

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.: A.H. C14-0050
	:	
v.	:	
	:	
Lisa Beese	:	
Respondent.	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to an Administrative Hearing Notice (“Notice”) issued to Lisa Beese (“Respondent”) by the Department of Health (“Department”) on August 1, 2014. 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 August 22, 2014 at which time the Respondent appeared at said hearing and testified on her own behalf. The Department was represented by counsel Amy Coleman. The Department’s witnesses were Police Officer John Izzi from the West Warwick Police Department and Donna Valetta, Nursing Assistant and Medication Board Administrator from the Department.

II. EXHIBITS

The Department introduced into evidence Karen Scott’s (victim’s daughter) Witness statement to the West Warwick Police Department dated 10/25/13 as the Department’s Exhibit

#1 Full. Department's Exhibit # 2 the West Warwick Police Report dated 10/23/2013 was marked as Full. In addition, the Cranston Police Report dated 12/6/2013 was marked as Department's Exhibit #3 Full. The Department's Administrative Hearing Notice was marked Exhibit #4 Full.

The Respondent also introduced a Banner print out of the charges she pled to as Respondent's A Full. A receipt of from the RI Justice System marked as Respondent's B Full. A Treasurer's check from evidence payment of restitution marked as Respondent's Exhibit C Full and The Total amount assessed as Respondent's Exhibit D Full.

III. 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.

IV. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 23-17.9-8 and if so, what is the appropriate sanction.

V. TESTIMONY AND MATERIAL FACTS

Lisa Beese
DEPARTMENT OF HEALTH
8/22/14

The issue here is whether or not the Respondent obtained access to two (2) credit cards from the victim and used them on two (2) separate occasions to buy gas and cigarettes. The

evidence at the hearing indicated that Ms. Beese was an employee of Healthtouch Inc. in Warwick, Rhode Island as a nursing assistant. That on or about September 24th, 2013, Respondent obtained access to the elderly victim's credit to purchase gasoline, oil and a carton of cigarettes at the Cumberland Farms in Warwick, RI. In addition, the evidence showed on October 15, 2013, that Ms. Beese obtained access to another credit card of the victims and purchased cigarettes and gasoline at a Sunoco Station in West Warwick, Rhode Island.

West Warwick Police Officer Izzi testified that he observed the video of Ms. Beese making the purchases in question. See Department's Exhibit # 2. In reviewing the Cranston Police Report it appears that a Detective Thomas Okolowicz had Ms. Beese come to the Cranston Police Department. Ms. Beese admitted to the detective that in fact it was her that used the credit card. It appears from the police record that three purchases were made in Cranston with the victim's credit card. Ms. Beese was charged with 3 misdemeanor counts of obtaining Money Under False Pretenses. In her witness statement to the police, Miss Beese stated that due to financial hardship, she made a stupid decision to use the credit cards to purchase gas and groceries. See Exhibit #3 Full.

Ms. Donna Valletta, the Board Administrator for Nursing Assistants, testified on the Department's behalf. She testified that the Board recommended revocation of her License for five (5) years.

During her testimony Miss Beese stating that she has been a nursing assistant since 1982 and has never done anything like this before. She was remorseful. She stated that she paid \$418 in full restitution. She pled to 3 charges of Obtaining Money under False Pretenses and 2 counts of Fraudulent use of credit cards (all misdemeanor charges) and received a filing for one year. She stated that after one year to the date of the charges, 1/8/2015, her record will be expunged.

She asked that the Hearing Officer considered giving her less than 5 years recommended for her revocation.

VI. 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 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. Statutes

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:

(3) Upon proof that the nursing assistant has been convicted in a court of competent jurisdiction, either within or without this state, of a felony;

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

Section 6 of the License Regulation provides as follows:

Pursuant to the statutory provisions of sections 23-17.9-8 and 23-17.9-9 of the Rhode Island General Laws, as amended, the Department may deny, suspend or revoke any registration issued hereunder or may reprimand, censure or otherwise discipline an individual who has been found guilty of violations of the Act or the rules and regulations herein, in accordance with section 23-17.9-8 of the Rhode Island General Laws, as amended, and upon decision and after hearing as provided pursuant to section 11.0 herein in any of the following cases:

a) upon proof that such nursing assistant and/or medication aide is unfit or incompetent by reason of negligence, habits or other causes.

