

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical
Technician – Paramedical License Held by:

JOHN BRYAN RUSLING
License No. P24550,

Respondent.

Case No.: 10-0017

OAH No.: 2010061228

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted
by the Emergency Medical Services Authority as its Decision in the above-entitled matter.

This Decision shall become effective 9/10/2011.

IT IS SO ORDERED as of 8/10/2011.

EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

By

Howard Becker

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PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on May 10 and 11, 2011.

Cynthia L. Curry, Staff Counsel, represented complainant Nancy Steiner, Chief of the EMS Personal Division of the Emergency Medical Services Authority, State of California.

David Givot, Attorney at Law, represented respondent John Bryan Rusling (respondent), who was present.

Testimonial and documentary evidence was received, the case argued, and the matter was submitted for decision on May 11, 2011. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

FACTUAL FINDINGS

1. Complainant made the Accusation in her official capacity.
2. The Emergency Medical Services Authority (Authority) issued Emergency Medical Technician-Paramedic (EMT-P) license number P24550 to respondent on February 5, 2007. At all times pertinent hereto the license was in full force and effect.
3. On June 16, 2009, respondent was a paramedic employed by the Sierra Madre Fire Department Paramedic Program (Fire Department). Respondent and his partner Jason Gorman (Gorman) responded to Sierra Madre Fire Run number 09-342 involving a 62-year-old cancer patient taking methadone and hydromorphone who experienced an apparent syncopal (fainting) episode. The patient's family found the patient slumped over and face down.

4. Respondent recognized the patient from a recent run four days earlier when he administered Narcan¹ to the patient because of the patient's near overdose on his methadone and hydromorphone medications. On the June 16 run, respondent again administered Narcan to the patient. One week later, the Fire Department placed respondent on administrative suspension to investigate his action. In a June 24, 2009 letter, the Fire Department stated the following specific grounds for the suspension:

... violations of Los Angeles County Department of Health Services Policy Reference 806; the administration of a medication after breaking from radio contact with the base station and no re-contact made or attempted; administration of a medication outside normal protocols for signs and symptoms to administer the medication (medication in question: Narcan); in addition, the documentation on the patient care report ... does not correspond with the recorded radio (base) communication made with the MICN at Arcadia Methodist Hospital. In addition, notations on the documentation indicate orders were given for medications, and some vital signs, and audio recordings from this run indicate no such orders for administration of Narcan was given.

5. Respondent notified the Los Angeles County Department of Health Services of his suspension and requested the Los Angeles County EMS Agency to review the matter, which it did. The Los Angeles County EMS Agency reported its findings in a December 9, 2009 letter as follows:

The Base Hospital Form and audio recording from Methodist Hospital of Southern California ... were reviewed and naloxone was not ordered by the mobile intensive care nurse.

Reference No. 806.1 Procedures Prior to Base Contact, allows for the administration of naloxone when a patient presents with the following symptoms:

- Respiratory distress with hypoventilation (respiratory rate \leq 8/minute) if suspected narcotic overdose
- Altered level of consciousness if suspected narcotic overdose with hypoventilation (respiratory rate \leq 8/minute)

This patient did not meet the parameters outlined in 806.1 and the documentation on the EMS Report Form did not support the administration of naloxone. If there was a change in patient condition warranting the

¹ Naloxone hydrochloride is marketed as Narcan, which is a drug used to counter the effects of opiate (e.g. morphine) overdose. Its specific use is to counteract life-threatening depression of the central nervous system and the respiratory system. For fastest action, Narcan is injected intravenously. Narcan acts within one minute, and its effects last up to 45 minutes.

administration of naloxone, these findings should have been documented on the EMS Report Form and base contact reestablished for medical consultation.

6. The Authority's regulations, as set forth below, permit a paramedic at the scene of a medical emergency to administer naloxone in accordance with the local EMS agency's written policies and procedures. Los Angeles County EMS Agency authorizes a paramedic to administer 0.8 to 2 mg of naloxone intravenously or 2 mg of naloxone intramuscularly, titrated to adequate respiratory rate and tidal volume, to a patient presenting with hypoventilation or suspected of narcotic overdose or poisoning without first obtaining direction from a physician or mobile intensive care nurse. The issue presented is whether respondent violated the local EMS agency's protocol for administering naloxone, and thereby "functioned outside the supervision of medical control" while performing his duties as a paramedic on June 16, 2009.

7. On the June 16 run respondent took responsibility for assessing the patient's condition. Respondent prepared Patient Care Report number RD679122. Gorman functioned as the radio man on the call, and, as such, he was responsible for reporting the field assessment of the patient's medical status to the base hospital.

