

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2225 (Rodriguez)
Version: March 14, 2024
Hearing Date: June 11, 2024
Fiscal: No
Urgency: No
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SUBJECT

Discovery: prehospital emergency medical care person or personnel review committees

DIGEST

This bill adds prehospital emergency medical care person or personnel organized committees and review committees to the list of organized medical committees and peer review bodies whose proceedings and records are currently exempt from discovery in civil litigation.

EXECUTIVE SUMMARY

Under existing law, Section 805 of the Business and Professions Code, various specified healing arts professions and mental health professions have instituted a peer review body which reviews basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of the license holders. The purpose of these peer review bodies is to make recommendations to improve the quality of service and if necessary to improve the educational aspects of licensure.

To ensure the effectiveness of these proceedings and thereby to arguably elevate the quality of in-hospital medical practice, Section 1157 of the Evidence Code exempts the proceedings and records of organized committees of specified health care professionals including medical, medical-dental, podiatric, psychological, marriage and family therapist, licensed clinical social worker, or veterinary staffs in hospitals or their "Section 805" peer review committees that have the responsibility of evaluation and improvement of the quality of care from discovery.

This bill adds to this list the organized committees and peer review committees of prehospital emergency medical care persons or personnel. The bill is supported by the League of California Cities and various fire response associations, including the California Fire Chiefs Association. The Committee has not received any timely opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Exempts from discovery the proceedings and records of organized committees of medical, medical-dental, podiatric, registered dietitian, psychological, marriage and family therapist, licensed clinical social worker, professional clinical counselor, pharmacist, or veterinary staffs in hospitals or of their peer review committees that have the responsibility of evaluation and improvement of the quality of care. (Evid. Code § 1157(a).)
- 2) Provides that, except as otherwise 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. Existing law provides that 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. (Evid. Code § 1157(b), (c).)
- 3) Provides that the prohibitions do not apply to medical, dental, dental hygienist, podiatric, dietetic, psychological, marriage and family therapist, licensed clinical social worker, professional clinical counselor, pharmacist, veterinary, acupuncture, midwifery, or chiropractic society committees that exceed 10 percent of the membership of the society, nor to any of those committees if a person serves upon the committee when their own conduct or practice is being reviewed. (Evid. Code § 1157(d).)
- 4) Requires organized committees and peer review committees of specified health care professionals to report to the professional licensing board whenever a disciplinary action is taken against a member. (Bus. & Prof. Code § 805.)
- 5) Defines “prehospital emergency medical care person or personnel” as any of the following: an authorized registered nurse or mobile intensive care nurse, emergency medical technician-I, emergency medical technician-II, emergency medical technician-paramedic, lifeguard, firefighter, or peace officer, as defined or described, or a physician and surgeon who provides prehospital emergency medical care or rescue services. (Health & Saf. Code § 1797.188(a)(1).)

This bill adds prehospital emergency medical care persons or personnel, as defined in Section 1797.188 of the Health and Safety Code, to the list of health care professionals whose organized and peer review committee proceedings and records are exempt from discovery pursuant to Section 1157.

COMMENTS

1. Exempting proceedings and records from discovery

Under existing law, Section 805 of the Business and Professions Code, various specified healing arts professions and mental health professions have instituted a peer review body which reviews basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of the license holders. The purpose of these peer review bodies is to make recommendations to improve the quality of service and, if necessary, to improve the educational aspects of licensure.

To ensure the effectiveness of these proceedings and thereby to arguably elevate the quality of health care, Section 1157 of the Evidence Code exempts the proceedings and records of organized committees of medical, medical-dental, podiatric, registered dietitian, psychological, marriage and family therapist, licensed clinical social worker, professional clinical counselor, pharmacist, or veterinary staffs in hospitals or their "Section 805" peer review committees that have the responsibility of evaluation and improvement of the quality of care from discovery.

The law also prohibits any person in attendance at a meeting of any of these committees from being required to testify as to what transpired at the meeting, except in limited circumstances (such as where the person is a party to an action or proceeding the subject matter of which was reviewed at that meeting). As such, this section reflects a policy that favors ensuring confidentiality for staff in order to encourage their candor in peer review proceedings over the policy in favor of ensuring access of litigants to evidence produced by those peer review bodies. The public policy underlining the enactment of Evidence Code Section 1157 was expressed by the court in *Matchett v. Superior Court* (1974) 40 Cal.App.3d 623. In that case, the court stated that:

. . . the quality of in-hospital medical care depends heavily upon the (peer review) committee members' frankness in evaluating their associates' medical skills. . . although composed of volunteer professionals, these committees are affected with a strong element of public interest. . .

