

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

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DIVISION OF LEGAL SERV.

In the Matter of:

Tina Silva, RN 34151, C15-
1229
Respondent.

ORDER SUSPENDING LICENSE

I. Introduction

The above-entitled matter came before the Board of Nurse Registration and Nursing Education ("Board") pursuant to a Notice of Charges and Administrative Hearing ("Notice") issued in September, 2016 by the Board to Tina Silva ("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 October 17, 2016 at which time the Respondent did not appear at hearing. Pursuant to Section 5.6 of the *Rules and Regulations Pertaining to Practices and Procedures Before the Department of Health* ("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, notice was sent to the Respondent's last known address by first class and certified mail. Since the Respondent was adequately noticed of hearing, a hearing was held. Additionally, Section 12.9 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 Board was represented by counsel.

II. Jurisdiction

The Board has jurisdiction over this matter pursuant to R.I. Gen. Laws § 5-34-1 *et seq.*, *Rules and Regulations for the Licensing of Nurses and Standards for the Approval of Basic Nursing Education Programs* and the Hearing Regulation.

III. Material Facts and Testimony

Margaret Clifton, Executive Director, Board of Nursing, testified on behalf of the Department. She testified that the Notice was sent by first class and certified mail to the Respondent's address on record with the Department and to her email address on record with the Department with the first class and certified Notice being returned to the Department. See Department's Exhibits One (1) and Two (2) (Notice). She testified that the Board received a complaint about the Respondent and reached out to her about the complaint, but the Board received no responses to its correspondence forwarded to the Respondent in February, April (twice), and May, 2016. See Department's Exhibits Four (4) through Seven (7). She testified that the complaint was that the Respondent had been sleeping at the home of her patient which is unsafe.

Jacob Auslander ("Auslander") testified on behalf of the Board. He testified that he is the business manager at the nursing company ("Company") that hired the Respondent to provide in-

home patient care. He testified that the Respondent was hired in October, 2015 and terminated in January, 2016. He testified that he spoke with a patient's father on the morning, December 7, 2015, and the father told him that he had heard his son's pulse-ox machine beeping and he woke up and found the Respondent sleeping and woke her up, and she said she was fine so he went back to bed, but then later he woke up and found her sleeping again so he took a photograph of her sleeping and told her to leave the house. Auslander testified that he knows what the Respondent looks like and while the photograph is of a person lying face down on the floor, he believes the photograph looks like her. He testified that the Respondent was on duty at the patient's house on the day that this incident occurred. He testified that the Respondent was eventually terminated for non-cooperation with the Company investigation. See Department's Exhibits Nine (9) (photograph) and Ten (10) (payroll records) and 11 and 12 (Company discipline).

Jill Dowling testified on behalf of the Board. She testified that she is the director of clinical services for the Company and has been an RN for 29 years. She testified that a complaint was received from a patient's father that twice he found the Respondent sleeping on the floor when she was supposed to be providing care to the son. Department's Exhibit 13 (complaint). She testified that usually a nurse would be sitting in a chair facing the patient, but instead the Respondent was lying face down on the floor. She testified that she is familiar with the Respondent and the patient's room and the photograph looks like her and shows the patient's room. She testified that the patient was a 1½ year old boy who was born prematurely and has chronic respiratory problems and tracheostomy and a feeding tube which needs monitoring overnight by the nurse. She testified that if the patient was left alone, the feeding tube could get clogged or dislodged. Department's Exhibit 16 (patient's plan of care) (under seal). She testified that after the Respondent was suspended by the Company, the Respondent called and said she had laryngitis and could not speak, and would call later, but never did.

III. Discussion

The Department argued that the Respondent violated R.I. Gen. Laws § 5-34-24(6)(i) (unprofessional conduct by abandoning patient).

Based on the pleadings and exhibits and testimony at hearing, it is undisputed that the Respondent twice fell asleep on the floor of a patient's bedroom on the same night when she was supposed to be caring for the patient and monitoring him.


Based on the forgoing, the Board unanimously found that the Respondent violated R.I. Gen. Laws § 5-34-24(6)(i).

V. Conclusion

After hearing and based on the forgoing, the Board made the following order:

The Respondent's License is suspended until such time she appears before the Board of Nursing for further determination as to the status of her License

By Order of the Board,



Jessica Brier, RN
President

Entered this 3rd day of October, 2016.

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 7th day of November, 2016 that a copy of the within Order and Notice of Appellate Rights was sent by first class mail, postage prepaid and registered mail, return receipt requested to Ms. Tina Silva, 11 South Angell Street, #191, Providence, RI 02906 and by hand-delivery to Julie A. Sacks, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.