Item 7

TO: FMA Board of Governors

FROM: Karl M. Altenburger, M.D., Chair

FMA Scope of Practice Task Force

SUBJECT: Scope of Practice Task Force recommendations to the FMA BOG

DATE: September 10, 2012

The Scope of Practice Task Force is pleased to present the attached recommendations to the FMA Board of Governors. We appreciate the confidence placed in us by Drs. Machado and DeGennaro and thank them for the opportunity to serve the FMA in this effort. The Scope of Practice Task Force ("Task Force") met four times between May and September of this year. At its initial meeting, the Task Force was given a historical overview of how the legislature has dealt with scope issues over the past decade. In addition, Task Force members heard how Florida compares to other states on scope issues, and were updated on state and national trends impacting physician practices and scope issues. Each Task Force member was charged with submitting proposed recommendations following this initial meeting. The second meeting was a telephonic meeting in which the Task Force discussed each of the recommendations that had been submitted. At the third meeting, the Task Force heard presentations from a number of specialty and medical society representatives and other FMA members. At its fourth and final meeting, the Task Force discussed and finalized these recommendations for the Board.

The Task Force heard from a number of individuals, including some who were dissatisfied with events that transpired during the 2012 legislative session on a specific scope issue. The Task Force recognized this issue was unique in many respects and resolved to learn from what transpired and focus on present and future challenges. The Task Force concluded that it should keep its Recommendations general in nature. This approach will allow the FMA as an association to address scope issues within a framework that can be applied in a variety of circumstances. It will help the FMA and other groups to achieve a common understanding of how the FMA will approach scope issues in the future and what is expected of groups who may seek the FMA's assistance on an issue. This approach allows maximum flexibility in the dynamic legislative, political and economic environment in which we are engaged.

Above all, the Task Force recommends that the FMA Board of Governors not allow any single issue to define the FMA. Instead, the FMA should continue its efforts to promote the concept of physician-directed care that ensures patient safety while promoting access to care. As long as physicians remain the leader of the health care team, it may be appropriate for the FMA and specialty societies to consider, on a case-by-case basis, scope of practice expansions when sufficiently protective of patient safety and improved patient access.

- Provide comparative date on how the issue might impact patient safety
- Outlining the steps taken by the society to support/oppose the issue
- Demonstrating the presence of an active legislative advocacy program, components of which should include:
    - A standing legislative committee and/or a lobbyist
    - Maintaining vote counts and/or other historical data to indicate legislator positions on the issue
    - Participation in grassroots initiatives (Doctor of the Day; news conferences, legislative grassroots involvement, etc.)
- Having a history of supporting policy initiatives of the FMA and other medical societies in the legislative process
- Demonstrating an awareness of basic political and factual circumstances, including how the issue has fared in other states and a plan for addressing such realities.

This recommendation was unanimously adopted by the Task Force with no abstentions.

Fiscal Note: Can be accomplished with current staff.

RECOMMENDATION NO. 3:

THE FMA SHALL CREATE A COALITION MODELED AFTER THE "PATIENTSFIRST COALITION" OF THE TEXAS MEDICAL ASSOCIATION, TO INDEPENDENTLY LOBBY AND ADVOCATE ON SCOPE OF PRACTICE SAFETY ISSUES.

The coalition would be comprised of participating physician specialty associations and the FMA. Its purpose would be to collaborate on scope of practice concerns through legislative and regulatory representation. The coalition would hire its own lobbyist to assist in the development and implementation of legislative policy initiatives of the coalition. Organizations wishing to participate in the coalition and benefit from its activities would be required to financially contribute to it. Financial contribution requirements could be based on factors such as an organization's membership size, budget, and other considerations. The funds collected would pay for the coalition's lobbyist and administrative costs. Such a coalition could serve as a uniting force among the FMA and respective specialty societies and ensure equitable participation and burden sharing in the legislative process by affected organizations.

This recommendation was unanimously adopted by the Task Force with no abstentions.

Fiscal Note: Unable to determine.

RECOMMENDATION NO. 4:

THE BOARD OF GOVERNORS SHOULD DIRECT FMA STAFF TO COORDINATE WITH SPECIALTY SOCIETY REPRESENTATIVES TO EXPLORE THE UTILITY OF DEFINING THE PRACTICE OF MEDICINE AND SPECIFYING THAT THE PRACTICE OF MEDICINE BY ANY PROFESSIONAL SHOULD BE ADDITIONALLY REGULATED BY THE BOARDS OF MEDICINE AND/OR OSTEOPATHIC MEDICINE.

