

MAINE STATE BOARD OF NURSING

IN RE: Jill I. Cote, R.N.)
) DECISION AND ORDER
Licensure Disciplinary Action)

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S.A. Sec. 2105-A(1-A)(D), et seq., 5 M.R.S.A. Sec. 9051, et seq. and 10 M.R.S.A. Sec. 8001, et seq., the Maine State Board of Nursing (Board) met in public session at the Board's offices located in Augusta, Maine on October 22 and 29, 2003 for the purpose of determining whether Jill Cote, R.N. engaged in fraudulent or deceitful or unprofessional or incompetent conduct as a registered nurse while licensed in Maine as more specifically stated in the Notice of Hearing dated September 8, 2003. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairwoman Jeanne B. Delicata, R.N.C., Therese B. Shippo, R.N., Charyl Doughty, L.P.N., Bruce O'Donnell, C.R.N.A. and Karen Tripp (public representative). Dennis Smith, Ass't. Attorney General, presented the State's case. Ken Lehman, Esq. represented Ms. Cote. James E. Smith, Esq. served as Presiding Officer.

Following the determination that none of the Board had conflicts of interest which would bar them from participating in the hearing, the taking of official notice of its statutes and rules, and subsequent to the opening statements by counsel, State's Exhibits 1-24, 26 were admitted into the Record as were Respondent's Exhibits B1-4, E1-3, G, L, J, N, O, P, S, U and V. Exhibit F was not admitted but is in the Record as an offer of proof. The Board then heard the testimony, reviewed the submission of exhibits and considered counsels' closing arguments after which it deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the violations alleged in the Complaint.

II. FINDINGS OF FACT

Jill I. Cote was first licensed to practice nursing in the State of Maine in 1996 and remained in that status until August 27, 2003 at which time the Board suspended her license pending hearing on the instant allegations. She began practicing her profession at a nursing home and then at Maine Medical Center (MMC) in Portland, Maine from 1997- June 2000 when she was placed on medical leave of absence by MMC due to drug addiction. Nurse Cote admitted that she diverted drugs for her own use during her employment as a staff nurse at that institution. On November 29, 2000, Jill Cote (Shoemaker) entered into a Consent Agreement with the Board pursuant to which she surrendered her nurse's license.

Subsequently, she appeared before the Board on June 28, 2001 and requested that her license to practice be reinstated. The Board found that Ms. Cote had completed a substance abuse program and had been substance free for one year. Additionally, she was receiving weekly counseling and participating in 5 self-help meetings per week. The Board, on July 16, 2001,

reinstated her license but placed her on probation for a period of 2 years which time was tolled unless she was engaged in performing nursing services or enrolled in a nursing education program. Other terms of probation were also included in that Consent Agreement.

On December 23, 2002, Jill Cote became employed as a registered nurse by Allied Resources for Correctional Health (ARCH), which is a Maine corporation that provides healthcare related services to county correctional facilities in this State. Ms. Cote was assigned to work at the York County jail. She was on duty at the jail on July 28, 2003 from 7:00 a.m.-4:30 p.m. and returned to work that evening from 7:00 p.m. until 10:00 p.m. At some time between noon and 1:00 p.m. on that day, inmate E.O. was transferred from the Cumberland County jail to the York County jail. Following his being booked at the latter facility, nurse Cote took his medical history at approximately 3:00 p.m. when she filled out a Medication Verification Note form. According to the Respondent, the space listed under the heading "Allergy" was blank. She testified that E.O. was a poor historian and that he didn't mention any allergies. However, he was diabetic and showing symptoms of distress consistent with that disease. Nurse Cote then called Claudia, her counterpart at the Cumberland County jail, and apprised her of the situation. Claudia faxed E.O.'s medical records to Ms. Cote at 3:10 p.m. These records revealed that E.O. was allergic to Demerol, a Class III controlled substance. Nurse Cote testified that she did not see that fax until around 7:00 p.m. that evening.

Due to the worsening condition of E.O., it was determined that he was in need of Insulin which was temporarily unavailable at the York County jail. Nurse Cote also testified that E.O. was complaining of stomach pain and was determined by her to need a pain killer. Therefore, after receiving authorization from ARCH nurse practitioner Constance Jordan, Jill Cote ordered Insulin by fax at 3:38 p.m. from the NCS Pharmacy. Ms. Jordan's license authorizes her to sign for Insulin among other drugs. Unbeknownst to Ms. Jordan, however, nurse Cote also added 60 Demerol pills to this prescription allegedly for E.O.'s pain. This order was not authorized by anyone and neither is there mention of it in E.O.'s medical records except for his allergy to that drug. Moreover, there is no record of nurse Cote's performing a requisite pain assessment on E.O. prior to or after ordering the drug. Additionally, the recommended amount of legally prescribed drugs such as Demerol for an inmate to receive at the York County jail is 3 pills per day for an average 14 day stay, or a total of 42 pills. The next day, the Respondent wrote a note to nurse Jordan stating that she had ordered the Demerol by mistake and that she meant to order Darvocet.

