

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

In the Matter of:

Angie Dorval,

Respondent.

:
:
:
:
:
:
:

DOH Case No.: C23-0550AB

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing and Specification of Charges (“Notice”) issued to Angie Dorval (“Respondent”) by the Department of Health (“Department”) on November 7, 2023. Pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.*, the Respondent holds a registration as a nursing assistant. Pursuant to R.I. Gen. Laws § 23-17.9-2(a)(3) and 216-RICR-40-05-22 *Nursing Assistants, Medication Aides, and the Approval of Nursing Assistant and Medication Aide Training Programs* (“Licensing Regulation”), the Respondent is also licensed as a medication aide. A hearing was held on November 30, 2023. The Department was represented by counsel, and the Respondent was *pro se*. The parties rested on the record.¹

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 216-RICR-10-05-4 *Practices and Procedures Before the Rhode Island Department of Health Regulation*.

¹ The day after the hearing, the Respondent submitted a written argument which the undersigned accepted as a written closing by the Respondent.

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 AND TESTIMONY

A \$5,000 check from the Respondent's patient made out to the Respondent is in dispute, and there are other checks from the Respondent's patient to the Respondent that are at issue.

Laura Serapiglia ("Serapiglia"), Assistant Health Program Administrator, testified on behalf of the Department. She testified that she conducts inspections for the Department for many professions including nursing assistants. She testified she met with the patient ("Patient") on whose account the \$5,000 check was drawn. She testified that the Patient identified the photograph of the woman attempting to deposit said check at a bank as the Respondent. Department's Exhibit 11 (photograph of the Respondent from bank). She testified that the Patient told her that she did not sign the check. She testified that the Patient told her that was not her signature on the check, and the Patient then in front of her (Serapiglia) signed her name next to the copy of the check and initialed it to show how she (Patient) would have signed a check. Department's Exhibit 12 (copy of \$5,000 check and Patient's signature and initials to the side). Serapiglia testified that she spoke to the Patient's bank, and the bank had flagged the check as suspicious and stopped payment.

The Respondent testified on her behalf. She testified that she has been a nursing assistant for 18 years without any discipline.² She testified that she met the Patient at the assisted living facility where she was working. She testified that she offered to do private cases for the Patient as she provided private services for other residents. She testified that she would go to the Patient's room after hours to help her. She testified she worked out an agreement for hours and payment

² The parties stipulated that the Respondent has been licensed for 18 years as a nursing assistant without discipline.

with the Patient, and the Patient missed paying her over a couple of weeks. She testified that when the Patient made out the \$5,000 check, the Patient owed her \$3,725 and the Patient said she would pay her in advance by making the check out for \$5,000. The Respondent testified that she had a car accident the next day and was unable to get to work. She testified the facility then told her she was being investigated, and she was suspended. She testified that she thought the Patient complained because the Patient had paid in advance, and she was not able to work for the Patient as she was suspended from the facility. She testified the bank flagged the check as suspicious, so she was not able to deposit it. She testified that she tried calling the Patient, but the Patient would not pick up, so she resigned from the facility.

On cross-examination, the Respondent testified that she provided private care on the side and worked for herself so did not have a supervisor. She testified that she was aware the Licensing Regulation requires nursing assistants be supervised by a nurse. She testified the assisted living facility administration was aware of her private care and did not have an issue with it. When shown various copies of checks written by the Patient as compared to the \$5,000 check, she testified the signatures do not look the same, but testified the Patient signed the \$5,000 check. She testified the Patient gave her other checks including one as a gift. Department's Exhibit Six (6) (copies of checks written by Patient to Respondent and other checks written by Patient). The Respondent testified she knew she was not supposed to accept gifts. She testified that she wrote out the checks for the Patient to sign as it was hard for the Patient to sign. She testified she did numerous private care cases at the facility. She testified that the \$5,000 check was written on June 6, 2023, and she tried to deposit it on June 9, 2023.

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:

(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;

(6) Any other causes that may be set forth in regulations promulgated under this chapter.

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:

1. Upon proof of any of the cases stated in R.I. Gen. Laws §§ 23-17.9-8(1) through 23-17.9-8(5)

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.

6. Upon proof that the nursing assistant or medication aide has participated in a physical or financial relationship with a patient. Consent of the patient shall not constitute a defense against the violation of § 22.6(A)(10) of this Part.