8. The patient care report indicates that the patient "appears lethargic" and that the patient was "AO x3," meaning that the patient was alert and oriented to person, place, and time. Respondent assessed the patient's level of consciousness using the Glasgow Coma Scale (GCS)² and initially assigned the patient a score of 14, which was subsequently changed to 15. Respondent also placed an "X" in the "PERL" box to report that the patient's pupils were equal and reactive to light.

9. Respondent recorded additional information in the patient care report that suggests the patient's vital signs were changing. On his initial examination of the patient, respondent noted that the patient's skin was cold and that the patient was hyperventilating. Within a 19-minute time span the patient's respiratory rate increased from 22 to 33 breaths per minute, the patient's blood pressure increased from 130/80mmHg to 150/152mmHg, and the patient's heart rate increased from 90 to 114 beats per minute. The patient's cold skin and short, shallow breaths are indicators of possible insufficient oxygenation. Respondent, however, was unable to obtain an assessment of the patient's oxygen status. The patient care report indicates that the patient was "AFIB." In atrial fibrillation (A-Fib) the two upper chambers of the heart quiver rapidly and irregularly. A rapid, irregular heart rate can cause a reduction in blood circulation and fainting from a lack of oxygen. The patient care report indicates that the patient was administered 15 liters of oxygen by mask. The patient's distress level is noted as "mod," meaning moderate, and an "X" appears next to the "Abuse Suspected" box.

² The Glasgow Coma Scale is comprised of eye, verbal, and motor responses. The lowest possible GCS sum is three, indicating deep coma, and the highest GCS sum is 15, indicating fully alert and oriented.

10. The audio recording of Gorman's radio call to base hospital in which he reported the patient's condition to a mobile intensive care nurse was available and played at hearing. Gorman reported that the patient complained of a syncopal episode and that family members found the patient face down and semi-alert. He reported the patient's distress level as moderate and the patient's Glasgow Coma Scale scores as 4, 6, 4, but later in his report corrected it as "normally" 4, 6, 5. He reported the patient's pupils as PERL, breath sounds as normal and clear, skin signs as cool and moist, and the patient's EKG reading as abnormal with A-fib at the rate of 120 beats per minute. Gorman reported the patient's initial vital signs were 130/80, pulse rate was 90, and respiration was 22. Gorman did not report any change in the patient's vital signs to the mobile intensive care nurse. Gorman additionally reported an administration of 10 liters (as opposed 15 liters) of oxygen by mask and that the patient's oxygen saturation was 98%, even though the patient care report indicates that the patient's oxygen saturation was unobtainable. Gorman did not report any suspicion of the patient's misuse or abuse of methadone and hydromorphone.

11. The assessments set forth in the patient care report indicate no substantial effect from the patient's analgesic medications. An overdose of methadone and hydromorphone causes the pupils to constrict. Nothing in the patient care report indicates that the patient's pupils constricted. An overdose of methadone and hydromorphone causes respiratory and circulatory depression. In such a case, vital signs are expected to decrease. The patient care report indicates that the patient's vital signs increased. The direction in which the patient's vital signs changed did not substantiate the need for any administration of Narcan to the patient without direction from a physician or mobile intensive care nurse.

12. Respondent contends that after Gorman radioed base hospital he asked Gorman, "Hey, did you get an order for Narcan?" Respondent contends that Gorman responded, "Yea, 1 mg." Respondent then loaded the patient on to a gurney and placed the patient into the ambulance. Respondent testified that he "had a hard time sticking the patient to start an IV." He "lifted up [the patient's] left shoulder and saw the Band-Aid from the last administration [of Narcan]." Respondent administered 1 mg of Narcan to the patient as the ambulance pulled into the ambulance bay. The patient's reaction to the Narcan is noted as positive on the patient care report.

13. The audio recording of Gorman's contact with base hospital clearly and convincingly established that Gorman made no inquiry about Narcan and the mobile intensive care nurse with whom Gorman spoke made no mention of Narcan. Gorman credibly testified that he received no authorization to administer Narcan and that he would not have claimed such authorization when there was none. "I don't believe I would relay information that the base hospital did not order." Respondent's contention that Gorman received and relayed to him a base order to administer Narcan to the patient is not credible.

14. Respondent's administration 1 mg of Narcan intramuscularly to the patient on Sierra Madre Fire Run number 09-342 on June 16, 2009 was without base hospital authorization.

15. In mitigation, respondent has no record of prior disciplinary actions.

LEGAL CONCLUSIONS

1. The Authority is the state agency responsible for all matters related to the licensure of paramedic technicians. It establishes and enforces rules and regulations governing paramedic activities, including a paramedic's scope of practice in the field with and without medical direction or control from a physician or mobile intensive care nurse. Each county additionally has its own local emergency medical services agency (local EMS agency), which promulgates its own procedures and protocols for paramedics practicing within its borders. A paramedic must comply with both the Authority's rules and regulations and the local EMS agency's procedures and protocols.

