

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

Department of Health	:	
Health Services Regulation	:	
Board of Nursing Assistants,	:	
	:	DOH Case No.: 18-0839A
v.	:	
	:	
Francisca Pires,	:	
Respondent.	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing and Specification of Charges (“Notice”) issued to Francisca Pires (“Respondent”) by the Department of Health (“Department”) on February 1, 2019. The Respondent holds a license (“License”) as a certified nursing assistant (“CNA”) pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* A hearing was scheduled for March 12, 2019 at which time the Respondent did not appear at the hearing. Pursuant to Section 4.6.1 of the 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 Notice was delivered to Respondent’s last known address by first class and certified mail.¹ Since the Respondent was adequately noticed of hearing, a

¹ See Department’s Exhibits One (1) (Respondent’s licensing history with last known address on record with Department); Two (2) (Notice indicating mailing address as last known address); and Three (3) (United States Post Office online tracking showing the certified mail of the Notice was delivered).

hearing was held before the undersigned on March 12, 2019.² 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 abused a patient in her care by slapping, pinching, and verbally insulting him. See Department’s Exhibits Four (4); Five (5); and Six (6) (reports regarding the investigation of Respondent’s abusive actions including various witness statements).³

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

² Pursuant to a delegation of authority by the Director of the Department of Health.

³ Department’s Exhibits Four (4); Five (5); and Six (6) are ordered sealed because of patient confidentiality.

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:

(5) Has engaged in conduct detrimental to the health, welfare and safety of patients/residents in his or her care.

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:

5. Upon proof that the nursing assistant or medication aide has engaged in any form of abuse as defined in this Part.

Section 22.3(A)(1) of the Licensing Regulation defines "abuse" as follows:

1. "Abuse" means any assault or battery as defined in R.I. Gen. Laws Chapter 11-5, R.I. Gen. Laws § 11-37-1, or any conduct which harms or is likely to harm a patient, or intentionally engaging in a pattern of harassing conduct which causes or is likely to cause emotional or psychological harm to the patient, including, but not limited to, ridiculing or demeaning a patient, making derogatory remarks to a patient, cursing directed towards a patient, and threatening to inflict physical or emotional harm on a patient, except when the conduct is a part of the care and treatment and in furtherance of the health and safety of the patient.

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

The Department sought revocation of the Respondent's License arguing that the evidence showed that the Respondent abused her patient.

Based on the pleadings and the undisputed evidence, the Respondent abused her patient. The Respondent's actions violated R.I. Gen. Laws § 23-17.9-8(5) (conduct detrimental to health and safety of patient) and violated Section 22.6.1(A)(5) (abuse) of the Licensing Regulation.

VI. FINDINGS OF FACT

1. The Respondent is licensed 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 February 1, 2019 to the

Respondent's most recent address on record with the Department.


3. A hearing was scheduled for March 12, 2019 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(5) and violated Section 22.6(A)(5) of the Licensing Regulation and pursuant to R.I. Gen. Laws § 23-17.9-8, the undersigned recommends that Respondent's License be revoked.

Entered this day 29th March, 2019.

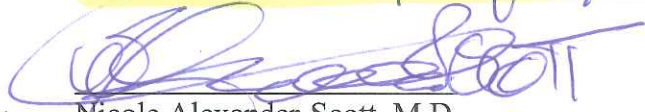

Catherine R. Warren, Esquire
Hearing Officer

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 Suspend for 1 year

Dated: 4/2/19

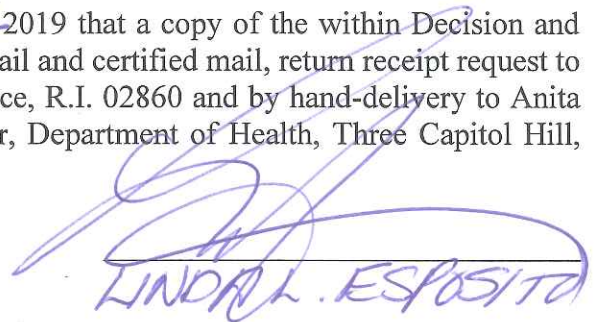

Nicole Alexander-Scott, M.D.
Director

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 5TH day of APRIL 2019 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail, return receipt request to Ms. Francisca Pires, 24 Nickerson Street, Providence, R.I. 02860 and by hand-delivery to Anita Flax, Esquire, and Linda Esposito, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.


LINDA L. ESPOSITO