

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

In the Matter of:

Elijah W. Hector,

Respondent.

91 7199 9991 7032 0935 2177

DOH Case No.: C21-0265

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing and Specification of Charges (“Notice”) issued to Elijah W. Hector (“Respondent”) by the Department of Health (“Department”) on December 7, 2021. The Respondent previously held a registration (“Registration”) as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* A hearing was held on January 28, 2022. The Department was represented by counsel and the Respondent was *pro se*. The parties 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 216-RICR-10-05-4 *Practices and Procedures Before the Rhode Island Department of Health* 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”)¹ and if so, what is the appropriate sanction.

¹ This refers to the regulation in effect from July 12, 2018 to October 7, 2021 which covers the pertinent time period.

IV. MATERIAL FACTS AND TESTIMONY

The Respondent testified for the Department. He testified that he was employed by an agency in February, 2021 and had no other employment. He testified that he worked for a patient ("Patient") at his house and that the Patient's cell phone was part of the care plan, and he helped the patient use the cell phone and would take the phone with him to the basement for laundry or when he emptied the trash or picked up the groceries. He testified he had the cell phone in his possession on February 17, 2021 and took it with him when he left.

The Respondent testified on his behalf. He testified he had permission to use the cell phone. He testified there were no other complaints against him. He testified that he did not intentionally steal the phone. He testified that he did not harm the Patient. He testified that he quit his job the following day, and the agency used his final pay check to reimburse the Patient for the cell phone.

On cross-examination, the Respondent testified that the cell phone was a jitterbug cell phone which is specifically for seniors as it has large numbers and special lighting, etc. He testified that the family members knew he used the telephone. He testified that he agreed the family reported the cell phone as stolen. He testified that his shift was 7:30 AM to 1:00 PM and he left on February 17, 2021 at 10:00 AM for a doctor's appointment and did not return the next day. He testified that he quit the agency before he was asked by the agency to leave. He testified that the cell phone is still in his possession. He testified that due to hardship, he was not able to either drive or take a bus to the Patient to return the phone or mail it to the agency. He testified that it is eleven (11) months since this happened, and he did not return the cell phone because the Patient was reimbursed and the agency paid the Patient from his, the Respondent, wages. He testified that the agency paid the Patient more than what the phone was worth. He testified that neither the Patient nor the agency asked for the cell phone back. He testified that he is sorry for what happened.

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;

(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.

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

During the hearing, it transpired that the Respondent's nursing assistant registration expired on June 30, 2021, so that the Respondent no longer holds such a registration. Department's Exhibit One (1) (Department's licensing information). The Department had been seeking revocation of the registration. The Respondent argued he did not steal the cell phone and the Patient had been reimbursed.

The Respondent's testimony was that he accidentally took the cell phone home with him and made no attempt to return it due to financial hardship. However, he could have telephoned the Patient or his family informing him that he accidentally took the cell phone home. The complaint to the Department indicated that when the Patient's family realized the cell phone was gone, the family had called the cell phone and someone answered it and said that the Respondent had sold it to them. Department's Exhibit Three (3). The Respondent's response to the Department regarding the complaint did not explain that he took the cell phone by accident but rather stated that the Patient was reimbursed by the agency out of his paycheck, and he was not fired for stolen property. Department's Exhibit Four (4).

The Respondent's explanation that his use of the cell phone was part of the Patient's care plan did not make sense since the cell phone was the type specifically made for the elderly. Thus, it would seem that the Patient had a jitterbug phone for his use rather than for a nursing assistant to use when doing the laundry or taking out the trash. Further, if the Respondent accidentally took the cell phone home, he could have easily called and told the agency and/or Patient so that the cell phone could be retrieved (if he was unable to bring it in). Instead, the Respondent testified that the agency paid the Patient from the Respondent's wages more than it was worth. One would think that the Respondent would rather return the cell phone to the Patient rather than lose his wages. Finally, the Respondent testified that he still had the cell phone in his possession. If so, he could have brought it to the hearing to show that it had not been sold.

While the Respondent argued the Patient was not harmed in that he was reimbursed for the cell phone, the Respondent took the cell phone and made no effort to return it. The Respondent's explanation about what happened to the cell phone lacked credibility. Whether it was his intent to steal the cell phone or not, he took it home and never made any effort by telephone or in person to

return it. The Respondent's actions were unprofessional and incompetent. Therefore, he violated R.I. Gen. Laws § 27-17.9-8(1) (incompetent); R.I. Gen. Laws § 27-17.9-8 (6) (violated regulation); and § 22.6(A)(2) of the Licensing Regulation (unprofessional behavior).

VI. FINDINGS OF FACT

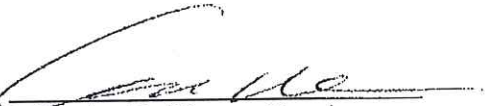
1. The Respondent was previously registered as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.*
2. The Notice was issued by the Department to Respondent on December 7, 2021 to the Respondent.
3. A hearing was held on January 28, 2022. The Department was represented by counsel. The Respondent was *pro se*. The parties rested on the record.
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 § 22.6(A)(2) of the Licensing Regulation and R.I. Gen. Laws § 23-17.9-8(1) and (6). As the Respondent's registration has expired, there is no registration to revoke or suspend. However, if the Respondent ever applies again for a nursing assistant registration, this matter shall be taken into consideration of his application.

Date:

February 24, 2022

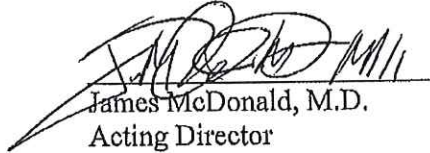

Catherine R. Warren, Esquire
Hearing Officer

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: 2/24/2022


James McDonald, M.D.
Acting 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 ^{2ND} day March, 2022 that a copy of the within Decision and Notice of Appellate Rights was sent by electronic delivery and by first class mail and certified mail, return receipt requested to Mr. Elijah Hector, 155 Wendell Street, Apt. 3, Providence, R.I. 02909 and by electronic delivery to Anita Flax, Esquire, and Linda Esposito, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.

