

- The committee is not protected from legal discovery to the extent that formal peer review committees are; however, depending on how the committee is structured, peers may be afforded some confidentiality protection for committee proceedings.
- The committee structure may offer more flexibility than traditional peer review committees, with its emphasis on improved patient care over punitive action.

### How to Establish a Peer-Based Quality Improvement Committee

Physicians have contacted the NORCAL Risk Management Department with questions about establishing a peer-based quality improvement committee. NORCAL advises all physicians and medical groups who wish to establish such a committee to consult with legal counsel who are well-versed in peer review and the proper organizational framework for it. The following risk management (not legal) advice also applies.

First, it is important to clearly determine the group's purpose. If the group is being convened to review specific physicians and cases, then a formal peer review structure (as established and protected under state and federal law) may be the most appropriate solution. If the group is designed to review processes and systems, and make procedural improvements that standardize and benefit patient care, then a quality improvement committee could be a suitable alternative.

These next steps for establishing a peer-based quality improvement committee may also be considered:

- Develop a mission statement. Clearly articulate the purpose of the committee in order to keep members on track.
- Establish bylaws and policies regarding how the group will be managed and how it will be operated, including who will facilitate or direct committee proceedings.
- Identify members. Physicians may wish to partner with another practice or organization in the community in order to achieve objectivity and balance.

- Establish channels for input into the proceedings of the group. Accept contributions from other staff categories, such as nursing, administration and ancillary staff. Input from nonphysician staff can be very valuable to the goal of the group.
- Refer to specialty societies, patient safety organizations and performance improvement organizations, which may have information on establishing quality improvement committees. For example, the American Society of Anesthesiologists has practical guidelines in their *Manual for Anesthesia Department Organization and Management*.

- Other references include:

- The following California Medical Association (CMA) On-Call Documents, which CMA members can access at: [www.cmanet.org](http://www.cmanet.org):
  - #1407: *Documentation of Peer Review Activities*
  - #1411: *Guide to Physician Peer Review Hearings*
  - #1410: *Peer Review - Fair Hearing Requirements*
  - #1425: *Peer Review Protections - Executive Summary*
  - #1435: *Reporting Incompetent, Impaired, or Unethical Colleagues*
  - #1440: *Sharing of Peer Review Information*
  - #1443: *State Agency Requests for Peer Review Information*
- California Physicians Legal Handbook (CPLH) Peer Review (Go to [www.cmanet.org](http://www.cmanet.org) for more information.)
- Rhode Island Business and Professions Code §5-37-1
- Alaska Health, Safety and Housing §18.23.010 - 18.23.070
- 42 U.S.C. 1320c
- Institute for Healthcare Improvement (IHI): [www.ihl.org](http://www.ihl.org)
- Agency for Healthcare Quality and Research: [www.ahrq.gov](http://www.ahrq.gov)
- Again, consult legal counsel.

(continued on page 3...)

### Be Aware of Crossing the Line:

#### *Quality Improvement Committees Shouldn't Take Disciplinary Actions*

To distinguish the group from a formal peer review committee, the quality improvement committee should not be used as a vehicle to take or justify disciplinary actions or employment status decisions. If the group were to take a disciplinary role, the case could be made that the quality improvement committee actually functions as a formal peer review committee, which may necessitate the committee to make reports to the medical board.

In the event that the quality improvement committee identifies the need for disciplinary action, the best course of action may be for the quality improvement committee to report findings and recommendations to a higher authority, such as an executive committee, where such determinations could then be made. ■

### The Importance of Confidentiality

Protection from legal discovery is an important component of traditional peer review committees. The liability protection granted to peer review proceedings enables peers to exchange professional information about patient care and safety without fear of being brought into a lawsuit.

Although quality improvement committees may not be afforded the same legal protections as a formal peer review committee, if the committee has been established with a clear mission statement and bylaws that reflect its position as a peer-based quality improvement process, the integrity of proceedings may be maintained.

The following precautions may also be helpful to protect confidentiality:

- Establish a policy on confidentiality of information and proceedings.
- Review data in aggregates, rather than in case-specific terms. For example, if a group had a problem tracking laboratory data, it might be helpful for a presenter to research the issue and make a presentation using statistics and scenarios, rather than focusing on a particular physician or case.\*
- Keep minutes of the meetings, but do not use specific patient identifiers.
- Develop several mechanisms to encourage members (and nonphysician staff) to bring

issues to the committee. One way would be to create an anonymous process for addressing sensitive issues.

