



Department of Health

Three Capitol Hill
Providence, RI 02908-5097

TTY: 711

www.health.ri.gov

April 27, 2017

Ashleigh Terrana
379 Church Ave.
Warwick, RI 02889

91 7108 2133 3939 5564 4669

RE: NA48555 C15-1001, C15-1043

USPS Regular and Certified Mail

Dear Ashleigh Terrana:

Please find the enclosed HEARING DECISION. You may contact me with questions or concerns.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Arlene Hartwell".

Arlene Hartwell
Board Manager, Nursing Assistant Board
(401) 222-7883

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 Nos.: C15-1001; C15-1043
v.	:	
	:	
Ashleigh Terrana,	:	
Respondent.	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Hearing Notice and Notice of Charges (“Notice”) issued to Ashley Terrana (“Respondent”) by the Department of Health (“Department”) on February 20, 2017. The Respondent holds a license as a certified nursing assistant (“CNA”) pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* A hearing was scheduled for March 21, 2017 at which time the Respondent did not appear at the 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* (“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 before the undersigned on March 21, 2017.² Additionally, Section 12.9 of the

¹ See testimony below.

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

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 § 23-7.9-8 and the *Rules and Regulations Pertaining to Rhode Island Certificates of Registration for Nursing Assistants, Medication Aides, and the Approval of Nursing Assistant and Medication Aide Training Program* (“Licensing Regulation”) and if so, what is the appropriate sanction.

IV. TESTIMONY AND MATERIAL FACTS

Robert O’Donnell, Lead Investigator, testified on behalf of the Department. He testified that the Department received a report stating that the Respondent had been involved in two (2) accidents and charged with a felony of driving under the influence. He testified that the Department also received a complaint from the Respondent’s former employer indicating that the Respondent had been fired for failing to show up for a shift without notice. See Department’s Exhibits One (1) (Department’s Investigation Report) and Two (2) and Three (3) (complaint and information from Respondent’s employer). He testified that the Department received a Rhode Island docket report detailing that the Respondent’s plea of *nolo contendere* to two (2) felonies, driving to endanger resulting in physical injury and driving to endanger. See Department’s Exhibit Four (4) (docket report), Six (6) (April 1, 2015 arrest report relating to the felonies); Seven (7) (Rhode Island Court Connect Document); and Eight (8) (incarceration report).

Arlene Hartwell, CNA board manager, testified on behalf of the Department. She testified that the Notice was sent by first class and certified mail to the Respondent's most recent address on the record. She testified that the Notice was returned to the Department. She then testified that the Board recommended a suspension of the Respondent's License for a period of three (3) years. See Department's Exhibit Nine (Notice).

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, 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 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. Statute

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.

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

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:

c) upon proof that such nursing assistant and/or medication aide has been convicted in a court of competent jurisdiction, either within or without this state, of a felony;

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 Respondent Violated R.I. Gen. Laws § 23-17.9-8

Due to the discovery of the Respondent's felony conviction, the Department argued that the Respondent violated her statutory obligation to avoid status as a felon. The Department argued that the Respondent violated R.I. Gen. Laws § 23-7.9-8 and sought suspension of License for three (3) years.

Based on the pleading and the undisputed evidence, the Respondent has been convicted of two (2) felonies and failed to show up for a shift as a CNA. The Respondent's actions violated R.I. Gen. Laws § 23-17.9-8(3) (being convicted in a court of competent jurisdiction, either within or without this state, of a felony); R.I. Gen. Laws § 23-17.9-8(5) (detrimental to health and safety of patient); and (6) (violates Section 6.1(f) of Licensing Regulation). The Respondent's actions also violated Section 6.1(e) (detrimental to health and safety of patient) and Section 6.1(f) (fails to conform to the standards of acceptable and prevailing practice) of the Licensing Regulation.

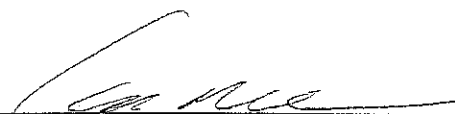
VI. FINDINGS OF FACT

1. The Respondent is licensed as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.*
2. A Notice was sent by the Department to Respondent on February 20, 2017 to the Respondent's most recent address on record with the Department.
3. A hearing was scheduled for March 21, 2017 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 § 23-7.9-8(3), (5) and (6) and violated Sections 6.1(c), (e), and (f) of the Licensing Regulation and pursuant to R.I. Gen. Laws § 23-17.9-8, the undersigned recommends that Respondent's License be suspended for three (3) years.

Entered this day 12th April, 2017.

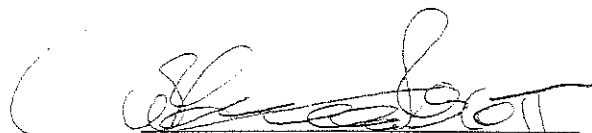

Catherine R. Warren, Esquire
Hearing Officer

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: 4/18/17


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 22 day of April, 2017 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. Ashley Terrano, 379 Church Avenue, Warwick, RI 02889 and by hand-delivery to Colleen McCarthy, Esquire, and Arlene Hartwell, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.

Arlene Hartwell