

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

---

<b>In the Matter of:</b>	:	
	:	
	:	<b>Case No.: 23-0453</b>
<b>Maria Alves,</b>	:	<b>Board of Nursing Assistants</b>
<b>Respondent.</b>	:	
	:	

---

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing and Specification of Charges (“Notice”) issued to Maria Alves (“Respondent”) by the Department of Health (“Department”) on April 17, 2024. The Respondent holds a registration as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.* A hearing was held on May 2, 2024 at which time the Respondent did not appear. 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. In this matter, the Respondent was sent notice by regular and certified mail and email.<sup>1</sup> Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on May 2, 2024.<sup>2</sup> Additionally, Section 4.13.2 of the Hearing Regulation provides that a judgment may be entered based on pleadings and/or evidence submitted

---

<sup>1</sup> The Notice was sent to the Respondent’s address and email address on record with the Department. Department’s Exhibits One (1) (Notice indicating mailing by email and regular and certified mail to email and mailing addresses on record with the Department); Two (2) (United States Post Office website tracking showing the Notice sent by certified mail delivery was in system); Three (3) (Respondent’s licensing information on record with the Department with email and mailing addresses used to send Notice); and Seven (7) (first class Notice returned as forwarding time expired). While it appears that the Respondent did not update her mailing address on record with the Department as required by regulation, the Notice was also sent by email to the Respondent’s email address on record with the Department.

<sup>2</sup> Pursuant to a delegation of authority by the Director of the Department of Health.

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 worked in 2023 as a nursing assistant for a staffing agency and worked in the Central Falls school district and submitted time sheets to her agency indicating she worked on dates at the high school in March, 2023 when she had not. Department’s Exhibits One (1); Three (3) (licensing record); Four (4) (complaint from staffing agency); Five (5) (email from high school); and Six (6) (email from staffing agency with time sheets).

## 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).

**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:

\*\*\*

(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:

\*\*\*

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 submitted inaccurate and misleading timesheets to her staffing agency for work she did not perform. The Respondent's actions violated R.I. Gen. Laws § 23-17.9-8(6) (violation of the regulation) in that she violated Section 22.6.1(A)(2) (unprofessional conduct) of the Licensing Regulation.

The Department requested that a two-year period of Active Probation on Respondent's nursing assistant registration be imposed as follows:

- a. The Respondent must work as a nursing assistant at a hospital or nursing facility with direct supervision for a period of two years. Respondent may not work as a nursing assistant in a private home or anywhere else without direct supervision.
- b. The Respondent's license status shall be listed as "Administrative Inactive" until Respondent provides the Department with documentation from a hospital or nursing facility stating that the hospital or facility intends to employ Respondent as a nursing assistant. Upon receipt of this documentation from Respondent or the hospital or facility, Respondent's licensing status will be changed to "Active Probation."
- c. If Respondent changes jobs, the Respondent must provide the Department with the name of the new hospital or nursing facility where she is employed within two weeks of starting employment.
- d. The Respondent must provide all hospitals and nursing facilities where she is employed as a nursing assistant with a copy of this decision and a Job Performance Progress Report form provided to her by the Department.
- e. The Respondent agrees to ensure that Respondent's employer provides Job Performance Progress Report to the Department. The due dates of Respondent's quarterly reports are as follows:

First Quarter Report (January -March) due by April 15th each year  
Second Quarter Report (April-June) due by July 15th each year  
Third Quarter Report (July-September) due by October 15th each year  
Fourth Quarter Report (October-December) due by January 15th each year

- f. The Respondent agrees to permits the Department to communicate with Respondent's employer(s) or potential employers regarding her employment.
- g. Respondent understands that if she fails to cause her employer to timely submit Respondent's Job Performance Progress Report to the Department, that is, within four (4) weeks of the date it is due to the Department, the Department shall be entitled to presume that she is not employed as a nursing assistant and will change Respondent's license status to "Administrative Inactive" until proof of employment or future employment is received by the Department.
- h. After Respondent completes two years of employment as a nursing assistant at a hospital or nursing facility with the status of Active Probation, Respondent may apply to the Department for her license status to be changed to "Active."
- i. Any violation of, or failure to adhere to, the terms of this decision shall constitute unprofessional conduct and subject Respondent to further disciplinary action at the discretion of the Department, including but not limited to revocation of her license. The Respondent understands and agrees that Respondent's formal discharge from this decision shall take place only upon Respondent's successful completion of the terms and conditions stated herein and by approval of the Department.

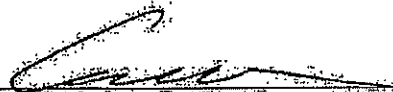
## VI. FINDINGS OF FACT

1. The Respondent is registered as a nursing assistant pursuant to R.I. Gen. Laws § 23-17.9-1 *et seq.*
2. A Notice was sent by the Department to Respondent on April 17, 2024 to the Respondent's most recent mailing address and email address on record with the Department.
3. A hearing was scheduled for May 2, 2024, 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 (6) and violated Section 22.6(A)(2) of the Licensing Regulation. Pursuant to R.I. Gen. Laws § 23-17.9-8, the undersigned recommends that a period of a two (2) year Active Probation be imposed as delineated above.<sup>3</sup>

Entered this day 14<sup>th</sup> May, 2024.

  
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: 5/15/24

  
Staci A. Fischer, MD, FACP, FIDSA  
Acting Director

<sup>3</sup> The Department's licensing record at hearing indicated the Respondent's registration expired on June 30, 2023, but also listed it as "active." Department's Exhibit Three (3). The Department's online licensing records (of which the undersigned takes administrative notice) indicate that the Respondent's registration expires June 30, 2025. See <https://healthh.mylicense.com/verification/Details.aspx?result=a7a52162-23f9-4465-bbee-57d29167dee1>.

If the Respondent's registration actually has expired, the Active Probation would apply if she chose to re-apply in future for a nursing assistant registration.

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 20<sup>th</sup> day of May 2024 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Maria Alves, 16 Carpenter Street, Pawtucket, R.I. 02860 and by electronic delivery to the Respondent at alvesmaria1988@yahoo.com and by electronic delivery to Anita Blax, Esquire, and Linda Esposito, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.