### Conclusion

Establishing a confidential quality improvement committee is an approach to creating a nonpunitive, peer-based mechanism for developing performance standards and reviewing processes and systems for quality/consistency. There are several risk management benefits to establishing such a committee in small and large medical groups and other nonhospital settings:

- Professional standards are set.
- Processes and systems are improved.
- Problems in healthcare delivery are addressed at the peer level.
- The ultimate outcome is remediation of problems rather than punishment of physicians.
- Quality and patient safety remain the primary goals.

Depending on how it is structured, this type of committee may not have the same legal protections as formal peer review organizations, but also may not need them. When a group addresses problems in general terms (and without evaluating one particular case), an opportunity exists to improve the performance of all team members and achieve better outcomes within healthcare as a whole.

- \* If a plaintiff's attorney were to acquire records from a quality improvement committee that indicated that the group had an ongoing problem with tracking labs, for example, it could be argued that the information obtained might support his or her case against the facility or particular physician. However, with the goal of patient safety and better outcomes in general, such fears should not preclude the establishment of peer-based quality improvement initiatives that are designed to improve processes and systems.

Endnotes

1 Weiss GG. Is peer review worth saving? *Med Econ* 2005 Feb 18;82(4):46-8, 51-2.

2 In NORCAL-insured areas, these laws include California Business and Professions Code §805.1, Rhode Island Business and Professions Code §5-37-1 and Alaska Health, Safety and Housing Code §18.23.070.

### Risk Management Resources CD-ROM

NORCAL's Risk Management Department is committed to providing quality risk management assistance and practical tools to help policyholders take steps towards improving patient safety efforts and reducing professional liability risks.

To further assist you in these efforts, NORCAL's in-house staff of risk management experts have developed a Risk Management Resources CD-ROM, which is available in three state-specific formats for Alaska, California and Rhode Island policyholders. The CD-ROM contains recommendations, sample policies and procedures, and sample forms covering thirteen different risk issues. Topics include:

- |                                      |                               |   |
|--------------------------------------|-------------------------------|---|
| ■ <i>Abandonment</i>                 | ■ <i>Credentialing</i>        | ■ <i>Medication Management/ Safe Medication Practices</i> |
| ■ <i>Allied Health Professionals</i> | ■ <i>Employment Practices</i> | ■ <i>Quality and Risk Management</i>                      |
| ■ <i>Arbitration Agreements</i>      | ■ <i>Follow Up</i>            | ■ <i>Telephone Liability</i>                              |
| ■ <i>Billing and Collections</i>     | ■ <i>Medical Emergencies</i>  |   |
| ■ <i>Consent</i>                     | ■ <i>Medical Records</i>      |   |

To request a copy of the Risk Management Resources CD-ROM, please contact the Risk Management Department at (800) 652-1051, ext. 2244.

## Continuing Medical Education (CME) and the 5% Loss Prevention Discount Program

We would like to remind you about the Risk Management Discount Program and continuing medical education activities (CME) available to you as a NORCAL policyholder.

If you are a solo physician or a medical group with two to four physicians, you can qualify for a 5% discount on your next NORCAL premium by participating in one of our original, award-winning CME courses or loss prevention activities, with a minimum of 2 CME credits or participation hours. Note: eligibility must be established every year to maintain your discount.

Following are NORCAL's CME course offerings for 2006 and qualifying loss prevention activities:

### Clinical Courses

- Pain Management
- Managing Pain with Opioid Analgesics
- Preventing Birth Injuries
- Communication and Follow Up
- Reducing Medication Errors
- Failure to Diagnose Breast Cancer
- Failure to Diagnose Acute Myocardial Infarction
- Failure to Diagnose Colon Cancer
- Failure to Diagnose Lung Cancer
- Diabetes: Managing Comorbidities **New**  
(available Winter 2006)

### Loss Prevention Activities

- Participation on a Hospital Quality Assurance Committee
- Participation on a State or National Medical Specialty Committee
- Hospital Service or Department Chairperson, or Chief of Staff

Please contact Policyholder Services at (877) 443-7232 with any questions regarding the application of your discount. To register for a CME course or loss prevention activity, please contact the Risk Management Department at (800) 652-1051, ext. 2244 or register online at [www.norcalmutual.com/cme](http://www.norcalmutual.com/cme).

