



Department of Health

Three Capitol Hill  
Providence, RI 02908-5097

TTY: 711

[www.health.ri.gov](http://www.health.ri.gov)

April 27, 2017

Berta Riquinha  
185 Providence Street  
Unit A108  
West Warwick, RI 02893

91 7108 2133 3939 5564 4607

RE: NA29638      C16-455

**USPS Regular and Certified Mail**

Dear Berta Riquinha:

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**

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<b>Department of Health</b>	:	
<b>Health Services Regulation</b>	:	
<b>Board of Nursing Assistants,</b>	:	
	:	<b>DOH Case No.: C16-455</b>
<b>v.</b>	:	
	:	
<b>Berta Riquinha,</b>	:	
<b>Respondent.</b>	:	

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**DECISION**

**I. INTRODUCTION**

This matter arose pursuant to an Administrative Hearing Notice (“Notice”) issued Berta Riquinha (“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.<sup>1</sup> Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on March 21, 2017.<sup>2</sup> Additionally, Section 12.9 of the Hearing Regulation provides

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<sup>1</sup> See testimony below.

<sup>2</sup> Pursuant to a delegation of authority by the Director of the Department of Health.

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 complaint in 2016 stating that the Respondent had been arrested several times and that the Respondent was not qualified to hold a license as a CNA. He testified that during the course of his investigation, he acquired a record concerning the Respondent’s arrest from the Seekonk Police Department. Said police report detailed the Respondent’s arrest for larceny of merchandise on July 15, 2011 from two (2) retail stores in Seekonk, MA. He testified that the Respondent was convicted on those charges (felonies, misdemeanors). See Department’s Exhibits One (Seekonk Police Arrest Report); and Three (3) (criminal offender record information). He testified that the Respondent had also been arrested by the East Providence Police Department for receiving stolen goods on September 7, 2011, which is a misdemeanor and to which she pled *nolo contendere*. See Department’s Exhibit Two (Criminal Docket Sheet). He testified that when the Respondent was asked on her CNA renewal application in 2012 whether

she had been convicted of a felony, she answered no. See Department's Exhibit Five (5) (partial copy of Respondent's renewal application in 2012).

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 and both Notices were returned to the Department. She testified that the Respondent was not truthful when responding to the renewal question in 2012 for the CNA license when asked about criminal history. She testified that CNA licenses are renewed every two (2) years and the Respondent answered "no" on June 28, 2012 for her 2012 renewal when she was asked if she had been convicted of a felony. Said form asks whether the applicant had been convicted or pled *nolo contendere* or entered a plea bargain to any charge. See Department's Exhibit Five. She testified that the Board recommended a revocation of Respondent's License and no reinstatement for at least five (5) years. See Department's Exhibit Four (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:

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(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;

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(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:

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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**

The Department argued that when the Respondent renewed her CNA license in 2012, she misrepresented her status as a felon. By being convicted of a felony and misrepresenting her convictions, the Department argued that the Respondent violated R.I. Gen. Laws § 23-7.9-8 and sought revocation of License and a bar on the Respondent from re-applying for five (5) years.

Based on the pleading and the undisputed evidence, the Respondent was convicted of a felony in 2011 prior to her 2012 renewal and misrepresented her criminal history when she renewed her CNA license. 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.

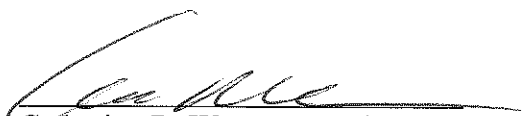
3. A hearing was scheduled for March 21, 2017 at which time the Respondent did not appear. As the Respondent had adequate notice of hearing, the undersigned held the hearing that day.

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(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 revoked and the Respondent cannot re-apply for licensing for five (5) years.<sup>3</sup>

Entered this day 12<sup>th</sup> April, 2017.

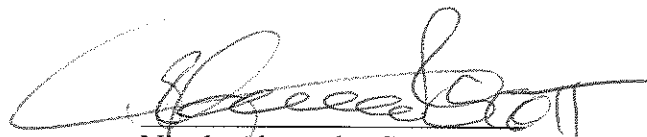
  
Catherine R. Warren, Esquire  
Hearing Officer

### **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

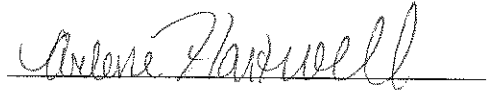
<sup>3</sup> Naturally, there is no guarantee that a license would issue after application.

**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 27 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. Berta Riquinha, 185 Providence Street, Unit A108, West Warwick, RI 02893 and by hand-delivery to Colleen McCarthy, Esquire, and Arlene Hartwell, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.

  
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