

hearing was held before the undersigned on November 19, 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(3) and if so, what is the appropriate sanction.

IV. MATERIAL FACTS

Based on the pleadings and the exhibits, the Respondent pled *nolo contendere* to two (2) counts of Medicaid fraud which were felonies. See Department's Exhibits Two (2) (Notice); Four (4) (criminal information); and Six (6) (judgment and disposition).

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

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

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

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.

D. Whether Respondent Violated R.I. Gen. Laws § 23-17.9-8(3)

The Department alleged that the Respondent's felony convictions constituted conduct subject to discipline pursuant to R.I. Gen. Laws § 23-17.9-8(3). The Department sought revocation of the Respondent's License. It argued that the Respondent pled *nolo contendere* to two (2) felonies of Medicaid fraud. The Respondent was sentenced to five (5) year deferred sentence for both felonies to be served concurrently. The Respondent was also ordered to pay restitution. Such a plea is considered a conviction. See R.I. Gen. Laws § 12-8-3. See also *Reis v. Hittner*, 2000 WL 220777 (R.I. Superior Court). The Department's Notice relied on the felony convictions as provided for by statute.

Based on the pleadings and the undisputed evidence, the Respondent was convicted of two (2) felonies of Medicaid fraud. The Respondent's actions violated R.I. Gen. Laws § 23-17.9-8(3) (conviction of a felony).


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 October 28, 2019 to the Respondent's most recent address on record with the Department.
3. A hearing was scheduled for November 19, 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(3) and pursuant to R.I. Gen. Laws § 23-17.9-8, the undersigned recommends that Respondent's Registration be revoked.

Entered this day 12th December, 2019.

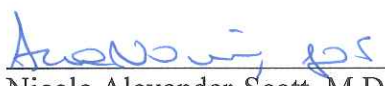

Catherine R. Warren, Esquire
Hearing Officer

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

Dated: 12/16/19

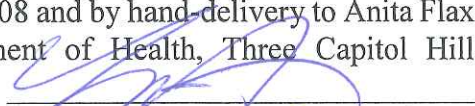

Nicole Alexander-Scott, M.D., M.P.H.
Director

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 18th day of December, 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. Mariser Liranzo, 873 River Street, Providence, R.I. 02908 and by hand-delivery to Anita Flax, Esquire, and Linda Esposito, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.


LINDA ESPOSITO