

Draft Minutes
Task Force on End of Life Care
September 13, 2019
7:30 AM via Webex

Present

John Maese, MD Chair
Bruce Berlin, MD
Patricia Bomba, MD
Erick Eiting, MD
Thomas Madejski, MD
John McIntyre, MD
Nancy Nielsen, MD
Monica Sweeny, MD
Janine Fogarty, MD Asst. Commissioner

Excused

Shail Maingi, MD
Parag Mehta, MD

Absent

Steven Kaner, MD
John Ostuni, MD
Malcolm Reid, MD
Myrna Sanchez, MD
Rishi Thaker, Student
Joshua Cohen, MD Asst. Commissioner

Staff

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

1) **Welcome** – Dr. John Maese

2) **Approval of Minutes** – July 19, 2019 meeting

3) **2020 House of Delegates Report** – Dr. Maese tasked the members with the responsibility to ensure that all areas of medicine are presented in this report. The members were asked to choose an area that they are familiar with to report. Areas that are typically underserved - minority patients, patients with special needs, elder patients, the LGBTQ community. Dr. Sweeny said she would look into the minority community for her report. Dr. Maese indicated he wanted the report completed by December 15, 2019. This would allow adequate time to finalize the report and submit it for consideration at the HOD meeting in April 2020. It was suggested that these section reports be limited to two to four pages.

A question was asked – how many members are hospitalists? Pat Clancy said she would look into getting a number for the committee. Members voiced a concern over the growing number of patients being handled by hospitalist instead of their primary care physicians when they are admitted to the hospital. Concerns were expressed that there would be a lack of familiarity with the patient if the primary care physician isn't treating their patient. Also concerns that many

19 hospitalists are coming from out of state and are not familiar with the New York State laws
20 regarding end of life care.

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22 Should the task force come up with some type of presentation to membership at the HOD
23 meeting regarding their findings on this report? The suggestion that perhaps it could be
24 incorporated with the mandatory pain management program that will be presented at that
25 time. A member indicated that it was important to medical students and new doctors to learn
26 how to deliver “bad news”.

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28 4) MSSNY and AMA position on Physician Assisted Suicide – Dr. Maese asks that committee
29 members review those positions and become familiar with them going forward. Also included is
30 the CEJA report from the House of Delegates for the AMA asking the AMA to take a neutral
31 position. There are eight states that allow physician assisted suicide: Washington, Oregon,
32 California, Colorado, Hawaii, New Hampshire, New Jersey, Vermont and The District of
33 Columbia. 11 States that have proposed laws in motion. 29 states that have laws against
34 physician assisted suicide, one state is in litigation on this topic and the states of Nevada and
35 Wyoming have no policy at all on this subject.

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37 5) **a) Review of the Aid in Dying bill** - This particular bill was introduced in 2016. It sets for
38 the process for patients to request medication for the purpose of ending their life. The patient
39 makes an oral request which is followed by a written request that is signed by the patient, dated
40 and witnessed by two adults. There is a process to determine capacity. The information is
41 provided to the attending physician. If the physician is concerned in any way regarding capacity,
42 the physician is required to consult a mental health professional. The legislation establishes the
43 written form that should be used. There are some liability protections within the bill. There are
44 also protections for the physician, should he or she decide not to participate in assisting the
45 patient. The bill also lays out the process that allows that patient to be transferred to a physician
46 who can handle their care. There rights of the patient are spelled out should the patient decide
47 to withdraw the request. The legislation requires an annual review by the Commissioner of
48 Health. There is a process for providing death certificates and the cause of death would be listed
49 as a qualified individual who died after self-administering medication as a result of terminal
50 illness. There are some discipline aspects of this bill basically stating failure to abide by the rules
51 and conditions of this law, a physician could be disciplined subject to the applicable criminal
52 liability under New York State law.

