

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

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Department of Health Health Services Regulation Board of Nursing Assistants,	:	
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	:	
	:	DOH Case No.: 18-0891; 18-0902
v.	:	
	:	
	:	
Tareka Brais, Respondent.	:	
	:	
	:	

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**DECISION**

**I. INTRODUCTION**

This matter arose pursuant to a Notice of Hearing and Specification of Charges (“Notice”) issued to Tareka Brais (“Respondent”) by the Department of Health (“Department”) on November 19, 2018. 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 December 18, 2018 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.<sup>1</sup> Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on December 18, 2018.<sup>2</sup> Additionally, Section 4.13.2 of

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<sup>1</sup> See Department’s Exhibit One (1) (United States Post Office showing certified mail delivery of Notice to the Respondent).

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

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 the *Rules and Regulations Pertaining to Rhode Island Certificates of Registration for Nursing Assistants, Medication Aides, and the Approval of Nursing Assistant and Medication Aide Training Program* (“Licensing Regulation”)<sup>3</sup> and if so, what is the appropriate sanction.

## IV. TESTIMONY AND MATERIAL FACTS

Linda Esposito, CNA board manager, testified on behalf of the Department. She testified that the Department received police reports regarding the Respondent being charged with credit card theft and larceny regarding six (6) individuals. See Department’s Exhibit One (1) (police reports regarding the charges which involved patients and co-workers at the nursing home where the Respondent worked). She testified that the Respondent pled *nolo contendere* to two (2) charges. See Department’s Exhibit Three (3) (print-out from Court website showing Respondent pled to a misdemeanor charge of fraudulent use of a credit card and a misdemeanor charge of larceny under \$1,500 in relation to a patient in her care). She testified that the Respondent telephoned her after receiving the Notice and said she would not be appearing at the hearing.

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<sup>3</sup> This regulation was amended and recodified pursuant to R.I. Gen. Laws § 42-35-5 as 216-RICR-40-05-22 *Nursing Assistants, Medication Aides, and the Approval of Nursing Assistant and Medication Aide Training Programs* Regulation effective July 12, 2018. As the actions in this matter took place in March and April, 2018, this decision shall refer to the prior licensing regulation in effect at that time.

## 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). 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).

### 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. 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:

(1) Upon proof that the nursing assistant is unfit or incompetent by reason of negligence, habits, or other causes;

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

Section 6 of the Licensing 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;

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

Based on the Respondent's actions, the Department sought revocation of the Respondent's License.

Based on the pleadings and the undisputed evidence, the Respondent pled *nolo contendere* to a misdemeanor charge of fraudulent use of a credit card and to a misdemeanor charge of larceny under \$1,500 in relation to obtaining a credit card from a patient in her care. The Respondent's actions violated R.I. Gen. Laws § 23-17.9-8(1) (unfit) and (5) (conduct detrimental to health and

safety of patient). The Respondent's actions also violated 6.1(1) (unfit) and (e) (detrimental to health and safety of patient) and 6.1(f) (unprofessional conduct) of the Licensing Regulation.

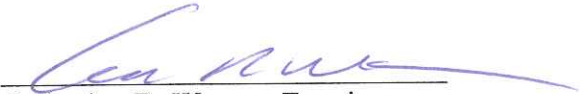
**VI. FINDINGS OF FACT**

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 November 19, 2018 to the Respondent's most recent address on record with the Department.
3. A hearing was scheduled for December 18, 2018 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(1) and (5) and violated Sections 6.1(a), (e), and (f) of the Licensing Regulation and pursuant to R.I. Gen. Laws § 23-17.9-8, the undersigned recommends that the Respondent's License shall be revoked immediately.

Entered this day 3<sup>rd</sup> January, 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: 1/8/19

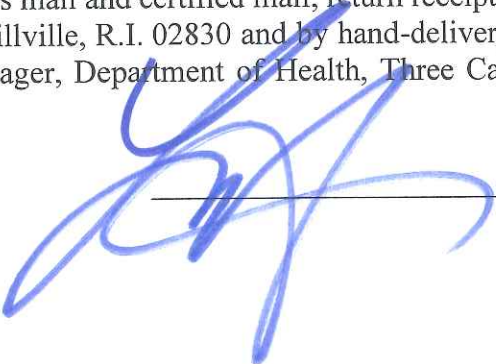
  
Nicole Alexander-Scott, M.D.  
Director

**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 10<sup>TH</sup> day of January, 2019 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail and certified mail, return receipt requested to Ms. Tareka Brais, 400 Iron Mine Road, Burrillville, R.I. 02830 and by hand-delivery to Anita Flax, Esquire, and Linda Esposito, Board Manager, Department of Health, Three Capitol Hill, Providence, RI 02908.

  
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