns Medical Assisted Recovery, Inc. ("MAR"). He testified that he has a contract with the Board to evaluate patients for substance abuse through his company, MAR. He testified that the Respondent came to MAR for evaluation and during her evaluation, she denied a history of drug or alcohol abuse. He testified that her urine screen tested positive for suboxone, an opiate replacement drug. He testified that the Respondent minimized her denials when asked about them. See Board's Exhibit Three (3) (MAR report, sealed).

The Respondent testified on her behalf. She testified that she disagrees with Sviokla's evaluation and she has gotten treatment which Sviokla is not aware of. She testified that she had checked into Butler Hospital in May, 2012 for help for amphetamines and Adderall and alcohol but that Sviokla does not know about that treatment. See Respondent's Exhibit One (1). She testified that she has been sober for 13 months. She testified that she is willing to go to counseling but does not think she should have her License suspended.

On cross-examination, the Respondent testified that she did not tell MAR during her evaluation about her drug or alcohol history because she was there for a mental health evaluation and not a substance abuse evaluation. She testified that she was ashamed and felt it was not relevant to her evaluation. She testified that she should have told the truth.

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 § 5-34-24 states in part as follows:

Grounds for discipline of licensees. – The board of nurse registration and nursing education has the power to deny, revoke, or suspend any license to practice nursing; to provide for a non-disciplinary alternative only in situations involving alcohol or drug abuse or to discipline a licensee upon proof that the person is:

(4) Habitually intemperate or is addicted to the use of habit-forming drugs.

D. Whether the Respondent Violated her Statutory Obligations

This matter turns on the Respondent’s fitness as a nurse. Because of an incident in 2011, the Board had agreed to the Interim Consent Order with the Respondent that allowed the Respondent maintain her License pending a mental health evaluation. The Respondent went for said evaluation but was not truthful with the doctors. At hearing, the Respondent admitted that she omitted key facts when speaking to Sviokla and others at MAR. At hearing, she did not understand why the omissions were so troubling. She testified that she felt that her substance abuse history was not relevant to a mental health evaluation. She never testified as to why that conclusion was erroneous. In order to receive appropriate and applicable treatment, a patient must be truthful with his or her

provider and understand how substance abuse can affect mental health and vice-versa. The Respondent testified that she should have told the truth at MAR but never acknowledged the reasons why.

As a result of her prevarications and omissions in her evaluation, MAR recommended that the Respondent be treated and monitored before being cleared for work. As a result of the MAR report, the Respondent's License was summarily suspended. At hearing, the Respondent did not demonstrate any reason why the suspension should be lifted. She testified about various previous addictions but admitted she failed to tell MAR about them during her evaluation. Her reasoning about her health history demonstrated a lack of understanding as to her own health and health history² and a lack of understanding as to why the Board had found reason to have her treated at MAR. Despite having signed an Interim Consent Order this year to be evaluated, she felt that the Butler Hospital treatment the prior year was adequate. She did not understand the reasons why and the purposes for the MAR evaluation. She has not satisfactorily completed treatment with MAR so that she is not fit to practice as a nurse.

VI. FINDING OF FACTS

1. The Respondent holds a license as a registered nurse pursuant to R.I. Gen. Laws § 5-34-1 *et seq.*
2. The Respondent's license as a registered nurse was summarily suspended on June 4, 2013.

² For example, the Respondent submitted a note that she testified was from a doctor that treated her. The note was not on a prescription pad or letterhead. The Respondent testified that the note was from a doctor indicating she was in good health. The note actually stated that the Respondent "presented to my office today 6/10/12 stating that she is in 'good mental health.'" In other words, the note only stated what the Respondent had told the doctor (assuming it was a doctor who wrote the note). Not only that, the note was from a year ago and prior to the Respondent starting her evaluation with MAR. See Respondent's Exhibit Two (2).

3. A hearing on said suspension was held before the Board on June 10, 2013.

The parties rested on the record.

4. The Respondent was to be evaluated by MAR under an Interim Consent Order. The Summary Suspension was issued because the Respondent has not completed her evaluation with MAR.

5. The Respondent did not complete her evaluation with MAR.

6. In order to be considered to be allowed to practice as a nurse, the Respondent needs to fully and truthfully complete her health evaluation and any treatment.

VII. CONCLUSIONS OF LAW

Wherefore, the Board voted unanimously to find as follows:

1. The Respondent shall continue with treatment by the Board approved health professional (Medical Assisted Recovery, Inc.).

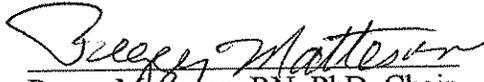
2. The Respondent is responsible for the scheduling and truthfully and fully completing the health evaluation by MAR.

3. The provider shall submit to the Board a written evaluation of the Respondent.

4. After receiving the evaluation, the Board will make a recommendation as to what sanctions, if any, are warranted with respect to the Respondent's professional practice.

5. The suspension of the Respondent's License shall continue until the Board receives the evaluation **and** takes action on the evaluation.

By Order of the Board,


Peggy Matteson, RN, PhD, Chair

Entered this 30 day of June, 2013.

NOTICE OF APPELLATE RIGHTS

PURSUANT TO R.I. GEN. LAWS § 5-34-28, APPEALS OF DECISIONS ARE GOVERNED BY THE ADMINISTRATIVE PROCEDURES ACT, R.I. GEN. LAWS § 42-35-1 *et seq.* 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 DECISION 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 _____ day of June, 2013 that a copy of the within Order and Notice of Appellate Rights was sent by first class mail, postage prepaid and certified mail, return receipt requested to -

Ms. Renee Pepin
68 Aborn Avenue
Cumberland, RI

and by hand-delivery to Jennifer Sternick, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.
