

**State Advisory Council on Quality Care at the End of Life
Minutes from the March 11, 2015 Meeting**

Meeting time and place: March 11, 2015, 10:00 a.m, Office of Health Care Quality, 55 Wade Avenue, Spring Grove Hospital Center, Bland Bryant Building, Catonsville, Maryland.

Council members present: Ted Meyerson, Chair; Paul Ballard (Attorney General's designee); Rabbi Michael Safra; M. Jane Markley; Gail S. Mansell, Catherine Stavelly; Sister Lawrence Mary Pocock; Hank Wilner; Steve Levenson. On speakerphone: Mary Lynn McPherson; George Failla (Department of Disabilities' designee); Gail Amalia Katz; Hope Miller.

Others present: Alan Eason; Dana Davenport; Sally Hunt; Elena Boisvert; Brandee Izquierdo; Gabriel Rubenstein; Brendan Loughran; Yvette Rode; Stevanne Ellis; Kim Burton.

Chairman Ted Meyerson convened the meeting at 10:00 a.m.

Jane Markley reported that she had a discussion with Ann Mitchell, President of Montgomery Hospice, regarding the articles in the Washington Post about the hospice care services provided in for-profit hospice care programs versus the care provided in nonprofit programs and asked whether the council should conduct a study regarding the services available at each type of hospice. She reported that Ms. Mitchell did not believe that studies were needed in Maryland, noting that the Washington Post's articles had focused on other states and that Maryland's Certificate of Need process helps to insure the quality of hospice care services.

Kim Burton of the Mental Health Association of Maryland discussed mental health advance directives and House Bill 293/Senate Bill 90. The mental health advance directives she discussed had been prepared by various groups and had been adopted by the Department of Health and Mental Hygiene. She stated that these mental health advance directives were meant to be consumer-friendly but have not been widely used. She expressed her hope that more people will prepare mental health advance directives. She stated that mental health advance directives provide persons with mental health issues the opportunity to control their care and determine the medications that would be used for their stay in the hospital in the likely event that they will be hospitalized in the future. The directives empower patients to determine what mental health treatments they would want in such a future hospitalization.

House Bill 293/Senate Bill 90 as introduced would not allow a patient to revoke their mental health advance directive for 72 hours after the patient was certified to be incapable of making an informed decision. The Mental Health Association amended the bill to strike this provision and to instead permit a person to state in the patient's advance directive that the person waives the right to object to the advance directive. The bill was also amended to strike the provision that would have allowed a surrogate decision maker to make mental health care decisions for an incapable patient.

Steve Levenson pointed out that patients may have other conditions that may exacerbate their problems and that treatments other than what are stated in the advance directive may be needed by the patient. Kim Burton stated that the advance directive only stated the preferences

of the patient. Steve Levenson responded that if that is the case that the document contains a patient's preferences rather than binding advance directives. Kim Burton stated that the bill would keep a patient from revoking their preferences so that they can get the treatments they chose in the advance directive. Paul Ballard noted that there is an Attorney General's Opinion that states that even an incompetent patient has the right to refuse treatment but that a patient must be competent to revoke an advance directive.

Ted Meyerson will write on behalf of the Council in support of House Bill 45 that would have the Governor annually proclaim April 16 as National Health Care Decisions Day. He thanked Gail Mansell for testifying in favor of the bill.

An issue had been raised at the January meeting regarding the validity of an advance directive prepared by a Maryland resident on the website proposed to be used for the advance directive registry. This issue concerned whether a person who prepares an advance directive on the website with an electronic signature is required to have the electronic signature witnessed by two witnesses in the physical presence of that person electronically signing the advance directive. Paul Ballard reported that the Attorney General's Office examined the issue and concluded that the two witnesses needed to be in the physical presence of the signer. In response, Delegate Morhaim introduced House Bill 1106 that made the physical presence of a witness unnecessary to witness an electronic signature.

The Council discussed House Bill 1006/Senate Bill 572 that would require a hospital to give a patient an opportunity to designate a caregiver to whom notices and information would be given regarding the patient's care needs. The consensus of the Council was to not take a position.

The Council discussed House Bill 1021/Senate Bill 676 that would permit a physician under certain circumstances to prescribe medication to a patient that would bring about the patient's death. George Failla reported that the legislative hearings showed a division of opinion on all issues. The Department of Disabilities filed written testimony calling for amendments to the bill regarding witness requirements, excluding persons with disabilities as defined in the federal Americans with Disabilities Act as well as degenerative disease and spinal cord injuries, and that meaningful data should be required to be collected to monitor any spike in suicides. He recommended that the Council take no position on the bill

Hank Wilner stated his opposition to physician-assisted suicide, stating that the phrase gets confused with hospice (which does not hasten death). He stated that the real problems that need to be addressed are those of inadequate access to palliative care and late referrals to hospice. He stated that a patient's request for a hastened death is usually a plea for how they could live better. He also stated that prognoses are not precise and that allowing for a 6-month prognosis as the basis for a qualified terminal condition is risky. He stated that physicians should first do no harm and should not play the role in a patient's death as contemplated by the legislation.

Rabbi Michael Safra stated that the State should not make the policy decision regarding this issue based on religion but stated that he is morally opposed to prescribing medication to

hasten a patient's death. He said that while individuals in the Jewish community are divided on the legislation, both the Baltimore Jewish Council and the Jewish Community Relations Council of Greater Washington have chosen to retain their 1997 policy positions against death with dignity legislation. He expressed concerns about the potential for abuse such as insurance companies suggesting that death be hastened to save money. He also expressed the concern that efforts to promote hospice care and advance directives may be hampered by the discussion of "death panels" that may result from passage of the legislation.

Jane Markley personally did not think the legislation was appropriate but that it might be inevitable because of the groundswell of public opinion. She did not think it was a way to enhance quality care at the end of life and doubted that many persons would want to end their lives as envisioned by the legislation. She believed that the Council should instead put its energies into promoting palliative care.

Ted Meyerson noted that few people have chosen to self-administer medication to hasten their deaths in those states where it is an option. He noted that he would like to have the legal right to do so but he was also under the impression that more study of the issue was wanted by people.

Steve Levenson opposed the legislation on philosophical, medical, and procedural grounds. He also stated that in practice other existing options in the law have not been exhausted, such as not eating or drinking.

Sister Lawrence Mary stated that in her experience it is not pain control that is lacking. Rather, a patient is afraid of being alone and being a burden. But a patient can lose their fear of death. She opposed the legislation.

Gail Mansell did not believe that the definition of palliative care was accurate in the bills and that the issues needed more study.

Lynn McPherson stated she was deeply conflicted by the legislation.

The Council voted to oppose the legislation. Gail Mansell, Hank Wilner, Sister Lawrence Mary, Steve Levenson, Catherine Stavely, Jane Markley, Lynn McPherson, Rabbi Michael Safra, and Ted Meyerson all voted to oppose the legislation. Other Council members either did not vote or were not present at the meeting. Steve Levenson agreed to draft a letter on behalf of the Council and Paul Ballard agreed to review the letter for accuracy.

Finally, regarding Senate Bill 619, the Council expressed its support for this bill that would extend Ted Meyerson's term on the Council.

No further items of business being presented, Chairman Meyerson adjourned the meeting.