

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

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|-------------------------------------|---|------------------------------|
| Department of Health | : | |
| Health Services Regulation | : | |
| Board of Nursing Assistants, | : | |
| | : | DOH Case No.: 19-0223 |
| v. | : | |
| | : | |
| Alisha Kingston, | : | |
| Respondent. | : | |

DECISION RE: SUMMARY SUSPENSION

I. INTRODUCTION

This matter arose pursuant to an Order of Summary Suspension of Nursing Assistant License (“Summary Suspension”) issued pursuant to R.I. Gen. Laws § 42-35-14¹ to Alisha Kingston (“Respondent”) by the Department of Health (“Department”) on February 28, 2019. The Respondent holds a license (“License”) as a certified nursing assistant (“CNA”) pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* The Respondent requested a hearing on the Summary Suspension and a Notice of Hearing and Specification of Charges (“Notice”) was issued to the Respondent on March 8, 2019. A hearing was scheduled for March 20, 2019 at which time the Respondent did not appear. Pursuant to Section 4.6.1 of the 216-RICR-10-05-4 *Practices and Procedures Before*

¹ R.I. Gen. Laws § 42-35-14 provides in part as follows:

Licenses.

(c) *** If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

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.² Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on March 20, 2019.³ 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 Department had grounds to issue the Summary Suspension.

IV. MATERIAL FACTS

Based on the pleadings, the Summary Suspension, and the exhibits, the Respondent stole money from a patient in her care and was intoxicated while on the job. See Department’s Exhibits Two (2) (nursing home complaint to Department about Respondent’s thefts); and Three (3) (Warwick police report in which Respondent admitted to the thefts and to drinking on the job).

² See Department’s Exhibits One (1) (Notice); and Five (5) (United State Post Office online tracking showing the certified mail of the Notice was delivered). The Notice was also sent by email.

³ 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). 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 (R.I. 1998).

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:

(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.

B. Whether the Summary Suspension Should Stay in Place Pending Completion of any Disciplinary Proceedings

Based on the Summary Suspension, pleadings, and the undisputed evidence, the Respondent stole from her patient and was intoxicated at work.

However, the issue before the undersigned is not whether the Respondent committed specific statutory violations but whether the Summary Suspension should continue pending any further disciplinary action by the Department. The Department requested that the hearing just address whether there were grounds for the issuance of a Summary Suspension and the Department did not seek revocation of the License at hearing.

Based on the foregoing, the Department had grounds to issue a Summary Suspension because of a finding that the Respondent was intoxicated at work and stole from a patient in her care which constitutes a danger to the public.

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 Summary Suspension of License was issued to the Respondent on February 28, 2019 to the Respondent's most recent address on record with the Department.
3. The Respondent requested a hearing and a Notice was sent to the Respondent at most recent address on record with the Department and giving notice of a hearing date.
4. A hearing was scheduled for March 20, 2019 at which time the Respondent did not appear. As the Respondent had adequate notice of hearing, the undersigned held the hearing that day.
5. The facts contained in Section IV and V are reincorporated by reference herein.


VII. CONCLUSION OF LAW

Based on the foregoing, the Department issued a Summary Suspension pursuant to R.I. Gen. Laws § 42-35-14.

VIII. RECOMMENDATION

Based on the foregoing, the Summary Suspension should stay in effect pending any further disciplinary action and the completion of such action. However, such action, when taken, needs to be instituted promptly so that a hearing, if necessary, can be held on such an action.

Dated: 3/29/19

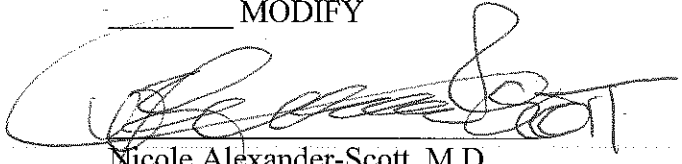

Catherine R. Warren, Esquire
Hearing Officer

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: 4/2/19



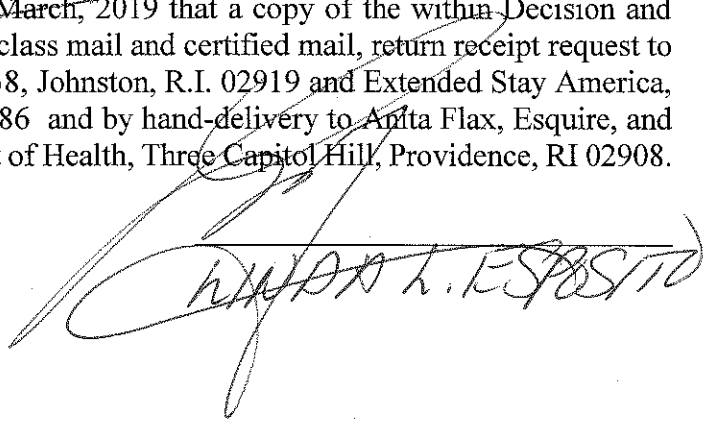
Nicole Alexander-Scott, M.D.
Director

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 NTH day of APRIL 2019 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail, return receipt request to Ms. Alisha Kingston, 20 Park Street, Apt. 138, Johnston, R.I. 02919 and Extended Stay America, Metro Center Boulevard, Warwick, R.I. 02886 and by hand-delivery to Anita Flax, Esquire, and Linda Esposito, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.



LINDA L. ESPOSITO