Quality Improvement - Protected or Not Protected?
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INTRODUCTION
Quality improvement (QI) is a major emphasis in modern medical practice. In pursuit of quality improvement, we encounter many QI tools in our pediatric anesthesia practice. These tools include handoff sheets, checklists and peer reviewed root cause analysis investigations. Many of these tools are not formally entered into the medical record, and many clinicians believe that “quality” equates with non-discoverability in a legal proceeding. Legal protection from discovery is however not assured for all of these QI tools. Which tools are protected depends on the legal jurisdiction, the tool involved, and the circumstances involved. In a malpractice proceeding, the content of QI tools and whether they can be discovered will be argued by attorneys, guided by state and federal laws, and decided by judges.

We investigated attorney opinions on whether QI tools are protected from legal discovery during malpractice litigation.

MATERIALS & METHODS
We surveyed practicing attorneys by describing eight scenarios that embody QI tools frequently encountered in pediatric anesthesia practice. We solicited feedback using a five point Likert scale ranging from “discoverable” to “likely not discoverable”, to “neutral” and then to “likely not discoverable” to “not discoverable”, with space for optional comments. Optional demographic information including attorney practice area and years in practice were also solicited.

The primary outcome of this study was a mean score ranking the discoverability of each QI tool; the secondary outcomes were the attorneys’ optional comments and demographic data.

RESULTS
In a survey of twelve practicing attorneys, we found that the most protected QI tool is a peer reviewed investigation with a root cause analysis; however, this tool was regarded as discoverable by some lawyers. All other QI tools were ranked by the surveyed attorneys in categories reflecting likely discovery in litigation. Comments from surveyed attorneys highlighted the relevance of the QI documents in legal matters, again reflecting their discoverability in most cases. Demographic data was inconsistently provided, but reflected various experience levels and practice areas.

ATTORNEY ASSESSMENT OF QI TOOL DISCOVERABILITY

DISCUSSION
Our study shows that lawyers believe QI tools are generally discoverable during malpractice litigation. The most protected QI tool is a peer review panel with a root cause analysis, but even this was deemed not fully protected by several attorneys. Although our attorney survey is not definitive and certainly not legally binding, it does suggest that quality improvement does not equate with legal protection.

A limitation of our study method is that attorney opinions on non-specific QI tools are not reflective of definitive legal fact. Furthermore, law on these issues is state dependent and our survey is not state specific. Nonetheless, we believe our study highlights the likelihood that some if not all QI tools may be discoverable during malpractice litigation. To follow this study, we are now investigating clinician opinions on legal protection of the same QI tools.

In conclusion, we recommend that QI tools are often not legally protected from discovery, and that clinicians be appropriately mindful during their creation and implementation.

REFERENCES
(1) Scope and extent of protection from disclosure of medical peer review proceedings relating to claim in medical malpractice action, 69 A.L.R. 5th 559.
(3) 42 U.S.C. § 1101.