

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

In the Matter of:

**Sherry Robinson,
Respondent.**

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**Case No.: 23-0490
Board of Nursing Assistants**

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing and Specification of Charges (“Notice”) issued to Sherry Robinson (“Respondent”) by the Department of Health (“Department”) on September 22, 2023. 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 October 25, 2023, 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.¹ Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on October 25, 2023.² Additionally, Section 4.13.2 of the Hearing Regulation provides that a judgment may be entered based on

¹ 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 address on record with the Department); Two (2) (United States Post Office website tracking showing the Notice sent by certified mail delivery was delivered to Respondent); and Three (3) (Respondent’s licensing information on record with the Department with email and mailing address used to send Notice).

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

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 was working on May 21, 2023 as a nursing assistant for a staffing agency at the home of two (2) patients. The Respondent allowed a man holding a bottle of alcohol to come into the house. The Respondent showed her visitor a monitor showing the patients sleeping upstairs. The patients’ daughter was able to view this on in-house video and requested that the man leave. Department’s Exhibits One (1) (Notice); Four (4) (complaint from staffing agency to Department about the incident); Five (5) (video showing man arriving via basement); and Six (6) (video showing man leaving via the basement).

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 allowed a man into her patients' house and showed him a monitor showing her patients sleeping. 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.

For this violation, the Department seeks a two (2) year probation period be imposed on the Respondent's registration as a nursing assistant during which certain conditions shall apply as follows:

1. The Respondent must work in a hospital or nursing facility.
2. The Respondent's nursing assistant registration shall reflect the status, "Active Probation."
3. The probationary period will abate for the duration of any period in which the Respondent ceases to be employed as a nursing assistant.
4. The Respondent will notify the Department of any lapse in employment and the probation period will be extended until the required employment as a nursing assistant for a total of two (2) years is completed.
5. The Respondent shall present her employer with a copy of this decision and a quarterly performance report form provided to her by the Department.

6. The Respondent must provide the Department with the name and address of any new employer(s) and the reason for said change.

7. When Respondent complies with the laws and regulations related to the practice of a nursing assistant during the probation and the requirements of this decision, the Respondent may apply to the Department for an unrestricted registration to practice as a nursing assistant.

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 September 22, 2023 to the Respondent's most recent address on record with the Department.


3. A hearing was scheduled for October 25, 2023, 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 probation be imposed on the Respondent's nursing assistant registration during which she must work in a **hospital or nursing facility** and be subject to the further conditions delineated above.

Entered this day 20th November, 2023.


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:

 X ADOPT
 REJECT
 MODIFY

Dated: 11/29/23

Utpala Bandy, MD, MPH

Utpala Bandy, MD, MPH
Interim 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 29th day of November, 2023 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail to Ms. Sherry Robinson, 12 Joslin Street, Apt. 2, Providence, R.I. 02909 and by electronic delivery to the Respondent at Esrmjr3109@gmail.com and by electronic delivery to Anita Flax, Esquire, and Linda Esposito, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.

Pamela Lopes
