

MINUTES

MMA POLICY COUNCIL

SATURDAY, JANUARY 23, 2016

8:30 AM – 12:00 NOON

MINNESOTA MEDICAL ASSOCIATION – JOHN MURPHY CONFERENCE ROOM

MINNEAPOLIS, MN

Members Present

Ernest Lampe, MD, Chair
David Agerter, MD (via phone)
Peter Amadio, MD (via phone)
Michael Baich, MD
Elisabeth Bilden, MD (via phone)
Terence Cahill, MD
Stuart Cameron, MD
Mark Eggen, MD
Alexander Feng
Robert Grill, MD
Daniel Heinemann, MD (via phone)
Christopher Johnson, MD
Matthew Kruse, MD

Kathryn Lombardo, MD
Lisa Mattson, MD
Kimberly McKeon, MD
Steven Meister, MD (via phone)
Noel Peterson, MD
Douglas Pryce, MD
Christopher Reif, MD
Caleb Schultz, MD
Sally Trippel, MD
Jon Van Loon, MD
Craig Walvatne, MD
Robert (Jay) Widmer, MD (via phone)

Members Absent

Leah Anderson
Stephen Cragle, MD
James Dehen, MD
Ramnik Dhaliwal, MD
Elizabeth Fracica
Jessica Heiring, MD
Meltiady Issa, MD

Evan James
Kenneth Kephart, MD
Neil Shah, MD
Christopher Thiessen, MD
Kimberly Tjaden, MD
Thomas Witt, MD

Staff Present

Eric Dick
Teresa Knoedler
Robert Meiches, MD (via phone)
Juliana Milhofer
Janet Silversmith

I. Welcome, Introductions & Meeting Goals

Ernest Lampe, MD, Policy Council Chair, called the meeting to order at 8:35 am. He welcomed members, noting the newest Council member, Dr. Caleb Schultz, and reviewed the goals for the meeting.

II. Approve Minutes of October 14, 2015

With no changes noted, the following motion was made, seconded and adopted:

Motion: that the minutes of the October 14, 2015 meeting be adopted as amended.

III. **Follow Up: Board Actions on Policy Council Recommendations**

Janet Silversmith provided an update on the actions taken by the MMA Board of Trustees on the Council's post-Annual Conference recommendations. All items were adopted as proposed, with one exception. The Council had two recommendations on the issue of physician aid-in-dying. The first recommendation, that the issue be further studied, was adopted by the Board and that study will be overseen by a to-be-convened work group. The other recommendation, that current MMA policy be edited to remove language that states MMA opposition to physician-assisted suicide, was tabled by the Board. A Council member asked what MMA would say if the media were to ask about MMA's position. Janet noted that the response would be that the MMA opposes physician-assisted suicide, but is currently reevaluating the issue.

IV. **Restrictive Covenants**

Teresa Knoedler, MMA Policy Counsel, presented background information on the issue of restrictive covenants. She noted that the MMA has considered restrictive covenants on several occasions over the last five year, including as part of the Council's April 2015 Policy Conference. The issue is being brought back to the Council to determine if a policy recommendation can be developed. The Council considered draft policy language from the MMA Ethics and Medical-Legal Affairs Committee.

There was robust conversation about the various pros and cons associated with restrictive covenants. The Council considered whether restrictive covenants should be banned entirely. Discussion focused upon patient choice and access, and the ways in which restrictive covenants may limit choice and access. Some members commented that there should be no restrictive covenants. Others agreed, but suggested that is not a practical solution. Several members noted that the proposal from the MMA Ethics Committee is a good place to start and would send a message about what constitutes "unreasonable" restrictions.

The Council ultimately voted to recommend to the Board that the MMA adopt the policy statement suggested by the Ethics Committee. There was limited opposition to the recommendation, but those who did vote against it did not believe it went far enough and would have preferred that MMA pursue an all-out ban.

The following motion was made, seconded, and adopted (with at least a 2/3 majority):

Motion: The MMA Policy Council recommends that the MMA Board of Trustees adopt the following position:

It is the position of the MMA to support high-quality patient care and patient choice of physicians. Covenants-not-to-compete may restrict competition, can disrupt continuity of care, and may limit patient access to care. In order to protect the physician-patient relationship and continuity of patient care, the MMA believes that physicians should not enter into covenants that: (a) unreasonably restrict the right of a physician to practice medicine for a specified period of time or in a specified geographic area on

termination of a contractual relationship; and (b) do not make reasonable accommodation for patients' choice of physician.