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54 The question was raised “was depression considered by this bill?” “Is the person’s pain being
55 adequately treated?” Whether physical or mental, if the person’s pain were adequately treated,
56 would they possibly rethink their decision? The question was could the family of a person who
57 chose aid in dying could be denied life insurance benefits? Pat Clancy said the bill states that
58 family beneficiaries could not be denied insurance benefits. It would not be considered suicide.
59 Could an insurance company deny payments if the policy was written prior to this new law?
60 Input from the insurance industry should be considered.
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62 It was noted that the bill sets an age of 18 years old. It was questioned whether 18 year olds
63 were mature enough to make these kinds of decisions. Why 18 years of age, when many other
64 age limits have been raised to 21 years of age e.g. tobacco, alcohol. These are questions to be
65 directed to the bill sponsors. The committee will try and consult with a pediatric oncologist to
66 get their view on this. What are the protections for the physician in this? The physicians should
67 be protected from any undue pressure to bring up this topic. It should be solely driven by the
68 patient in reference to aid in dying. The committee received clarification on what is considered a
69 "health care facility" in relationship to this bill, as well as, clarification on the determination of
70 "capacity". The bill also discusses other available options such as palliative care and hospice
71 care. Question: "has the State hospice organization taken a stance on this legislation?" Dr.
72 Neilsen and Pat Clancy will look into both the state and national agency to see if they have taken
73 an official stance on "Aid in Dying". Did the committee ever receive a summary for Dr.
74 Portenoy's presentation from the previous committee meeting? Pat Clancy will look into that.
75 Dr. Maese reminded the committee members that they represent the members of MSSNY and
76 that it's important to represent the interests of the membership and not necessarily their
77 individual views.

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79 **b) Presentation by Assemblywoman Paulin** - Assemblywoman Paulin asked for an
80 introduction to the members of the task force and explanation of the purpose the task force.
81 Dr. Maese gave a synopsis of why the task force was put together and the different areas of
82 concentration within the task force. About a year ago, MSSNY identified the need to evaluate
83 end of life care in New York State. The task force was created to look at three areas: Education
84 and Training, Health Services and Health Policy. The committee members indicated they were
85 interested in Assemblywoman Paulin's views, those of her constituency and what prompted the
86 sponsoring of this bill. What was the identified need? Why is this bill important?

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88 Assemblywomen Paulin's response: The intent of the bill is to allow terminally ill patients to
89 contemplate the manner of their death and to allow medical professionals to provide them with
90 the means without incurring liability or disciplinary actions. It follows many states that are
91 taking legislative or judicial actions. There are so many factors that go into determining what
92 happens to a patient at the end of life. The Oregon experiment has been going on for quite a
93 long time now with a lot of success. There were several things that were learned from studying
94 that program for example - Patients received reassurance and comfort from being able to
95 participate in the program without every availing themselves of the medication. There is a lot of
96 fear about how this program could be potentially abused. This law retains the same model that
97 Oregon has used successfully, that it must be self-administered. This bill has incorporated
98 certain safeguards that other states have added that have enhanced this bill as it was originally
99 written. The sponsors of this bill are hoping that as it moves forward this bill will promote
100 further conversation and input from organizations such as the Medical Society of the State of
101 New York and others to help make clarifications and changes.

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103 The assemblywoman then offered to entertain the committee's questions. Clarification that this
104 bill mandates a patient must be capable of administering the life ending medications
105 themselves. If they are not, then they would not be eligible for this process. The question of

payout of life insurance policies and whether that payout would be jeopardized if the policy was written before this bill was legalized. The bill states that the beneficiary of life insurance policies would not be in jeopardy of losing the policy payout at any time. Question regarding people with Alzheimer's – people with Alzheimer's lacks capacity. They have to go through three physicians to determine capacity. It requires the determination by the physician that the patient is going to die within 6 months. Question – often people with depression and have a terminal illness think that "aid in dying" is what they want to do, but often when the depression is treated the patient might feel quite differently. This is where the mental health professional comes into play. There was a question whether a hospice consult would be of value. The assemblywoman said she would look into it. She said part of the bill does require the physician to advise the patient that hospice is an option. The question was posed that was mentioned earlier that perhaps the age should be moved from 18 to 21. It was discussed between the bill's sponsor whether it should be 18 or 21. They went back and forth on it and decided they wanted to be in line with the other states that have this law and those states used the age of 18 to qualify. A committee member suggested that a referral to a palliative care physician would be a good idea. Often people who have made the decision to end their life have done so because their pain is so great. If their pain is managed properly, many times they will change their minds about ending their life. It is important to ensure that the patient's pain is adequately managed before you have the conversation about aid in dying. The response was that in the latest revision of the bill the sponsors were very careful to make sure that palliative care and hospice information and counseling were included as options.

Senator Diane Savino was unable to attend the meeting due to a conflict that arose this morning. It is anticipated that she will be invited again. The November meeting will focus on the State of Oregon's Aid in Dying Legislation.

6) Adjourned

7) Next Meeting November 15, 2019