

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

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<b>In the Matter of:</b>	:	
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	:	<b>Case No.: 24-0194</b>
<b>Chelsea K. Magrey,</b>	:	<b>Board of Nursing Assistants</b>
<b>Respondent.</b>	:	
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**DECISION**

**I. INTRODUCTION**

This matter arose pursuant to a Notice of Hearing and Specification of Charges (“Notice”) issued to Chelsea Magrey (“Respondent”) by the Department of Health (“Department”) on August 19, 2024. The Respondent held a registration as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* which expired on June 30, 2024. A hearing was held on September 6, 2024 at which time the Respondent did not appear. 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 Respondent was sent notice by regular and certified mail and by email to addresses on record with the Department.<sup>1</sup> Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on September 6, 2024.<sup>2</sup> Additionally, Section 4.13.2 of the Hearing Regulation provides that a judgment may be entered based on pleadings and/or

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<sup>1</sup> See Department’s Exhibits One (1) (Notice); Two (2) (United States Post Office website tracking print out showing attempted delivery of certified mail); and Three (3) (Respondent’s licensing information with Respondent’s email and mailing addresses).

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

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 216-RICR-40-05-22 *Nursing Assistants, Medication Aides, and the Approval of Nursing Assistant and Medication Aide Training Programs* (“Licensing Regulation”) and if so, what is the appropriate sanction.

## **IV. MATERIAL FACTS**

Donna Seymour testified on behalf of the Department. She testified that she is the office manager of the staffing agency that hired the Respondent. She testified that on Friday, February 16, 2024, she met with the Respondent, a new hire, and gave her the employee handbook, her work ID, the telephone call in numbers, and her schedule for the upcoming week starting on Monday. She testified that on Monday, she informed the Respondent that her first client that day was in hospital so she did not need to go to that client’s home. She testified that the agency has an in and out calling system for the nursing assistants to call in when get to a client’s house and then again when leaving. She testified that she did not receive a call in from the Respondent from the second client’s home. She testified she called the second client and his wife told her the Respondent never showed up. She testified that she called and texted the Respondent and after not hearing from her after a couple of days, she asked the police to conduct a wellness check. She testified the Respondent then contacted her and said she no longer lived at that address. She testified the Respondent did not try to call the agency at the weekend and that she checked the telephone call system and on February 18, 2204, there were no calls in the system. Department’s Exhibits Four

(4) (staffing agency complaint); Five (5) (staffing agency statement); Six (6) (staffing home policy); Seven (7) (February 19, 2024 emails and texts from staffing agency to Respondent); Eight (8) (February 20, 2024 emails and texts from staffing agency to Respondent); and Ten (10) (February 18, 2024 call log showing no calls to staffing agency).

The Respondent did not appear at the hearing, but in her correspondence to the Department after the complaint was received, she admitted she did not show up for her shift but stated that she called the staffing agency on Saturday and Sunday but never heard back from anyone. Department's Exhibit Nine (9) (email from Respondent to Department).

## 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:

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(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:

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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**

As the Respondent’s registration has expired, there is no registration on which to impose a reprimand. However, the Department sought a finding of unprofessional conduct by the Respondent for her actions.

Based on the pleadings, testimony, and the undisputed evidence, the Respondent did not call or show for her shift so abandoned her patient. By abandoning her patient, the Respondent's actions violated R.I. Gen. Laws § 23-17.9-8 (6) (violation of the regulation) and Section 22.6.1(A)(2) (unprofessional conduct) of the Licensing Regulation. The Respondent did not appear and did not show why there should not be a finding of unprofessional conduct.

**FINDINGS OF FACT**

1. The Respondent's registration as nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* expired on June 30, 2024.
2. A Notice was sent by the Department to Respondent on August 19, 2024 to the Respondent's most recent address on record with the Department.
3. A hearing was scheduled for September 6, 2024, 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 engaged in unprofessional conduct in violation of R.I. Gen. Laws § 23-7.9-8(1) and Section 22.6(A)(2) of the Licensing Regulation. As Respondent's registration has expired, no action is taken on her registration.

Entered this day 19<sup>th</sup> September, 2024.

  
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:   9/23/24  

Jerome Larkin, MD  
Jerome Larkin, MD  
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 23rd day of September, 2024 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Chelsea Magrey, 585 Main Street, Apt. 2B, East Greenwich, R.I. 02818 and by electronic delivery to magrechels94@icloud.com for the Respondent and by electronic delivery to Anita Flax, Esquire, and Jacqueline Kelley, Associate Director, Department of Health, Three Capitol Hill, Providence, RI 02908.

Pamela Lopes