

MAINE STATE BOARD OF NURSING

IN RE: Susan M. Frye, R.N.)
Licensure Disciplinary Action) DECISION AND ORDER

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 State of Maine Board of Nursing (Board) met in public session at the Board's offices located in Augusta, Maine on July 23, 2002 for the purpose of determining whether Susan M. Frye, R.N. engaged in fraud, deceit, unprofessional or incompetent conduct as a registered nurse while licensed in Maine as more specifically stated in the Notice of Hearing dated June 12, 2002. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairman Richard L. Sheehan, M.S., R.N., Kathleen A. Dugas, L.P.N., Hazel M. Rand, (public representative), Jeanne B. Delicata, R.N.C. and Karen Tripp (public representative). John H. Richards, Ass't. Attorney General, presented the State's case. James E. Smith, Esq. served as Presiding Officer.

Ms. Frye did not appear and neither was she represented by counsel. Service of the Notice of Hearing was duly made both by certified mail signed for on June 13, 2002 and by regular mail which was not returned to the sender (Board). Subsequent to the opening statement by counsel, State's Exhibits 1-9 were admitted into the Record. Following the submission of exhibits and closing argument, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the violations alleged in the Complaint.

FINDINGS OF FACT

Susan M. Frye (a/k/a/ Susan J. Frye), birth date September 2, 1956, has been a licensed registered nurse in Maine since 1981. Her current license expires September 2, 2002. On or about October 8, 2000, Susan M. Frye applied to the Board for a renewal of her nursing license and enclosed the licensure fee of \$50 with her application. Her address on her application was 10 Water Street, Apt. 4, Houlton, Maine 04730. The check could not be cashed apparently due to insufficient funds in her account. Myra Broadway, the Board's Executive Director, sent a letter dated November 20, 2000 to Ms. Frye at that address which informed her that "the license you currently hold is null and void, and, therefore, you may not engage in the practice of nursing in Maine pending payment of the required fees." (emphasis in original). Ms. Frye responded to this letter 18 months later and acknowledged receiving Director Broadway's letter. She also stated that "I have sent a

cashier's check to cover it [bounced check] under separate cover. I will be present at the hearing on June 5, 2002." Ms. Frye did not attend the informal hearing on that date and neither has the Board received the check that she stated she mailed.

On March 29, 2001, Susan J. Frye pled guilty in the Bangor District Court to the crime of theft by unauthorized use of property. For that offense, she received a sentence of 30 days in the Penobscot County jail which was suspended. She was also placed on probation for a term of 6 months beginning March 29, 2001. Ms. Frye was further ordered to forfeit and pay the sum of \$2,012.86 as restitution for the benefit of Budget Rent-A-Car.

On April 26, 2001, another criminal complaint was filed against Susan J. Frye for negotiating a worthless instrument. Her address on the Complaint was listed as 10 Water Street, Apt. 4, Houlton, Maine, 04730. Her arraignment was scheduled for June 11, 2001 but she failed to appear on that date which resulted in a warrant being issued by Judge Ronald D. Russell on June 20, 2001. On July 22, 2001, a Motion for revocation of probation relating to the first offense was filed by the Penobscot County District Attorney's Office with a subsequent Warrant issued by Judge Jessie Gunther for revocation of probation.

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:

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued.

The Board finds that Ms. Frye, in an attempt to obtain a renewal of her nursing license, forwarded to the Board a valueless check and practiced deceit regarding her statement that she subsequently mailed a replacement check to the Board.

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. This conclusion is based on the above recited facts.

The Board, by a vote of 5-0, based primarily on the cumulative effect of the above recited facts and its training and expertise, concluded that Susan Frye, R.N. violated the above statutory and regulatory standards of nursing. The Board revoked

her license to practice as a registered nurse pursuant to 10 M.R.S.A. Sec. 8003. 5. A-1. (2-A).

RECONSIDERATION

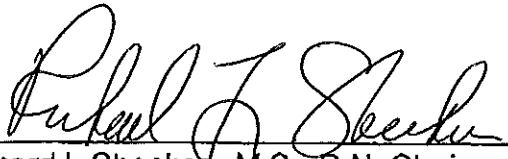
Immediately subsequent to the Board's Decision to revoke Ms. Frye's license, a phone call was made by the Executive Director to the nursing home where Ms. Frye was allegedly employed in order to inform the administrator of the Board's Decision. Upon being informed of the Board's Decision, the nursing home administrator and Ms. Frye requested reconsideration of the Board's Decision for the following reasons which were brought to the attention of the Board but were not recorded.

1. Ms. Frye claimed that she did not receive notice of the Hearing and that she had faxed a change of address to the Board. The Board responded through its attorney that a search of the Board's records did not reveal any such document and, at any rate, that service had been made.
2. Ms. Frye claimed that she did not plead guilty to the offense of unauthorized taking. The Board did not find this assertion to be credible.
3. Ms. Frye claimed that she did not recognize the name of the attorney who, for a time, represented her regarding that offense. The Board did not find this assertion to be credible.
4. Ms. Frye claimed hardship if she could not perform her duties since she is employed in an important administrative nursing position with the nursing home. The Board responded that she was violating the law since she was apparently practicing nursing without a license since she never paid her renewal fee.

After due consideration, the Board denied the "Motion for Reconsideration."

SO ORDERED.

Dated: July 23, 2002



Richard L. Sheehan, M.S., R.N. Chairman
Maine State Board of Nursing

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.