Covenants not-to-compete are unreasonable if they: (a) prohibit practice for longer than one year; (b) apply to practice sites which were not the primary practice site of the restricted physician; (c) prohibit practice for a distance greater than 5 miles from the primary practice site of the restricted physician; (d) apply to services the restricted physician was not contracted with to provide; (e) prevent a patient from obtaining information from the employer about the restricted physician's new practice; or (f) include a liquidated damages clause in excess of one year of the physician's salary.

V. **Hospital Bylaws Changes – Minnesota Law**

Teresa Knoedler, MMA Policy Counsel, presented background information on an issue that surfaced as a result of litigation between the hospital medical staff of Avera Marshall Regional Medical Center and the Avera Marshall Regional Medical Center and its board. Like the issue of restrictive covenants, this issue was considered at the Council's April 2015 Policy Conference and is being brought back to the Council to explore development of new MMA policy.

Following discussion and some clarification, the Council concluded that because Minnesota's hospital licensure standards are not as comprehensive or explicit as the standards articulated by either the Joint Commission or CMS, a Minnesota hospital that is not Joint Commission accredited or a full CMS participant may choose to disenfranchise its medical staff, as the Avera Marshall Regional Medical Center has done for years. It is not yet clear that such medical staffs will have meaningful protection from Minnesota courts. The Council voted to recommend that the MMA seek legislation that would close this gap and thereby offer enduring protection to Minnesota medical staffs, without relying on the protection of the court system.

The following motion was made, seconded, and adopted (with at least a 2/3 majority):

Motion: The MMA Policy Council recommends that the MMA Board of Trustees adopt the following policy statement:

The MMA will work to pursue a change in Minnesota law on hospital licensure to limit or preclude unilateral medical staff bylaws amendments by hospital boards of directors or medical staffs, consistent with current Joint Commission and CMS requirements.

VI. **Paid Sick Leave**

Janet Silversmith presented background information on this issue. She noted that the issue was brought forward by an MMA member, Carl Burkland, MD, and the Council had agreed to retain the topic for discussion.

The Council had a lengthy discussion. There was strong agreement on the benefits of paid sick leave as a means of improving employee health and protecting the health of the public. Some questions were raised about the economic effects of a legislative mandate and the challenges that various employers might face, including health care facilities. Some members expressed concern about the potential abuse of paid sick

leave, while others noted that employees are actually more committed to an organization when treated fairly. There was additional discussion that the public does not fully understand the risk of disease transmission to coworkers, customers, etc. when someone goes to work sick. The Council concluded that employer offering of paid sick leave was an important public health issue for MMA to support, but stopped short – at this time – of choosing to endorse a legislative solution.

The following motion was made, seconded, and adopted (with at least a 2/3 majority):

Motion: The MMA encourages all employers to provide paid sick leave to enhance the health of the public.

VII. 2016 Policy Forum Topics

Council members reviewed proposed topics for policy forums in 2016. During discussion, several other ideas were noted.

After discussion, the following topics were identified, with preference to be given to topics from the first tier of ideas:

Tier 1:

- Quality measurement
- Mental health
- Genetic testing

Tier 2:

- Gun safety
- Nutrition/dietary advice
- Health disparities

VIII. New Business

Janet Silversmith noted that a work group, with representation from the Policy Council, is meeting to develop recommendations on the future of the Policy Council (as well as other MMA governance changes adopted in 2013). The MMA House of Delegates will convene as part of the September Annual Conference to consider those recommendations; more details regarding those logistics will be shared as they are available.

Council members were reminded to note the following remaining meeting dates for 2016:

- Tuesday, April 26, 6:00 – 8:00 pm
- Monday, August 15, 6:00 – 8:00 pm
- Thursday-Friday, September 23-24, 2016 – MMA Annual Conference
- Wednesday, October 12, 5:00 – 8:00 pm

IX. Adjourn

With no time remaining, the following motion was made, seconded, and adopted:

Motion: that the meeting be adjourned at 11:50 am.