DEPARTMENT: Public Health  
BY: C.B. Mosher, MPH, MD  
PHONE: (209) 966-3689  
Health Officer

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes No X)  
Recommend resolution establishing a Quality Improvement Subcommittee of the EMCC.

It is believed by the Health Officer and others on the EMCC that a Quality Improvement Subcommittee which can review patient care in an open honest dialogue with a goal toward improving the quality of care rendered to patients is desireable. Because this would require discussion of issues that are sensitive and would normally be confidential, and because EMCC is a public meeting where confidentiality is not able to be maintained, discussion with County Counsel led to the recommendation that we seek the Board's approval to create such a Quality Improvement Subcommittee under California Evidence Code Section 1157 and 1157.7 (County Counsel memo attached).

BACKGROUND AND HISTORY OF BOARD ACTIONS:  
Not Applicable

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Quality improvement discussion will be either conducted outside the multi-disciplinary structure of the Emergency Medical Services Care Committees and Subcommittees, or will be discussed in such indirect ways as to protect confidentiality which will probably reduce the effectiveness of the discussion.

COSTS:  
(X) Not Applicable  
A. Budgeted current FY  
B. Total anticipated costs  
C. Required additional funding  
D. Internal transfers

SOURCE:  
(X) 4/5ths Vote Required  
A. Unanticipated revenues  
B. Reserve for contingencies  
C. Source description:  
Balance in Reserve for Contingencies, if approved: $ 

SPECIAL INSTRUCTIONS:  
List the attachments and number the pages consecutively:

ADMINISTRATIVE OFFICER'S RECOMMENDATION:  
This item on agenda as:

Recommended  
Not Recommended  
For Policy Determination  
Submitted with Comment  
Returned for Further Action

Comment:

A.O. Initials: 

Action Form Revised 5/92
MEMORANDUM

DATE: September 8, 1999

TO: Charles B. Mosher, M.D., Health Officer

FROM: Jeffrey G. Green, County Counsel

RE: Confidentiality of Emergency Medical Services Investigation

Thank you for memo of August 11, 1999 regarding the above matter. I am attaching for your review a copy of California Evidence Code sections 1157 and 1157.7.

Section 1157 makes certain documents, discussions, etc., confidential and non-discoverable through the legal process. Section 1157.7 extends that confidentiality to proceedings and records of a committee established by a local governmental agency to monitor, evaluate, and report on the necessity, quality, and level of specialty health services, etc. It would, therefore, be my opinion that if the quality improvement aspect of the EMCC is conducted by a committee established by a local governmental agency, i.e., the Board of Supervisors, the confidentiality which you are concerned with would be maintained. The "local governmental agency" language is not defined in section 1157.7 and it is questionable whether or not the EMCC itself would qualify as a local governmental agency. It would be my suggestion that if you desire to institute this process, the governing board of the EMCC would be the appropriate agency to institute the program thereby assuring you of confidentiality.

Should you desire any additional information regarding this matter, please feel free to contact me.

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attachment
§ 1156.1. Records of medical or psychiatric studies of quality assurance committees

(a) A committee established in compliance with Sections 4070 and 5624 of the Welfare and Institutions Code may engage in research and medical or psychiatric study for the purpose of reducing morbidity or mortality, and may make findings and recommendations to the county and state relating to such purpose. Except as provided in subdivision (b), the written records of interviews, reports, statements, or memoranda of such committees relating to such medical or psychiatric studies are subject to Sections 2016 to 2036, inclusive, of the Code of Civil Procedure but, subject to subdivisions (c) and (d), shall not be admitted as evidence in any action or before any administrative body, agency, or person.

(b) The disclosure, with or without the consent of the patient, of information concerning him or her to such committee does not make unprivileged any information that would otherwise be privileged under Section 994 or 1014. However, notwithstanding Sections 994 and 1014, such information is subject to discovery under subdivision (a) except that the identity of any patient may not be discovered under subdivision (a) unless the patient consents to such disclosure.

(c) This section does not affect the admissibility in evidence of the original medical or psychiatric records of any patient.

(d) This section does not exclude evidence which is relevant evidence in a criminal action.

(Added by Stats.1982, c. 234, p. 767, § 4, eff. June 2, 1982.)

Historical and Statutory Notes

Legislative findings concerning Stats.1982, c. 234, see Historical and Statutory Note under Civil Code § 43.7.

Library References

West's California Handbook—California Evidence, Mendez, § 20.01.
West's California Practice—California Evidence, Aitken, §§ 181, 203.
West's California Practice—Defenses in Civil Actions, Schwing, § 38.33.

