

**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.: 23-00842</b>
<b>Daniel Scott,</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 Daniel Scott (“Respondent”) by the Department of Health (“Department”) on June 5, 2024. The Respondent holds a registration as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* A hearing was held on June 27, 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

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<sup>1</sup> In this matter, a Notice of Pre-hearing Conference and Specification of Charges dated April 22, 2024 was initially sent to the Respondent. The Respondent reached out to the Division by email requesting that the prehearing conference be rescheduled and be held remotely. A remote prehearing conference was scheduled on the day and time suggested by the Respondent, but the Respondent did not appear at the prehearing conference. As a result of the Respondent’s non-appearance, a date was chosen for a full remote hearing. The undersigned notified the Respondent by email that a full remote hearing had been scheduled for June 27, 2024. Department’s Exhibit Four (4) (May 28, 2024 email from undersigned to the Respondent). The Department also sent the Notice to the Respondent notifying him that a remote full hearing was scheduled for June 27, 2024. The Notice was sent to the Respondent’s address on record with the Department by first class and certified mail and to the email address on record with the Department. Department’s Exhibits One (1) (Notice indicating mailing by email and regular and certified mail to email and mailing addresses on record with the Department); Two (2) (United States Post Office website tracking showing the Notice sent by certified mail delivery was unclaimed by Respondent); and Three (3) (Respondent’s licensing information on record with the Department with email and updated mailing address used to send Notice).

was adequately noticed of hearing, a hearing was held before the undersigned on June 27, 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 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**

Based on the pleadings and the exhibits, the Respondent was employed by a health care facility and on August 18, 2023, he clocked in for an eight (8) hour shift but left 30 minutes later. Department’s Exhibits One (1)<sup>3</sup> and Five (5) (complaint from agency and affidavit from agency). The Respondent submitted a response to the Department that he quit his job and believed the complaint arose because of retaliation by the health care facility as he had reported it to the Department, and that there were two (2) other nursing assistants on the floor so there were no grounds for abandonment. His response also indicated that he would provide further information but apparently none was forthcoming. Department’s Exhibit Six (6) (Respondent’s response).

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

<sup>3</sup> It is noted that the Notice had the incorrect date of this incidence. The exhibits had the correct date.

## 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**

Based on the pleadings and the undisputed evidence, the Respondent clocked in for an eight (8) hour shift at a health care facility and left 30 minutes later. In his written response, the Respondent stated he quit his job and did not dispute that he left during his shift. He indicated there were other nursing assistants on the floor but did not explain how quitting during his shift did not constitute abandonment of his patients. By abandoning his patients, 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 Department requested that a sanction of a reprimand be imposed on the Respondent's registration. The Respondent did not appear and did not show why a reprimand should not be imposed for said violation.


**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. A Notice was sent by the Department to Respondent on June 5, 2024 to the Respondent's most recent address on record with the Department.
3. A hearing was scheduled for June 27, 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 violated R.I. Gen. Laws § 23-7.9-8(6) and violated Section 22.6(A)(2) of the Licensing Regulation and pursuant to R.I. Gen. Laws § 23-17.9-8, the undersigned recommends that a reprimand be issued against Respondent's registration.

Entered this day 11<sup>th</sup> July, 2024.

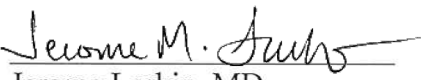
  
Catherine R. Warren, Esquire  
Hearing Officer

**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:

ADOPT  
 REJECT  
 MODIFY

Dated: 7.22.2024

  
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 22<sup>nd</sup> day of July, 2024 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Mr. Daniel Scott, 495 Blackstone Street, Apt. 3, Woonsocket, R.I. 02895 and by electronic delivery at daniellscott772@gmail.com for the Respondent and by electronic delivery to Anita Flax, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

*Pamela Lopes*  
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