

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

Department of Health	:	
Health Services Regulation	:	
Board of Nursing Assistants,	:	
	:	Summary Suspension
v.	:	
	:	
Erica Mincey,	:	
Respondent.	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to a Summary Suspension of Nursing Assistant Registration (“Summary Suspension”) dated March 16, 2022 and a Notice of Hearing dated May 7, 2022 (“Notice”) issued to Erica Mincey (“Respondent”) by the Department of Health (“Department”). The Respondent holds a registration (“Registration”) as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* A hearing was scheduled for June 1, 2022 in regard to whether the Summary Suspension should have been issued and at which time the Respondent did not appear at the hearing. 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.¹ Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on June 1, 2022. Additionally,

¹ See Department’s Exhibits One (1) (Notice); (Seven) (Summary Suspension with address); Eight (8) (United States Post Office online tracking sheet showing delivery of Summary Suspension); Ten (10) (United States Post Office online tracking sheet showing Notice sent by certified mail to same address as Summary Suspension and that notice was left regarding the certified mail at the address).

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 216-RICR-10-05-4 *Practices and Procedures Before the Department of Health*.

III. ISSUE

Whether the Summary Suspension should have been issued.

IV. MATERIAL FACTS

Based on the pleading and exhibits entered at hearing, it was undisputed that on February 17, 2022, the Respondent was intoxicated while on duty at a patient's house and was unable to care for her patient. Department's Exhibit One (1) (Notice); Three (3) (complaint filed by Respondent's employment agency with Department dated February 18, 2022); Four (4) (police report); Five (5) (fire department report); Six (6) (hospital records);² Seven (7) (Notice of Violation/Compliance Order/Summary Suspension); and Nine (9) (request for hearing).

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 literally and must give the words of the statute their plain and

² The hospital records are sealed by order of the hearing officer.

ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 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.2d 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 130, 134 (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. Whether the Summary Suspension Should Stay in Place Pending Completion of any Disciplinary Proceedings

The Department suspended the Respondent’s Registration based on information that on February 17, 2022, she was intoxicated while on duty caring for a patient at a patient’s house and was unable to care for her patient.

Since the issue is only whether the Summary Suspension should be issued, the undersigned will not be reviewing the matter for possible statutory or regulatory violations, but rather whether the Department had evidence to support its finding that the Respondent's alleged behavior constituted an immediate danger to the public

R.I. Gen. Laws § 42-35-14(c) provides that "[i]f the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of license may be ordered pending proceedings for revocation or other action."

In this matter, the Department found there was a public danger in that the Respondent is a nursing assistant, and the Department received information that the Respondent was intoxicated while on duty and not performing her duties to care for her patient. That type of behavior is a danger to patients in that the Respondent was unable to care for her patient while on duty.

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. The Department issued a Summary Suspension of Respondent's Registration on March 16, 2022.
3. A hearing notice on Summary Suspension was issued on May 7, 2022.
4. As the Respondent was adequately notified of the hearing, a hearing was held on June 1, 2022.
5. The facts contained in Section IV and V are reincorporated by reference herein.

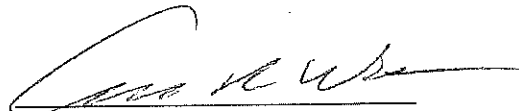
VII. CONCLUSION OF LAW

Based on the foregoing, the Department issued a Summary Suspension pursuant to R.I. Gen. Laws § 42-35-14(c).

VIII. RECOMMENDATION

Based on the foregoing, the Summary Suspension should stay in effect pending any further disciplinary action and the completion of such action. However, such action, when taken, needs to be instituted promptly so that a hearing, if necessary,³ can be held on such an action.

Dated: June 13, 2022

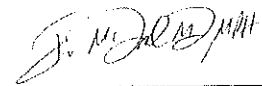

Catherine R. Warren, Esquire
Hearing Officer

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: 6/14/2022


James McDonald, M.D., M.P.H.
Interim Director

³ The parties may choose to resolve this matter by settlement without a need for a hearing. However, without a settlement, a hearing should be held as the Appellant requested a hearing.

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 § 42-35-15, 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 15TH day of June, 2022 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Erica Mincey, 10 Aberdeen Street, West Warwick, R.I. 02893 and 460 Pine Street, Providence, R.I. 02907 and by electronic delivery to Anita Flax, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.


LINDA L. ESPOSITO