2. The Authority's regulations permit a paramedic at the scene of a medical emergency to administer naloxone hydrochloride when such medication has been approved by the local EMS agency's medical director and is included in the local EMS agency's written policies and procedures. (Cal. Code Regs., tit. 22, § 100145, subd. (c).) Los Angeles EMS Agency's written policies and procedures permit a paramedic at the scene of a medical emergency to administer naloxone when a patient presents with hypoventilation or suspected narcotic overdose without first obtaining direction from a physician or mobile intensive care nurse.

3. As set forth in Factual Findings 8, 9, 10, and 11, on June 16, 2009, respondent violated the local EMS agency's policy and procedure governing the administration of naloxone.

4. Pursuant to Health and Safety Code section 1798.200, subdivision (b), the Authority may place an EMT-P license holder on probation or suspend or revoke an EMT-P license upon finding the occurrence of any action constituting a threat to the public health and safety. "Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification" is a threat to public health and safety. (Health & Saf. Code, § 1798.200, subd. (c) (10).)

5. An act shall be considered substantially related to the qualifications, functions, or duties of a paramedic "if to a substantial degree it evidences present or potential unfitness of a paramedic to perform the functions authorized by her/his license in a manner consistent with the public health and safety." (Cal. Code Regs., titl 22, § 100174.)

6. Cause exists to revoke or suspend Emergency Medical Technician-Paramedic license number P24550 issued to respondent John Bryan Rusling pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c) (10), in conjunction with California Code of Regulations, title 22, section 100174, by reason of Factual Findings 8, 9, 10 and 11 in that the clear and convincing evidence establishes that the patient on Sierra Madre Fire Run number 09-342 did not present symptoms warranting respondent's administration of

Narcan to the patient without first obtaining direction from a physician or mobile intensive care nurse. An assessment that the patient was alert and oriented to person, place and time, had pupils that were equal and reactive to light, had a Glasgow Coma Scale score of 14 or 15, and oxygenating well is contraindicative to any administration of Narcan. Respondent apparently administered Narcan to the patient because he had done so before. Respondent attended to the patient a few days earlier. He had some familiarity with the patient's medical history, including a near overdose on the powerful analgesics he consumed. On June 16, 2009, however, respondent acted precipitously without regard for the patient's actual condition on that day.

7. Cause exists to revoke or suspend Emergency Medical Technician-Paramedic license number P24550 issued to respondent John Bryan Rusling pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c) (10), in conjunction with California Code of Regulations, title 22, section 100174, by reason of Factual Findings 13 and 14 in that clear and convincing evidence establishes that base hospital did not authorize respondent to administer Narcan to the patient on Sierra Madre Fire Run number 09-342. Respondent functioned outside the supervision and control of base hospital in a manner inconsistent with public health and safety.

8. The Authority's *Recommended Guidelines for Disciplinary Orders and Conditions of Probation* (Effective July 10, 2002), which is incorporated by reference into California Code of Regulations, title 22, section 100172, provides a list of factors for consideration when determining an appropriate level of discipline. That list includes: the nature and severity of the acts under consideration; actual or potential harm to the public; actual or potential harm to any patient; prior disciplinary record; prior warnings on record or prior remediation; the number and variety of current violations; aggravating and mitigating evidence; rehabilitation evidence; and the lapse of time since the acts occurred.

9. But for this one occasion, respondent has no history of disciplinary warning or record of misconduct. The patient on Sierra Madre Fire Run number 09-342 suffered no actual harm from respondent's unwarranted and unauthorized administration of Narcan. Respondent's conduct nonetheless threatened public health and safety. On the facts of this case, imposition of the *Guidelines'* "Recommended Discipline: revocation stayed, 15 day suspension, 1 year probation with terms and conditions" ensures future protection of the public.

ORDER

Emergency Medical Technician-Paramedic license number P24550 issued to respondent John Bryan Rusling is revoked. However, the revocation is stayed for a period of one year; the license is suspended for a period of 15 days commencing with the effective date of this Order. Respondent John Bryan Rusling is placed on one year probation upon the following terms and conditions:

1. **Probation Compliance:** The respondent shall fully comply with all terms and conditions of the probationary order. The respondent shall fully cooperate with the EMSA in its monitoring, investigation, and evaluation of the respondent's compliance with the terms and conditions of his/her probationary order.

The respondent shall immediately execute and submit to the EMSA all Release of Information forms that the EMSA may require of the respondent.

