

STATE OF RHODE ISLAND  
DEPARTMENT OF HEALTH  
HEALTH SERVICES REGULATION  
BOARD OF NURSE REGISTRATION AND NURSING EDUCATION  
THREE CAPITOL HILL  
PROVIDENCE, RI 02908

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In the Matter of:

Kimberly Lemire, RN,

Respondent.

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C22-0536; C22-0580

ORDER REVOKING LICENSE

**I. Introduction**

The above-entitled matter came before the Board of Nurse Registration and Nursing Education (“Board”) pursuant to a Summary Suspension of Registered Nurse License (“Suspension”) issued on May 3, 2022 by the Board to Kimberly Lemire (“Respondent”). The Respondent holds a license (“License”) as a registered nurse in the State of Rhode Island pursuant to R.I. Gen. Laws § 5-34-1 *et seq.* A hearing was scheduled for May 9, 2022 at which time the Respondent did not appear at hearing. 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 Suspension was delivered to Respondent in person.<sup>1</sup> Since the Respondent was adequately noticed of hearing, a hearing was held before the Board on May 9, 2022. Additionally, Section 4.13.2 of the Hearing Regulation provides that a judgment may be entered

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<sup>1</sup> See Department’s Exhibit One (1) (Summary Suspension with proof of hand delivery of the Suspension to Respondent who signed an acknowledgement of service).

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 Board has jurisdiction over this matter pursuant to R.I. Gen. Laws § 5-34-1 *et seq.* and the Hearing Regulation.

## **III. Material Facts and Testimony**

Lynda D'Alessio, Director of the Board of Nursing, testified on behalf of the Department. She testified that she has been a registered nurse for 33 years. She testified that the Department received two (2) complaints in April, 2022 regarding the Respondent relating to drug diversion of oxycodone and morphine and the forging of records. She testified that she investigated the Respondent's licensing history and found that she had her nursing license suspended in 2020 by the State of Connecticut for drug diversion. She testified that the Respondent had a history of drug diversion between 2018 and 2022 and had lied on her 2021 renewal application to the State of Rhode Island about her Connecticut suspension. She testified that it was determined that the Respondent's continued practice as a nurse was an immediate danger to the public. She testified that the Respondent had indicated that she would come to the Department on April 29, 2022 to surrender her License but had never appeared. She testified that the Suspension was hand delivered to the Respondent on May 3, 2022.

Robert O'Donnell ("O'Donnell"), Investigator, testified on behalf of the Department. He testified that he conducts investigations for the Department. He testified that he received a copy of the May 20, 2020 suspension of the Respondent's nursing license by Connecticut. He testified that a hearing was held that suspension on June 17, 2020 with the Connecticut decision being issued on April 21, 2021. He testified that the April, 2021 decision lifted the suspension

but put the Respondent on probation. He testified that said decision was based on the Respondent failing to document, diverting drugs, and falsifying drug records. Department's Exhibit Three (3). He testified that when the Respondent submitted her renewal of her License to the Department, she answered no to whether she had been disciplined since her last renewal. He testified that she submitted her renewal on February 11, 2021. He testified that at the time of her Rhode Island renewal, she would have known of May, 2020 Connecticut suspension so lied when she answered that question.

O'Donnell testified that in April, 2022, the Department received a complaint from a nursing home that the Respondent had diluted morphine in March, 2022 that was for a patient in her care. He testified that she was investigated by the nursing home and the police. He testified that the Respondent was arrested for larceny of a controlled substance. Department's Exhibits Five (5) (nursing home complaint); Six (6) (police report); and Seven (7) (police arrest report).

O'Donnell testified that in the course of investigating the incidence of the morphine dilution, he discovered that the Respondent had been involved in February, 2022 in another drug diversion incident at another nursing home that had not been reported the Department. He testified that he spoke to that nursing home executive director and its director of nursing regarding the February, 2022 incident and received complaint on it on April 28, 2022. Department's Exhibit Eight (8). He testified that the Respondent was the nurse on duty when the medical log was signed that 18 oxycodone pills had been destroyed, but the signature was that of the director of nursing who was not on duty at the time that the medical log was purportedly signed by her. He testified that the Respondent forged the director of nursing signature on the medication log. He testified that the nursing director provided examples of her real signature. He testified that the nursing home protocol for destroyed medicine was also to provide a second

document indicating the medicine was destroyed which was not provided for the 18 oxycodone pills. Department's Exhibit Nine (9) (police report) and Ten (10) (nursing home's medication policies, medical log with the forged signature and examples of real signature).

#### **IV. Summary Suspension**

As detailed in the Suspension, the Department received many complaints against the Respondent alleging unprofessional conduct in violation of R.I. Gen. Laws § 5-34-24. The Suspension was issued pursuant to R.I. Gen. Laws § 5-34-26<sup>2</sup> and R.I. Gen. Laws § 42-35-14(c).<sup>3</sup> The Suspension provided that “[i]f you fail to appear at the scheduled hearing, absent good cause, the Board will proceed with the hearing and enter an order based upon the evidence presented.” As required by R.I. Gen. Laws § 5-34-26, a hearing was held within ten (10) days of the Suspension.