California law recognizes this public interest by endowing the practitioner-members of the hospital staff committees without measure of immunity from damage claims arising from committees activities. Evidence Code section 1157 expresses a legislative judgment that the public interest in medical staff candor extends beyond damage immunity and requires a degree of confidentiality. . . Section 1157 was enacted upon the theory that external access to peer investigations conducted by staff committees stifles candor and inhibits objectivity. It evinces a legislative judgment that the quality of in-hospital medical practice will be elevated by armoring staff inquiries with a measure of confidentiality.

This confidentiality exacts a social cost because it impairs malpractice plaintiffs' access to evidence. In a damage suit for in-hospital malpractice against doctor or hospital or both, unavailability of recorded evidence of incompetence might seriously jeopardize or even prevent the plaintiff's recovery. Section 1157 represents a legislative choice between competing public concerns. It embraces the goal of medical staff candor at the cost of impairing plaintiffs' access to evidence.¹

2. Extending the Section 1157 exemptions

This exemption from discovery originally applied to physicians, dentists, podiatrists, dietitians, and veterinarians. Over the last 40 years, it has been extended multiple times to include additional health care professionals such as psychologist (SB 328 (Presley, Ch. 725, Stats. 1985)), acupuncturists (SB 1279 (Torres, Ch. 815, Stats. 1994)), marriage and family therapists and licensed clinical social workers (AB 2374 (Lempert, Ch. 136, Stats. 2000)), professional clinical counselors (SB 146 (Wyland, Ch. 381, Stat. 2011)), and pharmacists (SB 672 (Hernandez, Ch. 274, Stats. 2015)).

This bill now includes prehospital emergency medical care persons or personnel. This is defined to include an authorized registered nurse or mobile intensive care nurse, emergency medical technician-I, emergency medical technician-II, emergency medical technician-paramedic, lifeguard, firefighter, or peace officer, as defined or described, or a physician and surgeon who provides prehospital emergency medical care or rescue services.

The goal of extending this exemption from discovery is to ensure candid assessments and objectivity are encouraged in this additional field.

According to the author:

With over 30 years in emergency medical services (EMS), I know firsthand the challenges of providing high-quality emergency response and care. Our commitment extends around the clock, serving every patient regardless of their ability to pay or legal status. This mission requires intricate coordination among paramedics, emergency medical technicians, physicians, nurses, dispatchers, and other healthcare professionals.

Like all healthcare providers, EMS professionals are dedicated to continuously evaluating and enhancing the quality of care we provide. To safeguard public health and ensure the delivery of high-quality care, various medical professionals, including physicians and chiropractors,

¹ *Matchett*, 40 Cal.App.3d at 629 (internal citation and footnotes omitted).

have established peer review committees that provide feedback and report disciplinary actions.

Recognizing the importance of candid discussions in these committees, the Legislature has exempted the peer review records of fourteen professions from standard discovery and evidence admissibility in litigation. Unfortunately, EMS is not listed among these exemptions provided to other healthcare professionals involved with the evaluation and improvement of the quality of care provided to patients.

Granting EMS peer review committee records the same protection from the discovery process would allow EMS professionals to candidly discuss their performance without fear of legal action being taken against them. AB 2225 would improve public health outcomes and allow EMS professionals to serve patients more effectively wherever and whenever they are needed.

The California Professional Firefighters write:

The peer review quality assurance/quality improvement (QA/QI) process is a vital piece of ensuring the highest level of care and service by EMS personnel while they are out in the field serving the public. Public safety and emergency medical personnel operate in high-pressure and high-stakes environments, and as such it is necessary to constantly be examining the operations, procedures, and decisions that were made in order to seek continuous improvement and correction. Peer review committees are mandated by law, and ensure that EMS personnel are held to the highest standards [] thorough discussion and evaluation.

Unfortunately, unlike other medical professions where these venues are protected from discovery during civil litigation procedures in order to protect their important work, EMS peer review committees do not have similar explicit exemptions in law.

The threat of having these discussions used as evidence in a civil trial procedure can have a negative impact on their effectiveness, as personnel may fear the consequences of speaking openly. AB 2225 creates an exemption for EMS QA/QI processes from discovery in civil litigation similar to the exemptions that already exist for 10 other medical professions, thereby ensuring that QA/QI is robust.

SUPPORT

California Professional Firefighters
California Special Districts Association
Fire Districts Association of California
League of California Cities

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 672 (Hernandez, Ch. 274, Stats. 2015) *See* Comment 2.

SB 146 (Wyland, Ch. 381, Stats. 2011) *See* Comment 2.

AB 2374 (Lempert, Ch. 136, Stats. 2000) *See* Comment 2.

SB 1279 (Ch. 815, Stats. 1994) *See* Comment 2.

SB 328 (Presley, Ch. 725, Stats. 1985.) *See* Comment 2.

PRIOR VOTES:

Assembly Floor (Ayes 72, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
