Draft Minutes
Committee on Bioethics
September 27, 2019
8AM Via Webex

Present
Jeffrey Berger, MD
Maria Basile, MD
Gino Bottino, MD
Stanley Bukowski, MD
Robert Milch, MD
Cheryl Morrow, MD
Anthony Pivarunas, DO
Joel Potash, MD
Mrs. Cheryl Stier, Alliance

Absent
Joshua Cohen, MD Commissioner
Gregory Bennett, MD
Joseph Maldonado, MD
Stanley Pietrak, MD
Sally White, MD

Excused
Janine Fogarty, MD Commissioner
Patricia Bomba, MD
John O'Brien, MD
Joel Potash, MD
Corinne Salanson-Lajos MD

Invited Guests
Erin Sutton, Assoc. Counsel, Assoc. Director, AMA Litigation Ctr.
Shail Maingi, MD – member/guest speaker

Staff
Patricia Clancy, Sr. Vice-President/Managing Director
Public Health and Education
Maureen Ramirez, Administrative Asst.

1 **1) Welcome**
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3 **2) Approval of May 10, 2019 minutes** – approved
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5 **3) Discussion of the Conscience Clause Rule**
6 a) Erin Sutton, Associate Counsel, Associate Director, AMA Litigation Center was
7 welcomed to the meeting. The American Medical Association is tracking the conscience clause
8 and any other laws that may change medical treatment to disparate individuals. The conscience
9 clause applies broadly to anyone in medical service and does not address emergency situations.
10 It allows anyone that delivers any kind of service in the medical field to broadly object to
11 providing a service is they have either moral or religious objections. Gender equity was already
12 ensured in medical care under the Equality Act. The current administration is trying to roll that
13 back. The current Equality Act protects the LGBTQ community. Once a physician accepts a
14 patient the prerogative to act on your conscience as opposed to treating a patient is not that

15 clear. The Conscience Rule can be so liberally interpreted that it can be problematic. “Where do
16 we set the line?”
17 AMA advocacy regarding transgender individuals – an incarcerated patient was illegally denied
18 medical treatment for gender dysphoria. The court ruled in favor of the AMA brief that insisted
19 the prisoner receive treatment. There is a well-established list of professional standards that
20 protects against discrimination. Since this rule was proposed, there has been many lawsuits
21 saying this rule goes well beyond the scope of its original intent and could be detrimental in so
22 many ways to the LGBTQ and other underserved communities. Because of the lawsuits, the
23 date for this rule to become effective has been postponed until November 22, 2019. The AMA
24 has filed a brief regarding this rule in conjunction with the lawsuit in the state of New York,
25 saying it comes close to violating the ethical code of conduct that physicians are required to
26 follow. The physician certainly has the opportunity to follow his conscience and his personal
27 morals, but that comes with limitations. The physician must consider the patient. The physician
28 must ensure continuity of care. The patient’s well-being must be considered. If a physician is
29 against abortion, that’s ok, but the physician must advise the patient where they can go to get
30 the help they need. The current administration is seeking to roll back some of the coverage
31 guaranteed under the Equality Act that would put underserved communities at risk –
32 specifically the transgender community. The AMA has also filed briefs and is closely following
33 the Title 10 employment discrimination. The AMA has had some success in in cases regarding
34 access to care for transgender people. The question was asked if the AMA was doing anything
35 regarding the Equality Act – which is a civil rights act protecting LGBTQ people and defining sex
36 as sexual orientation. Ms. Sutton indicated she would check with the AMA advocacy team in
37 Washington D.C. to verify that they are acting on this.
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39 The committee asked Ms. Sutton to give further examples of cases that the AMA is working on.
40 The AMA has filed several amicus briefs in several states regarding the Conscience Rule and
41 these brief have been accepted which the AMA is considering a hopeful sign that the delivery of
42 patient care is being taken seriously. With regard specifically to advocacy for the transgender
43 community, the AMA has tried to use its’ position with the medical organizations to be very
44 clear on the medical definitions, treatment, anything related to gender dysphoria and particular
45 health issues affecting the transgender community. The AMA had a particularly significant
46 victory in case where a prisoner that is transgender was in need of health care for gender
47 dysphoria and was being denied any sort of care for that condition while they were
48 incarcerated. The AMA submitted a brief laying out what they considered to be the standard of
49 care in the situation. The court used the AMA’s brief siting that withholding the care in this
50 situation was considered cruel and inhuman punishment.
51 Dr. Maingi began her presentation on the LGBTQ community and medical care. Dr. Maingi
52 indicated that discrimination in the LGBTQ community definitely happens and that because of
53 the discrimination it causes individuals not to seek timely care and it has a devastating effect on
54 people when they do seek care. Most of Dr. Maingi’s work is in palliative care and oncology
55 settings with LGBTQ populations. A just recently completed study across 15 hospices regarding
56 LGBTQ people experiencing discrimination. The people that were reporting it were the people
57 working in the hospices at all levels. 45% of those people described themselves as very
58 religious. The levels of discrimination were much higher than their heterosexual counterparts. It

was much higher in states that don't have protections in place to safeguard against discrimination. What they found was – how religious a person was – was not a factor. The people who did the study thought that the in the religious based hospices, this would be an issue and it was not. To allow anyone who treats a patient, to allow them to treat the patient in a way that discourages quality and discourages people from feeling safe in medical settings, that can do more harm. Religious freedom is a fundamental right in the United States, but so is access to healthcare. The expectations from health organizations is that it be quality, equitable care. One should not come at the expense of the other. Because of the way that the rule is written the implications are so broad and so dangerous especially for the marginalized. There is a lot of data on discrimination and bad outcomes. Especially for LGBTQ patients. A physician in his own office should be able to direct the entire staff how he'd like people to be treated. There was a question – how often does this happen? What is the frequency of LGBTQ people being mistreated in a medical setting. There are studies to indicate that over 70% of LGBTQ individuals have been discriminated against at some time in their experience with medical professionals. There is a lack of quality or just not providing the right care for these patients. Ms. Sutton had to leave the meeting for another call, but indicated that if the committee wanted to put together a list of any questions they might have, she'd be happy to respond. Ms. Sutton indicated she would send a list of the lawsuits that are pending. The chair indicated that this conversation will continue as the legal challenges unfold. Dr. Buckowski asked if Dr. Maingi could provide the committee with article as examples of when medical professionals may have treated individuals differently and how the medical outcome changed. He feels this may be helpful for people to read and consider. Dr. Maingi provided links to articles for the committee to review. Pat Clancy will put information together from Ms. Sutton and Dr. Maingi for further discussion by the committee.

Future topics of discussion:

- Public health implications of vaping - Pat Clancy will invite Brad Hutton from the State Department of Health to the next meeting.
- Defining death by current neurological criteria
- Ethics of medical marijuana and the lack of science behind it

4) **Schedule 2020 Meetings** -

- February 7, 2020
- May 8, 2020
- October 23, 2020