e) has engaged in conduct detrimental to the health, welfare, and safety of patients/residents in his/her care.

f) 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 the Respondent Violated R.I. Gen. Laws § 23-17.9-8

The evidence in this case shows that the Respondent obtained credit cards and made unauthorized purchases of gas and cigarettes on 3 separate occasions in Cranston and 2 separate occasions in West Warwick to buy gas and groceries from a patient in her care totaling in an amount to \$418. Respondent admitted to the West Warwick Police Department that she had completed the fraudulent transactions. Detective John Izzi noted that she appeared upset explaining that she felt very bad for what she did. In addition, Respondent also admitted to the Cranston Police Department that in fact it was her who used the victim's credit card to make purchases. Miss Beese turned herself in and stated she made a stupid decision and has never done anything like this before.

This Hearing Officer finds that the Respondent's action of obtaining the two credit cards from a patient in her care and making the purchases on 5 separate occasions violated R.I. Gen. Laws § 23-17.9-8 (5) (has engaged in conduct detrimental to the health, welfare and safety of a patient in her care). The Respondent's action also violated Section 6.1(e) (has engaged in conduct detrimental to the health, welfare, and safety of patients) and (f) (fails to conform to the standards of acceptable and prevailing practice) of the Licensing Regulations.

VII. FINDINGS OF FACT

1. The Respondent is licensed as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* and Licensing Regulation.

2. Respondent was an employee of HealthTouch Inc. provided in home nursing assistant services to the victim.

3. Respondent made unauthorized purchases in the City of Cranston and West Warwick and was charged with 3 misdemeanor counts of Obtaining Money Under False Pretenses, 2 counts of Larceny (which were later dismissed) and 2 misdemeanor Counts of Fraudulent Use of Credit Cards.

4. Respondent admitted to the charges to both the Cranston and West Warwick Police and turned herself in both times.

5. Respondent pled nolo and received a felling for one year and a No contact order with the victim.

6. Respondent paid restitution in full in amount of \$418.

7. A hearing was held on August 22, 2014 at which time the Respondent did appear.

8.. The facts contained in Section IV and V are reincorporated by reference herein.

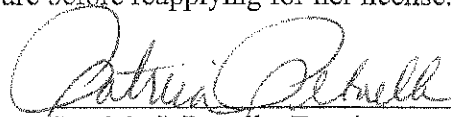
VIII. CONCLUSION

Based on the forgoing, the Respondent violated R.I. Gen. Laws § 23-17.9-8(5) and sections 6.1(e) and (f) of the Licensing Regulation. This Hearing Officer recommends that Respondent's license be revoked for a period of two (2) years. Unlike other Respondents whose licenses were revoked for unauthorized purchases who failed to appear at hearings, Respondent appeared before this Hearing Officer and took responsibility for her actions. See Christine Sallah, DOH Case No: C13-359. See Victoria Dubay, DOH Case No: C13-363. In addition, Respondent immediately admitted to her crimes to the police officers and paid restitution in full. Detective Izzi noted in his police report that she was upset and explained she felt very bad for what she did. Before these incidents, Respondent was never in trouble with the law and had no history of this kind of behavior since working from 1982.

Moreover, the Department of Health entered into a Consent Agreement under Cassandra Lee Gonzalez DOH Case No. C13-476 in March of 2014. In that case, the Department agreed to a revocation for two years where Respondent admitted to stealing 3 blank checks from the victim and cashing them in for a total of \$1645. Ms. Beese admitted to making unauthorized purchases totaling \$418.

For these reasons, this Hearing Officer recommends her license be revoked for two years. Her criminal record will be clear in 1 year, however, Respondent will have to wait another year and meet all educational requirements for licensure before reapplying for her license.¹

Entered this day 5th September, 2014.



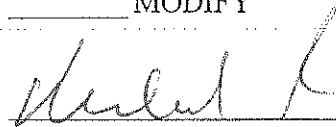
Patricia J. Petrella, Esquire
Hearing Officer

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: 10/2/2014



Michael Fine, M.D.
Director

¹ There is no guarantee that a license would issue after application.

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 3 day of ~~September~~^{OCTOBER}, 2014 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Lisa Beese 52 Leaf Street, West Warwick, RI 02893 and by mail to Donna Valetta, Department of Health and Amy Coleman, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

ARLINE MARONI