Jill Cote further testified that after she discovered the fax at 7:00 p.m. from the Cumberland County jail, she filled in "Demerol" on the "Allergy" space on the Medication Verification Note form. However, when the Demerol was delivered to the jail by the pharmacy at approximately 8:56 p.m., nurse Cote, knowing of inmate E.O.'s allergy to Demerol, accepted and signed for same by 9:02 p.m. even though she had refused a delivery of drugs from the same pharmacy earlier that day. The white copy of the receipt was retained by the pharmacy, but the yellow copy, to be retained by the jail, is missing. Shortly thereafter, inmate E.O. was bailed from the jail. Whatever happened to the Demerol remains a mystery, although Jill Cote stated that she locked same in the jail's medicine closet.

The Board specifically finds that nurse Cote's explanation of her reasons for ordering Demerol despite E.O.'s allergy thereto and her testimony in connection with this issue is not credible. The Board is of the opinion that due to E.O.'s somewhat urgent medical condition, nurse Cote most probably read the fax from the Cumberland County jail soon after it was sent and was aware of E.O.'s allergy prior to ordering the Demerol. The Board is persuaded that nurse Cote intended to divert the Demerol for her own purposes rather than for E.O.'s alleged pain, and that

she intentionally ordered the Demerol without the necessary authorization which act was outside the scope of her license and constitutes falsification of a medical record. The Board further finds that the Demerol was improperly stored or disposed of by nurse Cote in that there is no record of its being locked up. The Board was disturbed by the fact that nurse Cote took no responsibility for these acts.

On a different issue, Jill Cote e-mailed the Board's Executive Director on February 5, 2003 regarding possible noncompliance with the Consent Decree. In that message, she stated that she was still employed at Maine Medical Center and "have not changed employers yet" and other words to that effect. However, she had, in fact, accepted employment and was working at the York County jail as of December 23, 2002.

III.

CONCLUSIONS OF LAW

The relevant statutory and regulatory provisions regarding the above matter and as stated in the Complaint/Notice of Hearing are as follows:

32 M.R.S.A. Sec. 2105-A.2. Grounds for discipline. The board may suspend or revoke a license pursuant to Title 5 section 10004. The following are grounds for an action to issue, modify, suspend, revoke or refuse to renew the license of an individual licensed under this chapter:

E. Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:

1. Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public.
2. Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed.

The facts found in this Decision support the conclusion that Ms. Cote is incompetent to practice nursing since she was not truthful about her reasons for ordering the Demerol, did so without authorization, did not record how the pills were disposed of if indeed they were, did not perform a pain assessment on patient E.O. prior to ordering the drug, and diverted same for her own purposes.

F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which the licensee is licensed.

The facts found in this Decision support the conclusion that Ms. Cote was unprofessional in her practice of nursing since she was not truthful in her e-mail regarding employment to the Board's Executive Director, was not truthful about her reasons for ordering the Demerol, ordered same without authorization, did not record how the pills were disposed of if indeed they were, did not perform a pain assessment on patient E.O. prior to ordering the drug, and diverted same for her own purposes.

H. A violation of this chapter or a rule adopted by the board.

"Rules and Regulations of the Maine State Board of Nursing, Chapter 4."

1. Disciplinary Action.

3. Definition of Unprofessional Conduct. Nursing behavior which fails to conform to legal standards and accepted standards of the nursing profession, and which could reflect adversely on the health and welfare of the public shall constitute unprofessional conduct and shall include, but not be limited to, the following:

K. Inaccurate recording, falsifying or altering a patient or health care provider record.

Nurse Cote did not record the history of the Demerol after delivery. She was not truthful in stating that she did not become aware of patient E.O.'s allergy until after she had ordered the drug and falsified his records by ordering a drug that was not prescribed. Additionally, there is no record of her ordering the Demerol in patient E.O.'s records.

P. Diverting drugs, supplies or property of patients or health care provider.

Nurse Cote ordered a drug that was not prescribed and diverted same for her own purposes.

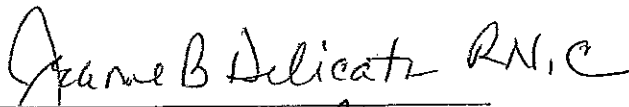
Q. Possessing, obtaining, furnishing or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.

Nurse Cote obtained and possessed a prescription drug without authorization.

The Board, by a vote of 5-0, based on the above recited facts and its training and expertise, concluded that Jill I. Cote, R.N., violated the above statutory and regulatory standards of nursing. The Board then voted 4-1 to revoke her license to practice as a registered nurse pursuant to 10 M.R.S.A. Sec. 8003. The Board further ordered her to pay the costs related to the hearing which total \$3,611.80 (Hearing officer - 21 hours and 45 mins. @ \$100 per hour = \$2175; Court reporter services for 1st day = \$650; court reporter for 2nd day = \$600; witness and travel fees = \$186.80). The check or money order shall be made payable to: Maine Board of Nursing and mailed to Myra Broadway, Exec. Director, 158 State House Station, Augusta, Maine 04333-0158.

SO ORDERED.

Dated: ~~November 2003~~
December 11, 2003


Jeanne B. Delicata, R.N., Chairwoman
Maine State Board of Nursing

IV.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3, any party that decides to appeal this Decision and Order must file a Petition for Review within 30 days of the date of receipt of this Order with the District Court having jurisdiction. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Nursing, all parties to the agency proceedings, and the Maine Attorney General.