### Administrative Courses

- Informed Consent
- Medical Records Management and Practice Management



### NORCAL Claims Rx Editorial Board

Editor  
Jo Townson  
Risk Management Specialist, NORCAL

#### Content Advisors

James R. McFarland, MD  
Vice Chairman, NORCAL  
Board of Directors

David R. Holley, MD  
Secretary/Treasurer, NORCAL  
Board of Directors

Harry B. Richardson, Jr., MD  
NORCAL Board of Directors

William R. Vetter, MD  
NORCAL Board of Directors

Michael Stephens  
NORCAL Board of Directors

Newell E. Warde, PhD  
NORCAL Board Advisory Council  
Executive Director,  
Rhode Island Medical Society

James Sunseri  
President & CEO, NORCAL

Stephen M. Farber  
Vice President, Risk Management, NORCAL

Margaret D. Ramirez, MPA, ARM  
Manager, Risk Management, NORCAL

Barbara Halliday, CPCU  
Supervisor, Claims Department, NORCAL

Neil Simons  
Director, Underwriting Operations, NORCAL

Jane Tishkoff, Esq.  
Associate Vice President and  
Assistant General Counsel, NORCAL

Copyright © 2006 NORCAL Mutual Insurance Company.  
Reproduction permissible with written permission and credit.

Direct inquiries to:  
NORCAL Mutual Insurance Company  
Risk Management Department  
560 Davis Street, Suite 200  
San Francisco, CA 94111-1966  
(800) 652-1051

The information in this newsletter is obtained from sources generally considered to be reliable; however, accuracy and completeness are not guaranteed. The information is intended as risk management advice. It does not constitute a legal opinion, nor is it a substitute for legal advice. Legal inquiries about topics covered in this newsletter should be directed to your attorney.

Guidelines and/or recommendations contained in this publication are not intended to determine the standard of care, but are provided as risk management advice. Guidelines presented should not be considered inclusive of all proper methods of care or exclusive of other methods of care reasonably directed to obtain the same results. The ultimate judgment regarding the propriety of any specific procedure must be made by the physician in light of the individual circumstances presented by the patient.

Visit NORCAL Mutual on the Internet at  
[www.norcalmutual.com](http://www.norcalmutual.com).

495e-RM

## Improving Healthcare Quality Through Peer Review in the Office Setting

After a patient registered a complaint regarding lack of follow up on after-hours telephone advice, the medical director of a family practice group initiated an investigation of how after-hours calls were handled. The investigation revealed that, despite a written telephone contact policy, the practitioners rotating call had widely divergent methods of documenting after-hours patient contact. Furthermore, no standardized process for follow up was in place.

The incident prompted the group to call a NORCAL risk management specialist, who, in addition to providing a sample form for telephone contact, reminded the group of the need for consistency in administrative systems. The risk management specialist suggested that formalizing a committee for reviewing standards and processes within the practitioner group would improve patient care and reduce liability exposure.

Starting with the perspective that formalized processes make it easier to help all members of a practice conform to agreed-upon standards, the medical director began research about establishing such a committee. It soon became apparent that clarification would be necessary on how a peer-based quality improvement committee is similar and yet different from the hospital-based model of peer-review. Because of this process, this *Claims Rx* article has been prepared to assist physicians in small and medium-sized groups to begin defining and establishing a peer-driven quality improvement mechanism in their nonhospital settings. NORCAL encourages you to contact the risk management specialist assigned to the territory in which you practice to answer any specific questions or concerns you may have about formalizing a process for your practice.

### What Is Peer Review?

State law defines what entities must conduct peer review.<sup>1</sup> In California this includes hospital medical staffs, healthcare service plans, insurers and other

third party payors, certain professional societies and larger medical groups. In the hospital setting, a formal peer review committee typically has the following features:

- The committee makes credentialing and privileging determinations.
- The committee has authority to report infractions to the Medical Executive Committee, the Medical Board or other regulatory bodies.
- The committee structure not only allows physicians to take formal actions such as privilege determinations and Medical Board reporting, but requires them to do so.
- The committee has appropriate membership to be representative and achieve fair balance.
- The committee proceedings are strictly confidential.

### Peer-Based Quality Improvement: An Alternative to Formal Peer Review

Some physicians and medical groups have established other peer-based structures as alternatives to formal hospital peer review. These provide mechanisms to review cases and events, and establish protocols for group members. These groups are often referred to as quality improvement committees, or are sometimes convened under the rubric of medical staff meetings or chart review meetings. Some groups call these committee meetings "peer review," although frequently the groups do not fully meet the criteria for peer review organizations listed above.

A peer-based quality improvement committee can include the following features, which are distinct from formal peer review:

- The committee is primarily designed to improve processes and systems, rather than make reports to the medical board or make credentialing/privileging decisions.

(continued on page 2...)

Prsrt. Std  
U.S. Postage  
PAID  
Permit #2325  
San Diego

**NORCAL**  
Mutual Insurance Company  
Risk Management Department  
560 Davis Street  
San Francisco, CA 94111-1902