The objective is to ensure that any professional who seeks to practice medicine is subject to the same regulatory and disciplinary oversight, as well as liability coverage requirements. The practice of medicine should be regulated by the Boards of Medicine and Osteopathic Medicine, not other boards, regardless of

the type of professional seeking to practice medicine. This approach would ensure the same standard of care would be applied and enforced consistently, regardless of the type of professional engaging in the conduct.

This concept would likely require expanding or modifying the role of the Boards of Medicine and Osteopathic Medicine to regulate and discipline allied health professionals whose practices fall within the definition of practicing medicine. All other activities by such professionals that do not meet the definition of practicing medicine would continue to be licensed and regulated by their respective licensing boards. It is possible that expansion of the medical boards would have a negative fiscal impact to the state.

Each specialty would be asked to establish minimum standards for credentialing that are expected of any professional seeking to engage in medical practice, e.g., a minimum number of procedures or hours performed under direct supervision, a minimum number of educational and practical hours (also define the type of institution where such hours must be obtained so that correspondence courses alone will not qualify). As an example, an ARNP seeking to practice independently would need to pass National Boards Part I and II and then practice under the Board of Medicine.

This approach would not be appropriate for every scope issue. Rather, it may be appropriate only when data suggests there is little danger to patient safety and when few alternatives exist due to policy and political constraints.

This recommendation was unanimously adopted by the Task Force with no abstentions.

Fiscal Note: Can be accomplished with current staff.

<u>RECOMMENDATION NO. 5</u>:

THE FMA SHOULD PROMOTE TEAM-BASED MODELS OF CARE THAT MAINTAIN PHYSICIANS AS THE LEADER OF THE HEALTH CARE TEAM TO ENSURE PATIENT SAFETY AND QUALITY OF CARE.

The future of health care delivery will require inter-professional health care teams working together to provide patient-centered care. This is an opportunity for the FMA to be innovative to help physicians practice medicine and protect patient safety. Even a managed care system requires that someone be in charge. That person should be the professional with the most experience and education – the physician. As such, the FMA should consider only scope of practice expansion proposals that protect patient safety by promoting the physician-led team approach to medicine.

This approach could be either narrow or broad. A narrow approach would authorize expansions in scope only as specifically directed in statute, and only if a physician remains in a supervisory role. The enabling legislation could specify that written protocols must be supervised by board certified Florida physicians, require consultations with such physicians, specify requirements for referral, and limits on the number of protocols that a physician may supervise. This is not very different than the status quo. We could expect non-physician providers to continually seek to push the envelope in the legislative process.

A broader approach is more flexible. Rather than having non-physician providers nibble at legislative changes each year, the FMA could seek legislation to delegate the authority to define the practice parameters to the physicians. In other words, the legislature would pass enabling legislation to authorize physicians, through collaborative practice agreement, to define and delegate practice responsibilities for

non-physician providers. The legislation would specify that the supervising physician has the authority to delegate any professional activity that the practice deems appropriate by virtue of the non-physician provider's education, training and experience. The authority to determine scope would rest with the supervising physician rather than the legislature or licensing boards. This approach could protect patient safety, improve coordination of care and provide greater accountability.
It should be noted that legislation was filed in 2006 by then-Representative Negron (HB 699), which would have granted rulemaking authority to the Board of Medicine and Board of Osteopathic Medicine to develop standards of practice and standards of care for physicians who supervise health care practitioners who are not under direct, onsite supervision by the physician. The original bill was amended to remove this open-ended grant of rulemaking authority and ultimately passed with more limited language. The final bill provided for specific limitations on the number of "off-site" offices that may be supervised by primary care physicians, specialists, and offices offering dermatologic or skin care services. The bill as originally filed raised concerns that such a broad grant of rulemaking authority to the Board of Medicine would violate the Florida Administrative Procedure Act, which authorizes agencies to enact rules only if there exists a "specific grant of rulemaking authority".

It is likely that future efforts to seek legislative authority for physicians similar or even broader than the authority sought in HB 699 would encounter similar problems with the Administrative Procedure Act. Another concern is that unless at least minimum criteria or standards are set forth in statute or in rule, standards contained in collaborative practice agreements would be unregulated and unenforceable.