§ 1157. Proceedings and records of organized committees having responsibility of evaluation and improvement of quality of care; exceptions

(a) Neither the proceedings nor the records of organized committees of medical, medical-dental, podiatric, registered dietitian, psychological, 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
OTHER EVIDENCE
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hygienist, podiatric, dietetic, veterinary, acupuncture, or chiropractic societies, or psychological review committees of state or local psychological associations or societies having the responsibility of evaluation and improvement of the quality of care, shall be subject to discovery.

(b) Except as hereinafter provided, no person in attendance at a meeting of any of those committees shall be required to testify as to what transpired at that meeting.

(c) The prohibition relating to discovery or testimony does not apply to the statements made by any person in attendance at a meeting of any of those committees who is a party to an action or proceeding the subject matter of which was reviewed at that meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

(d) The prohibitions in this section do not apply to medical, dental, dental hygienist, podiatric, dietetic, psychological, veterinary, acupuncture, or chiropractic society committees that exceed 10 percent of the membership of the society, nor to any of those committees if any person serves upon the committee when his or her own conduct or practice is being reviewed.

(e) The amendments made to this section by Chapter 1081 of the Statutes of 1983, or at the 1985 portion of the 1985–86 Regular Session of the Legislature, or at the 1990 portion of the 1989–90 Regular Session of the Legislature, do not exclude the discovery or use of relevant evidence in a criminal action.

(Added by Stats.1968, c. 1122, p. 2138, § 1. Amended by Stats.1975, c. 674, p. 1468, § 2; Stats.1978, c. 7, p. 62, § 1, eff. Feb. 10, 1978; Stats.1978, c. 503, p. 1648, § 2; Stats.1982, c. 705, p. 2864, § 3; Stats.1983, c. 289, § 3; Stats.1983, c. 422, § 1; Stats.1983, c. 1081, § 2.5; Stats.1985, c. 725, § 1; Stats.1990, c. 196 (A.B.1565), § 2; Stats.1994, c. 815 (S.B.1279), § 3.)

Historical and Statutory Notes

The 1975 amendment extended provisions to medical-dental staffs, dental review committees, and dental societies and review committees.

The 1978 amendment, by c. 7, in the first paragraph, inserted "or chiropractic review" following "dental review" and substituted "dental, or chiropractic societies" for "or dental societies"; and, in the second paragraph, substituted "dental, or chiropractic society" for "or dental society".

The 1978 amendment, by c. 503, in the first paragraph, inserted "or dental hygienist review" and "dental hygienist"; and, in the second paragraph, inserted "dental hygienist, ."

The 1982 amendment extended provisions to veterinary staffs, veterinary review committees, and veterinary societies.

The 1983 amendment, in the first paragraph, inserted a comma following "medical-dental"; inserted "podiatric, registered dietitian,"; inserted "or podiatric review or registered diettian review"; in the first and second para-
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(testimony shall not apply to the statements made by any person in attendance at such a meeting who is a party to an action or proceeding the subject matter of which was reviewed at such meeting, or to any person requesting facility staff privileges.

(Added by Stats.1982, c. 234, p. 767, § 5, eff. June 2, 1982.)

Historical and Statutory Notes

Legislative findings concerning Stats.1982, c. 234, see Historical and Statutory Note under Civil Code § 43.7.

Library References

West's California Handbook—California Evidence, Mendez, § 20.01.

§ 1157.7. Application of Section 1157 discovery or testimony prohibitions; application of public records and meetings provisions

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.

(Added by Stats.1983, c. 1237, § 1.)

Library References

California Practice Guide: Civil Procedure Before Trial, Weil & Brown, see Guide's Table of Statutes for chapter paragraph number references to paragraphs discussing this section.
West’s California Handbook—California Evidence, Mendez, § 20.01.

Notes of Decisions

Trauma center designation process

1. Trauma center designation process

Evid.Code § 1157.7 preventing discovery of records of committee appointed to monitor or evaluate trauma care at general acute care hospital did not apply to records of committee considering request of hospital to become a hospital designated to provide specialty health care services; statute does not apply to the trauma center designation process. San Diego County v. Superior Court (Tri-City Hosp. Dist.) (App. 4 Dist. 1986) 222 Cal.Rptr. 484, 176 Cal. App.3d 1009.
TO: DR. MOSHER, Health Officer
FROM: MARGIE WILLIAMS, Clerk of the Board
SUBJECT: Establishing a Quality Improvement Subcommittee of the EMCC

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,
ADOPTED THIS Order on December 7, 1999

ACTION AND VOTE:

Approval of Consent Agenda (See End of Minutes)
BOARD ACTION: Item 11 was continued to December 14, 1999. Supervisor Balmain advised that he has an interest in being a member of the Quality Improvement Subcommittee of the EMCC – item 1. (M)Balmain, (S)Reilly, all items were approved, with the exception of item 11/Ayes: Unanimous.

Resolution Establishing a Quality Improvement Subcommittee of the Emergency Medical Care Committee (Health), Res. 99-345

cc: File