NAEMT Position Statement
Protecting EMS Patient Safety and Quality Information

Statement:

NAEMT believes that all EMS agencies should have access to and utilize mechanisms that encourage and promote the evaluation necessary for continued improvement in the delivery of emergency patient care. Laws and regulations that protect this evaluation from legal discovery contribute to an environment conducive to learning which is an essential component of an EMS culture of safety. The two established mechanisms to achieve this protection are through establishing peer review protection legislation and/or participation in a listed Patient Safety Organization (PSO). It is essential that every EMS agency engage either or both of these protections.

States that currently have peer review protection laws in place should review these laws to ensure that the protection afforded to EMS agencies and their personnel is commensurate with the peer review protection afforded to physicians, nurses and other health care providers in their states. Such protection should extend to participation in regional activities, such as the development of regional "systems of care," and collaboration with area hospitals.

Members of PSOs are provided federal protection from the legal discovery process for patient safety evaluation, review and improvement activities. EMS agencies can become members of PSOs and not only achieve protection of their own processes but also benefit from the collective knowledge and understanding provided by the PSO and its members. Currently, two PSOs listed in the U.S. assist EMS agencies in gathering information, learning from the data and improving patient care within a community of EMS organizations, and even across the continuum of care.

 Background:

The term "peer review protection" is commonly used in the health care community to describe the protection from legal discovery of information, reports, minutes, comments or studies generated for the purpose of improving the quality of health care provided by an agency or institution.   Peer review protection was identified by the 2011National EMS Assessment Report which states, "For EMS data systems to be used to their maximum potential with respect to performance improvement and outcomes measurement, peer review protection is required and should be the goal of every state EMS office."

Access to this type of information through subpoena creates significant legal liability and hinders agencies from adopting a safety culture. The documents protected from legal discovery can include medical director assessments of particular cases, the root cause analysis of specific incidents, the internal evaluation of personnel performance regarding clinical protocols, the minutes of formal meetings conducted to review the clinical services provided to patients, and

other materials.

Most states have laws that provide peer review protection for physicians, nurses and associated hospitals. Some state laws provide protection for "health care providers" but if EMS agencies are not specifically enumerated in the law as health care providers, courts have ruled that EMS agency personnel are not protected. The 2011 National EMS Assessment Report estimated that 23 of 50 states do not have any laws or regulations in place that affords peer review protection to EMS agencies and their personnel. Of the 27 states reporting laws and/or regulations that provide such protection, some laws are missing key components.

Peer review protection laws and regulations that include EMS provide protection for the EMS agency and their personnel from legal costs related to the liability incurred from information being used as part of plaintiff actions against the agency. Damages can be both monetary as well as professional impacting reputations and licensure status.

Patient Safety Organizations (PSOs) were formed as an outgrowth of the landmark study by the Institute of Medicine (IOM) *To Err is Human*, which identified the serious problem of medical errors in American health care. PSOs were created and authorized by the 2005 Patient Safety and Quality Improvement Act (Patient Safety Act) to improve the quality and safety of U.S. healthcare specifically through the voluntary reporting and sharing of quality and patient safety information without fear of legal discovery. This protected information is considered "patient safety work product," and in most cases, items typically protected under peer review laws are protected through an association with a PSO.

PSOs must be filed and listed with the federal Agency for Healthcare Research and Quality (AHRQ) in order to provide its members the needed protection. The Center for Patient Safety and the Emergency Medical Error Reduction Group (EMERG) are two PSOs that are listed with AHRQ and have capabilities and programming specifically for EMS agencies.

Reference:

To Err in Human, Nov 1999, Institute of Medicine

http://www.iom.edu/~/media/Files/Report%20Files/1999/To-Err-is-Human/To%20Err%20is%20Human%201999%20%20report%20brief.pdf

National EMS Assessment Report, 2011, National Highway Traffic Safety Administration.

http://www.emspic.org/documents/PDF/2003_National_EMS_Survey.pdf

U.S. Dept of Health & Human Services, AHRQ, Patient Safety Organizations

www.pso.ahrq.govs

Case Law: A Fifty State Survey of the Medical Peer Review Privilege, Anito Modak-Truran, Butler Snow law firm Jackson Miss, Oct 2008

www.butlersnow.com/WorkArea/DownloadAsset.aspx?id=4016

Larry's Legal Lessons: Quality Assurance Reviewers Enjoy Immunity, Oct 23, 2008

http://www.firehouse.com/article/10495214/larrys-legal-lessons-quality-assurance-reviewers-enjoy-immunity

Sample state peer review legislation including EMS, Kansas

http://kansasstatutes.lesterama.org/Chapter_65/Article_49/65-4915.html

Adopted: February 8, 2013