Section 22.4 of the Licensing Regulation provides as follows:

Levels of Nursing Assistants

A. Pursuant to R.I. Gen. Laws § 23-17.9-2(3), the Director of the Rhode Island Department of Health hereby establishes the following levels of nursing assistants:

1. Nursing Assistant. A nursing assistant is a paraprofessional trained to provide personal care and related health care and assistance to individuals who are sick, disabled, or infirm, and who are residents of or receiving services from health care

facilities or agencies licensed by the State, and holds a license as a nursing assistant issued by the Department.

2. Medication Aide. A medication aide is a nursing assistant who has had additional training in the administration of medication, and holds a license as a medication aide issued by the Department.

Section 22.5.1 of the Licensing Regulation provides in part as follows:

Supervision

A. Nursing assistants must be supervised by a licensed nurse, physician, or other appropriate health professional who is duly licensed and/or certified as required by law. The type of supervision, either direct or indirect, shall be determined by the licensed health care facility as defined in R.I. Gen. Laws § 23-17-2(8). Provided, however, those duties listed in § 22.12.1(B) of this Part shall be discharged only under direct supervision of a licensed nurse, physician, or other appropriate health professional who is duly licensed and/or certified as required by law.

D. Arguments

The Department argued the Respondent admitted to accepting gifts and to working without a supervisor in violation of the Licensing Regulation. It argued the Patient did not sign the \$5,000 check, and her so called signature was her initials but backwards. The Department seeks revocation of both the Respondent’s nursing assistant and medication aide licenses.

The Respondent argued she has been a nursing assistant for 18 years, and it was not fair to revoke her license. In her written submission, she represented she helped the Patient arrange her closet, buy groceries, clean her bathroom, and took her to her hair appointments, and the facility charged its patients a lot of money but did not provide the services so that the Patient appreciated her help. She represented that she knows she made a mistake in accepting gifts from the Patient.

E. Whether Respondent Violated R.I. Gen. Laws § 23-17.9-8 and/or Licensing Regulation

The Patient was admitted to the assisted living facility on April 3, 2023. Department’s Exhibit Six (6) (facility incident report). On May 10, 2023,³ a \$300 check entitled “gift” was made

³ The date on this check looks like June 10, 2023 but the bank records show it was cashed on May 11, 2023.

out by the Patient to Respondent. On May 12, 2023, a \$300 check entitled “gift” was made out by the Patient to Respondent. On May 19, 2023, a \$300 check was made out by the Patient to Respondent. On May 30, 2023, a \$500 check was made out by the Patient to Respondent. *Id.* Of the eight (8) checks provided by the bank that were made out by the Patient, seven (7) of the Patient’s signatures were her first initial and her complete last name. The Patient’s signature on the eighth check was her initials. *Id.*

In terms of the timing of this matter, on June 6, 2023, the Department received a complaint from the assisted living facility about the Respondent and the four (4) checks from May totaling \$1,400. Department’s Exhibits One (1) (Notice) and Six (6) (facility complaint). The facility complaint dated the incidence as June 6, 2023. The facility reported that the Respondent was suspended on June 6, 2023. Department’s Exhibit Seven (7) (five day investigation report). There was a separate complaint filed with adult protective services by the Patient’s daughter regarding the May checks⁴ and the June 6, 2023 \$5,000 check. Department’s Exhibit Eight (8).

The Department alleges unprofessional conduct in relation to all checks in that it is a regulatory violation by a nursing assistant to be involved in financial relationships with a patient, and the Department alleges that the Respondent made out \$5,000 check to herself and forged the Patient’s signature.

While the Respondent testified the Patient signed the \$5,000 check, the Respondent admitted the signature did not look similar to the Patient’s other signatures. Usually, the Patient’s signature is her first initial and last name as she signed for Serapiglia (Department’s Exhibit 12) and as seen in checks contained in Department’s Exhibit Six (6). The one check that the Patient initialed and how she initialed as well for Serapiglia were her initials, first and last name.

⁴ This complaint alleged that some of the amounts on the May checks appeared altered, e.g. \$200 changed to \$300. However, that allegation was not pursued by the Department.

Department's Exhibits Six (6) and 11. The Patient's initials are backwards on the \$5,000 check.

The Respondent testified that the Patient hired her to perform private services. She did not testify about how much the Patient agreed to pay her and/or whether it was an hourly rate or a weekly agreement. She testified that she performed these services after hours. She testified that when the \$5,000 check was made out, the Patient had missed some payments and owed her \$3,725. However, the Patient had just paid her \$500 dollars seven (7) days earlier on May 30, 2023.