#### **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.

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<sup>2</sup> R.I. Gen. Laws § 5-34-26 provides as follows:

Grounds for discipline without a hearing. The director may temporarily suspend the license of a nurse without a hearing if the director finds that evidence in his or her possession indicates that a nurse's continuation in practice would constitute an immediate danger to the public. In the event that the director temporarily suspends the license of a nurse without a hearing, a hearing by the board must be held within ten (10) days after the suspension has occurred.

<sup>3</sup> R.I. Gen. Laws § 42-35-14(c) provides as follows:

Licenses. \*\*\* (c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency sent notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

*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**

R.I. Gen. Laws § 5-34-24 provides in part as follows:

Grounds for discipline of licensees. The board of nurse registration and nursing education has the power to deny, revoke, or suspend any license to practice nursing; to provide for a nondisciplinary alternative only in situations involving alcohol or drug abuse; or to discipline a licensee upon proof that the person is:

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(3) Unfit or incompetent by reason of negligence or habits;

(4) Habitually intemperate or is addicted to the use of habit-forming drugs;

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(6) Guilty of unprofessional conduct that includes, but is not limited to, all of the above and also:

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(ii) Willfully making and filing false reports or records in the practice of nursing;

(iii) Willful omission to file or record nursing records and reports required by law;

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(v) Willful disregard of standards of nursing practice and failure to maintain standards established by the nursing profession; or

(7) Guilty of and willfully or repeatedly violating any of the provisions of this chapter and/or rule or regulation adopted pursuant to this chapter.

**D. Whether Discipline Should be Imposed on the Respondent**

Based on the pleadings and exhibits and testimony at hearing, it is undisputed that while acting as a registered nurse in the State of Connecticut, the Respondent during 2019 on many occasions failed to document hospital records, failed to safeguard controlled substances, failed to administer and/or document property the administration of controlled substances, falsified and/or improperly documented control substance disposition records, falsified another person's name for the wasting of a controlled substance. In July, 2018, the Respondent had discrepancies in her narcotic book at nursing home where she was employed. In December, 2018, the Respondent diverted oxycodone at a nursing home in Rhode Island. On three (3) different occasions in 2020, the Respondent diverted oxycodone at two (2) different nursing homes at which she worked. The Respondent was not truthful when she filed her 2021 renewal application with Rhode Island because she failed to disclose that disciplinary action had been taken by Connecticut in May, 2020 against her license as a registered nurse. In February, 2022, the Respondent diverted oxycodone at a nursing home where she worked and forged the director of nursing's signature in an effort to cover up her diversion. In April, 2022, the Respondent diluted morphine of a patient in her care. On April 12, May 10, and June 14, 2021, the Respondent failed to appear before the Board as requested by the Board.

**a. Summary Suspension**

The Board unanimously found that based on the foregoing, the Department had enough evidence to find the Respondent's practice as a nurse was an immediate danger to the public to and to issue the Suspension due to the Respondent's repeated diversion of drugs and falsifying records and failing to document records for controlled substances.

**b. Revocation of License**

As indicated in the Suspension, the Board would enter an order based upon the evidence presented at hearing. On the basis of the evidence presented, the Board found that the Respondent repeatedly diverted drugs and falsified records and failed to document records for controlled substances and lied on her renewal application to the Department. On the basis of the foregoing, the Board unanimously found that the Respondent violated R.I. Gen. Laws § 5-34-24(3) (unfit or incompetent by reason of negligence or habits); R.I. Gen. Laws § 5-34-24(4) (habitually intemperate or addicted to habit-forming drugs); R.I. Gen. Laws § 5-34-24(6)(ii) (willfully making or filing false reports); R.I. Gen. Laws § 5-34-24(6)(iii) (willfully filing false reports); R.I. Gen. Laws § 5-34-24(6)(v) (willfully disregarding standards of nursing practice), and R.I. Gen. Laws § 5-34-24(7) (willfully and repeatedly violating the provisions of this chapter). As a result of the evidence presented, the Board unanimously voted to revoke the Respondent's License due to her statutory violations.

**VI. Conclusion**

After hearing and based on the foregoing, the Board made the following orders:

1. The Department was justified in issuing the Suspension.
2. The Respondent's License is revoked effectively immediately.

By Order of the Board,

  
Diane Martins, RN  
President

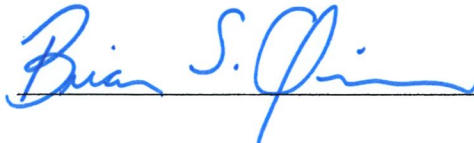
Entered this 23<sup>rd</sup> day of May, 2022.

**NOTICE OF APPELLATE RIGHTS**

PURSUANT TO R.I. GEN. LAWS § 5-34-28, APPEALS OF DECISIONS ARE GOVERNED BY THE ADMINISTRATIVE PROCEDURES ACT, R.I. GEN. LAWS § 42-35-1 *et seq.* 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 DECISION 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 23<sup>rd</sup> day of May, 2022 that a copy of the within Order and Notice of Appellate Rights was sent by first class mail, postage prepaid and certified mail, return receipt requested to Ms. Kimberly Lemire, 46 Reservoir Avenue, Pascoag, R.I. 02859 and by electronic delivery to Lisa Bortolotti, Esquire, and Lynda D'Alessio, Department of Health, Three Capitol Hill, Providence, RI 02908.

  
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