2. **Personal Appearances:** As directed by the EMSA, the respondent shall appear in person for interviews, meetings, and/or evaluations of the respondent's compliance with the terms and conditions of the probationary order. The respondent shall be responsible for all of his/her costs associated with this requirement.

3. **Quarterly Report Requirements:** During the probationary period, the respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by the respondent with all the terms and conditions of his/her probation. If the respondent submits his/her quarterly reports by mail, it shall be sent as Certified Mail.

4. **Employment Notification:** During the probationary period, the respondent shall notify the EMSA in writing of any EMS employment. The respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, the respondent shall submit proof in writing to the EMSA of disclosure, by the respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of the respondent's probation.

The respondent authorizes any EMS employer to submit performance evaluations and other reports which the EMSA may request that relate to the qualifications, functions, and duties of prehospital personnel.

Any and all notifications to the EMSA shall be by certified mail.

5. **Notification of Termination:** The respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his/her pre-hospital medical care employer. The respondent must provide a full, detailed written explanation of the reasons for and circumstances of his/her termination.

Any and all notifications to the EMSA shall be by certified mail.

6. **Functioning as a Paramedic:** The period of probation shall not run anytime that the respondent is not practicing as a paramedic within the jurisdiction of California.

If the respondent, during his/her probationary period, leaves the jurisdiction of California to practice as a paramedic, the respondent must immediately notify the EMSA, in writing, of the date of such departure and the date of return to California, if the respondent returns.

Any and all notifications to the EMSA shall be by certified mail.

7. **Educational Course Work:** Within 120 days of the effective date of this decision, the respondent shall submit to the EMSA proof of completion of 16 hours of education in areas substantially related to the offense as stated in the accusation and to the satisfaction of the EMSA.

Any educational program may include community service to reinforce the learning objectives of the educational program.

All courses must be approved by the EMSA. Within thirty-five days after completing the course work, the respondent shall submit evidence of competency in the required education. Submittal of a certificate or letter from the instructor attesting to the respondent's competency shall suffice.

Any and all notifications to the EMSA shall be by certified mail.

8. **Practical Skills Examination:** Within 180 days of the effective date of this decision, the respondent shall submit to and pass a skills examination in subjects substantially related to the accusation based upon the U. S. Department of Transportation (DOT) and/or the National Registry of Emergency Medical Technicians (NREMT) skills examination, when applicable. If not addressed in the DOT or NREMT, an approved local standard shall be identified and utilized. The skills examination shall be administered by a board selected by the EMSA using the pre-established criteria.

If the respondent fails the examination, the respondent may function as a paramedic only while under the direct supervision of a preceptor. The respondent shall not be allowed to function as a sole paramedic until the respondent passes the examination. The respondent has the option and right to repeat the examination. There shall be at least a two-week period between examinations. No more than three attempts to pass the examination shall be allowed. If the respondent fails to pass the exam after three attempts, or chooses not to retake the examination, the respondent's license shall be revoked.

9. **Obey All Related Laws:** The respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. The respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Section 1798.200. To permit monitoring of compliance with this term, if the respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then the respondent shall submit his/her fingerprints by Live Scan or

by fingerprint cards and pay the appropriate fees within 45 days of the effective date of this decision.

Within 72 hours of being arrested, cited or criminally charged for any offense, the respondent shall submit to the EMSA a full and detailed account of the circumstances thereof. The EMSA shall determine the applicability of the offense(s) as to whether the respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic.

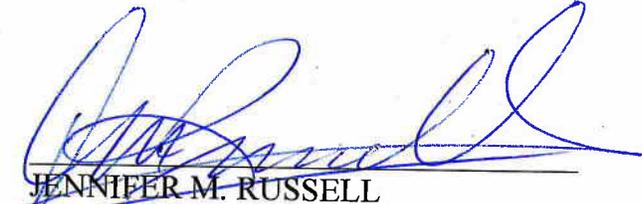
Any and all notifications to the EMSA shall be by certified mail.

10. **Completion of Probation:** The respondent's license shall be fully restored upon successful completion of probation.

11. **Violation of Probation:** If during the period of probation the respondent fails to comply with any term of probation, the EMSA may initiate action to terminate probation and implement actual license suspension/revocation. Upon the initiation of such an action, or the giving of a notice to the respondent of the intent to initiate such an action, the period of probation shall remain in effect until such time as a decision on the matter has been adopted by the EMSA. An action to terminate probation and implement actual license suspension/revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

The issues to be resolved at the hearing shall be limited to whether the respondent has violated any term of his/her probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. At the hearing, the respondent and the EMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

DATED: August 2, 2011


JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings