

**STATE OF RHODE ISLAND
DEPARTMENT OF HEALTH
THREE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908**

In the Matter of:	:	
	:	
	:	Case No.: 22-0107
Geycell Borjas,	:	Board of Nursing Assistants
Respondent.	:	
	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing and Specification of Charges (“Notice”) issued to Geycell Borjas (“Respondent”) by the Department of Health (“Department”) on May 16, 2022. The Respondent holds a registration as a nursing assistant with a medication aide dispensing endorsement/license pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* and 216-RICR-40-05-22 *Nursing Assistants, Medication Aides, and the Approval of Nursing Assistant and Medication Aide Training Programs* (“Licensing Regulation”). A hearing was scheduled for June 22, 2022, at which time the Respondent did not appear at the hearing. Pursuant to Section 4.6.1 of 216-RICR-10-05-4 *Practices and Procedures Before the Rhode Island Department of Health Regulation* (“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 delivered to 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 Exhibits One (1) (Notice indicating mailing for regular mail and certified mail to address on record with the Department); Two (2) (copy of the United States Post Office tracking sheet showing Notice was delivered by certified mail); and Three (3) (Respondent’s licensing history with last known address on record with Department). The Notice was also sent by electronic delivery to the Respondent’s email address contained in her licensing history. Department’s Exhibits One (1) and Three (3).

before the undersigned on June 22, 2022.² Additionally, Section 4.13.2 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 the Licensing Regulation and if so, what is the appropriate sanction.

IV. MATERIAL FACTS

Based on the pleadings and the exhibits, the Respondent entered into a consent order with the Department on September 10, 2021 at which time her license to practice as a medication aide was suspended for six (6) months. On January 4, 2022, the Department received a complaint about the Respondent from a nursing home that employed the Respondent stating that the nursing home had just recently found out that the Respondent's medication aide license was currently suspended, and that the Respondent had been working as a medication aide at the nursing home. The nursing home informed the Department that it had terminated the Respondent's employment. See Department's Exhibits Four (4) (copy of said consent order); Five (5) (complaint to Department detailing that Respondent was acting as a medication aide while her license as a medication aide was suspended); and Six (6) (Respondent's statement to Department admitting she continued to act as medication aide while said license was suspended).

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

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 and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2s 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.2s 541 (R.I. 1989) (citation omitted).

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 130m 34 (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. **Relevant Statute and Regulation**

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;

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

Section 22.6 of the Licensing Regulation provides as follows:

A. Pursuant to R.I. Gen. Laws §§ 23-17.9-8 and 23-17.9-9, and upon a decision after a hearing as provided in accordance with the Rhode Island Administrative Procedures Act and the Rules and Regulations Pertaining to Practices and Procedures Before the Rhode Island Department of Health (Part 10-05-4 of this Title), the Department may deny, suspend, or revoke a license issued under this Part, or may reprimand, censure, or otherwise discipline an individual who has been found guilty of violations of the Act or this Part in any of the following cases:

2. Upon proof that the nursing assistant or medication aide 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 Respondent Violated R.I. Gen. Laws § 23-17.9-8 and/or Licensing Regulation

The Department sought revocation of the Respondent's medication aide license only. The Department argued the evidence showed the Respondent worked as a medication aide when her license as a medication aide was suspended, and she was not permitted to act as a medication aide.

Based on the pleadings and the undisputed evidence, the Respondent worked as a medication aide when her license as a medication aide was suspended, and she was not permitted to act as a medication aide.

The Respondent's actions violated R.I. Gen. Laws § 23-17.9-8(1) (unfit or incompetent because of negligence, habits, or other causes) and (5) (conduct detrimental to health and safety of patient). The Respondent's actions also violated Section 22.6.1(A)(2) (unprofessional conduct) of the Licensing Regulation.

VI. FINDINGS OF FACT

1. The Respondent is registered as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.*

2. A Notice was sent by the Department to Respondent on May 16, 2022 to the Respondent's most recent address on record with the Department.

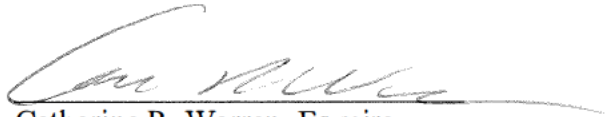
3. A hearing was scheduled for June 22, 2022, at which time the Respondent did not appear. As the Respondent had adequate notice of hearing, the undersigned held the hearing that day.

4. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the foregoing, the Respondent violated R.I. Gen. Laws § 23-7.9-8(1) and (5) and violated Section 22.6(A)(2) of the Licensing Regulation and pursuant to R.I. Gen. Laws § 23-17.9-8, the undersigned recommends that Respondent's medication aide license be revoked.

Entered this day 23rd June, 2022.



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:

 X ADOPT
 REJECT
 MODIFY

Dated: 6/23/2022


James McDonald, M.D.
Interim 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 §42-15-15, 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 24th day of June, 2022 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail, return receipt requested and electronic delivery to Ms. Geycell Borjas, 61 Bancroft Street, Apt. 1, Providence, R.I. 02909 and geycell@icloud.com and by electronic delivery to Anita Flax, Esquire, and Linda Esposito, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.

/s/ Pamela Lopes
