

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

Department of Health	:	
Health Services Regulation	:	
Board of Nursing Assistants,	:	
	:	C22-0233
v.	:	
	:	
Erica Mincey,	:	
Respondent.	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing and Specification of Charges (“Notice”) dated August 17, 2022 issued to Erica Mincey (“Respondent”) by the Department of Health (“Department”). The Respondent held a registration (“Registration”) as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* which was summarily suspended by the Department on March 16, 2022. The summary suspension was affirmed by a Department decision dated June 15, 2022. A further hearing was scheduled for September 14, 2022 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, Section 4.13.2 of the Hearing Regulation provides that a judgment may be

¹ See Department’s Exhibits One (1) (Notice); and Two (2) (United States Post Office online tracking sheet showing delivery of Notice).

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 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 Exhibits One (1) (Notice); Four (4) (complaint filed by Respondent’s employment agency with Department dated February 18, 2022); Five (5) (police report); Six (6) (fire department report); Eight (8) (hospital records);² Nine (9) (Compliance Order/Summary Suspension); 11 (request for hearing); and 13 (June 15, 2022 decision).

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. 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;

(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 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

Based on the pleadings and the undisputed evidence, the Respondent was intoxicated while on duty and was not performing her duties to care for her patient. The Respondent's actions violated R.I. Gen. Laws § 23-17.9-8(1) (unfit or incompetent because of negligence, habits, or other causes); (5) (conduct detrimental to health and safety of patient); and (6) (violation of the regulation). The Respondent's actions also violated Section 22.6.1(A)(2) (unprofessional conduct) of the Licensing Regulation.

I. FINDINGS OF FACT

1. The Respondent was registered as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* Her registration was suspended effective March 16, 2022.

2. A Notice was sent by the Department to Respondent on August 17, 2022 to the Respondent's most recent address on record with the Department.

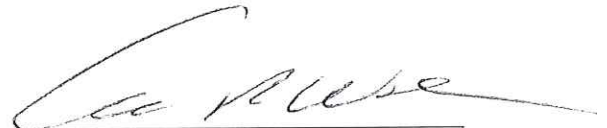
3. A hearing was scheduled for September 14, 2022, at which time the Respondent did not appear. As the Respondent had adequate notice of hearing, the undersigned held the hearing that day.

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(1); (5); and (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 Respondent's nursing assistant registration be revoked.

Entered this day 28th September, 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: 9/28/2022

Utpala Bandy, MD, MPH

Utpala Bandy, MD, MPH
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 § 42-35-15, 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 29TH day of September, 2022 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail, return receipt requested to Ms. Erica Mincey, 10 Aberdeen Street, Apt. 2R, West Warwick, R.I. 02893 and by electronic delivery to the Respondent at emvargas12@gmail.com and by electronic delivery to Anita Flax, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.



LINDA L. ESPOSITO