



EMS Special Memorandum - #16-002

Date: September 27, 2016

To: Mendocino/ Sonoma County EMS Providers and System Stakeholders

From: Bryan Cleaver
Regional EMS Administrator

Mark Luoto, MD
Regional EMS Medical Director

Re: Coastal Valleys EMS System Continuous Quality Improvement

Coastal Valleys EMS Agency has been asked to provide information and education regarding protection from potential liability when provider agencies and their staff review EMS calls for Continuous Quality Improvement (CQI) purposes. CVEMSA reviewed the relevant statutes and regulations as well as reaching out to the community of Local EMS Agency Medical Directors represented by the Emergency Medical Directors' Association of California (EMDAC) and the California EMS Authority (EMSA). The paragraphs below are taken from a response by the EMSA legal counsel, Steven McGee, on the question.

Mr. McGee writes:

"The question of whether or not EMS QI entities enjoy protection from discovery under the California evidence code occurs frequently. My opinion is that while EMS QI entities are not specifically mentioned in the statute, they are nevertheless protected given the broad policy considerations of protecting that information, and the reaffirmation of that consideration by the courts. Although there has not been any EMS specific litigation regarding this issue that I am aware of, I suggest that interested entities pursue a legislative solution to specifically add EMS QI entities to the list of other entities covered by the evidence code.

Evidence code section 1157 provides:

(a) Neither the proceedings nor the records of organized committees of medical, medical-dental, podiatric, registered dietitian, psychological, marriage and family therapist, licensed clinical social worker, professional clinical counselor, or veterinary staffs in hospitals, or of a peer review body, as defined in Section 805 of the Business and Professions Code, having the responsibility of evaluation and improvement of the quality of care rendered in the hospital, or for that peer review body, or medical or dental review or dental hygienist review or chiropractic review or podiatric review or registered dietitian review or veterinary review or acupuncturist review committees of local medical, dental, dental hygienist, podiatric, dietetic, veterinary, acupuncture, or chiropractic societies, marriage and family therapist, licensed clinical social worker, professional clinical counselor, or psychological review committees of state or local marriage and family therapist, state or local licensed clinical social worker, state or local licensed professional clinical counselor, or state or local psychological associations or societies having the responsibility of evaluation and improvement of the quality of care, shall be subject to discovery. (emphasis added)

1157.5 provides:

Except in actions involving a claim of a provider of health care services for payment for such services, the prohibition relating to discovery or testimony provided by Section 1157 shall be applicable to the proceedings or records of an organized committee of any nonprofit medical care foundation or professional standards review organization which is organized in a manner which makes available professional competence to review health

care services with respect to medical necessity, quality of care, or economic justification of charges or level of care. (emphasis added)

And 1157.7 provides:

The prohibition relating to discovery or testimony provided in Section 1157 shall be applicable to proceedings and records of any committee established by a local governmental agency to monitor, evaluate, and report on the necessity, quality, and level of specialty health services, including, but not limited to, trauma care services, provided by a general acute care hospital which has been designated or recognized by that governmental agency as qualified to render specialty health care services. The provisions of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code shall not be applicable to the committee records and proceedings.

Section 1157.7 Makes clear that a local EMS entity (i.e, a LEMSA)has protections when the QI issues are in conjunction with a hospital. Based upon the prior two evidence codes, and relevant court cases (for example, Willits v. Superior Court (1993), 20 Cal. App. 4th 90), there is a broad policy for protecting the documents and processes of “self critical” QI entities. Essentially, the public policy of allowing those committees to improve the system and patient outcomes and protect that process is more important than an individual’s need for discovery materials from those QI entities.

I believe this statement by the court in Willits is particularly illustrative of the broad policy considerations:

“Just as candor and frankness are essential to effective peer review (California Eye Institute v. Superior Court, supra, 215 Cal.App.3d 1477) and to effective treatment and product review (Mt. Diablo Hospital Dist. v. Superior Court, supra, 183 Cal.App.3d 30), so also are they essential to the review of health and safety matters by hospital staff committees. The threat of later disclosure in damage actions would be a powerful disincentive to serve on such committees, to uninhibited participation by those willing to serve, and to full and candid investigation of incidents such as needle stick injuries. The same legislative choice pertains: A few hospital employees must be denied discovery in order to protect the health of all health care workers and of the public as a whole.”

Given the clear legislative intent to protect a whole host of QI entities from discovery, the fact that EMS QI entities are organized for the purposes of QI and system improvement and represent health care professions and local governmental entities, and it can reasonably be assumed that EMS QI is the type of entity the legislature intended to cover, I believe those QI processes to be protected from discovery by the evidence code even though EMS is not specifically listed as one of the covered entities.”

Steven A. McGee

*Administrative Adviser, Counsel, EMR
California Emergency Medical Services Authority”*

CVEMSA is in agreement with the opinion expressed above and feels the provider agencies operating under our medical control are protected as described.

In order to formalize case review as QI, appropriate documentation should be maintained. A sign-in sheet should be created and retained. The sign-in sheet should include a formal statement that the discussions and materials reviewed are considered confidential and for the purpose of Quality Improvement only. Participants should be limited to care providers and staff with a clear QI role. An additional statement that the meeting is conducted under the medical control authority of CVEMSA is appropriate if the case review is conducted as a multi-agency QI activity.

Each ALS Provider Agency operating under CVEMSA medical control is required by State regulation and local policy to participate in Provider Agency and CVEMSA CQI activities. CVEMSA believes only frank, open and safe review of the care provided in the system can contribute to improving quality.

CVEMSA staff look forward to discussing further at our established Continuous Quality Improvement meetings in both Sonoma and Mendocino Counties in the near future.

Thank you for your contribution to improving the quality of EMS care in the CVEMSA Region.