If the Patient agreed to pay the Respondent \$50 an hour that would represent that she worked 74.5 hours to have earned \$3,725. If the Patient agreed to pay \$25 an hour that would represent the Respondent worked 150 hours to have earned \$3,725. If the Patient agreed to pay \$15 an hour that would represent that the Respondent worked 248 hours to have earned \$3,725.

In the Respondent's written submission, she indicated that she worked three (3) jobs. It is not credible that the \$5,000 check represented payment for work performed – after hours - by the Respondent for the Patient in the one (1) or two (2) weeks before the check was written. The Respondent already had four (4) checks from May from the Patient; though, two (2) were entitled gifts. There was no time for the Respondent to be performing those hours of work⁵ for the Patient when working three (3) jobs. Indeed, buying groceries and organizing a closet cannot add up to the time that the Respondent represents she spent on for the Patient.

The Patient's initials on the \$5,000 check were backwards. The Respondent's explanation of why the Patient gave her the check is not credible. It can be inferred the Respondent wrote the \$5,000 check and signed the Patient's name without authorization; thereby, forging the check.

The Respondent's explanation that the facility did not mind her private care is irrelevant. She did not bring anyone from the facility nor mention any names at the hearing. Even if the

⁵ It is noted that the complaint from the Patient's daughter indicated that the services for which the Patient was supposedly paying for were all included in the facilities' fees.

facility told her that private care was acceptable, private care without nursing supervision is a violation of § 22.5.1 of Licensing Regulation and entering in financial transactions with a patient is a violation of § 22.6(A)(6) of the Licensing Regulation. Any acquiescence by the facility is not a defense to the Respondent's regulatory violations. Furthermore, pursuant to § 22.6(A)(6) of the Licensing Regulation, any acquiescence by the Patient is not a defense to the Respondent's regulatory violations of accepting money from the Patient.

Based on the foregoing, the Respondent forged the Patient's signature on the \$5,000 check and accepted money from the Patient.

The Respondent's actions make her unfit and incompetent so that the Respondent violated R.I. Gen. Laws § 27-17.9-8(1) five (5) times. Those five (5) violations represent the four (4) checks that she accepted in May, 2023 and the June 6, 2023 \$5,000 check that she forged. Her action of forging the \$5,000 check is also detrimental to the welfare of her patient in her care in that she took her patient's property (money) without consent, so she violated R.I. Gen. Laws § 27-17.9-8(5). In addition, her actions were unprofessional, so she violated R.I. Gen. Laws § 27-17.9-8(6) by violating § 22.6(A)(2) (unprofessional behavior) and (A)(6) (participating in a financial relationship with a patient). She violated § 22.6(A)(2) and (5) five (5) times each (accepting the four (4) checks and forging the June, 2023 check). As a consequence, the Respondent engaged in numerous violations of R.I. Gen. Laws § 27-17.9-8(1); (5); and (6) and § 22.6(A)(2) and (5) of the Licensing Regulation.

The Respondent's explanation for the \$5,000 check was not credible. She accepted four (4) checks from the Patient. She committed many statutory and regulatory violations. Her actions were unprofessional, detrimental to the welfare of her patient, and demonstrated that she is unfit and incompetent as a nursing assistant and medication aide.

Based on the foregoing, the Respondent's numerous statutory and regulatory violations in relation to accepting money from a patient and forging a patient's check merit the revocation of her registration as a nursing assistant and medication aide.

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. The Respondent holds a medication aide license endorsement pursuant to R.I. Gen. Laws § 23-17.9-2(a)(3) and the Licensing Regulation.
3. The Notice was issued by the Department to Respondent on November 7, 2023.
4. A hearing was held on November 30, 2023. The Department was represented by counsel. The Respondent was *pro se*. The parties rested on the record.
5. 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); (5); and (6) and Section 22.6(A)(2) and (5) of the Licensing Regulation numerous times and pursuant to R.I. Gen. Laws § 23-17.9-8, the undersigned recommends that Respondent's nursing assistant and medication aide registration be revoked.

Date: December 19, 2023



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: 12/19/2023

 Utpala Bandy, MD, MPH
Utpala Bandy, MD, MPH
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 19th day December, 2023 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail, return receipt requested to Ms. Angie Dorval, 49 Warren Avenue, Apt. 302, Pawtucket, R.I. 02860 and by electronic delivery to the Respondent at her email address on record with the Department and by electronic delivery to Anita Flax, Esquire, Linda Esposito, Board Manager, and Jennifer Sternick, Associate Director, Department of Health, Three Capitol Hill, Providence, RI 02908.

 Pamela Lopes