This recommendation was unanimously adopted by the Task Force with no abstentions.

Fiscal Note: Can be accomplished with current staff.

RECOMMENDATION NO. 6:

SPECIALTY SOCIETIES AT ALL LEVELS SHOULD EXPLORE WAYS TO IMPROVE DATA COLLECTION ON PATIENT OUTCOMES, COST SAVINGS, ADVERSE INCIDENTS, AND WORKFORCE SHORTAGES (ACCESS LIMITATIONS) RELATING TO SCOPE OF PRACTICE ISSUES. SPECIALTY SOCIETIES MUST TAKE THE LEAD IN DATA COLLECTION IN THEIR AREA OF CONCERN ON SCOPE ISSUES, AND COORDINATE WITH THE FMA.

State and national specialty societies must take the lead in data collection, using resources of their organizations. The AMA should be called on to engage in data collection, as well, and the FMA and specialty societies should consider applying for an AMA grant to accomplish this. Data may be limited because many states that authorized scope expansions have not required adverse incident reporting or similar tracking or reporting mechanisms. The FMA should always attempt to include reporting requirements -- both patient safety and fiscal data -- in any proposed scope bill that appears poised to pass. The FMA could consider asking the legislature to fund a study to mine any data that may currently exist at the Department of Health.

This recommendation was unanimously adopted by the Task Force with no abstentions.

Fiscal Note: None.

RECOMMENDATION NO. 7:

IN COLLABORATION WITH SPECIALTY SOCIETIES, THE FMA WILL WORK TO ENHANCE AND STRENGTHEN EXISTING LAW PROVIDING FOR TRUTH IN ADVERTISING FOR NON-PHYSICIAN PROVIDERS, AND EXPLORE WAYS TO EDUCATE THE PUBLIC TO HELP INDIVIDUALS IDENTIFY AND DISTINGUISH THE TRAINING AND QUALIFICATIONS OF THEIR HEALTH CARE PROVIDER.

Patients and members of the public are often unaware of the differences between physicians and allied health professionals. Patients should be able to make informed choices about who is treating them. Presently there are no coordinated efforts by medical organizations to educate patients and the public. Lack of knowledge and education make consumers vulnerable to unscrupulous advertising and businesses practices, and ultimately could be harmful to patient safety. This is not a new problem. For years, the lines of professional credentials have grown increasingly blurred as terminology becomes less distinctive and exclusive. For example, chiropractors and optometrists refer to themselves as "Doctors of Chiropractic", "Chiropractic Physicians" and "Doctors of Optometry", respectively. Now, even allied health professions who are not authorized to practice independently seek to use the term "Doctor". We are seeing this with ARNPs who obtain a "Doctor of Nursing" degree. The problem is further compounded by state and federal policymakers and others who repeatedly include MDs and DOs within the generic term "health care provider". This issue is pervasive, growing, and relevant to all physicians and specialty groups.

The FMA should build on its success in 2006 with the passage of HB 587. HB 587 provided that it was grounds for disciplinary action for a practitioner licensed by the Department of Health to fail to identify through written notice (such as by wearing a name tag) the type of license under which the practitioner is practicing. The bill placed similar requirements on advertisements. The bill directed individual boards to develop rules for implementation and compliance by licensees. Unfortunately, the efficacy of the law is limited because enforcement is left to the discretion of the individual licensing boards, and the requirements do not apply in a hospital setting. Much debate ensued on this issue at the 2012 FMA Annual Meeting. While there was general agreement about the need to act, there was little consensus on the mechanics of a solution. Ultimately the FMA House of Delegates adopted Substitute Resolution 12-303, which directed the FMA to seek legislation to reinforce current law regarding license identification. In addition, the House of Delegates referred Resolution 12-316 to the Board of Governors. This Resolution directed the FMA to seek legislation prohibiting use of the word "doctor" by individuals other than MD's, DO's, DDS's, and DPM's, in the clinical setting. Finally, the Task Force notes the FMA has several existing policies opposing "Doctor of Nursing" degrees and supporting legislation to penalize persons who misrepresent themselves as physicians (MD/DO). See, e.g, P 340-002; 450.025. In sum, the Board of Governors may wish to direct FMA staff to consult and coordinate with specialty societies on possible legislative remedies.

This recommendation was unanimously adopted by the Task Force with no abstentions.

Fiscal Note: Can be accomplished with current staff.

RECOMMENDATION NO. 8:

SPECIALTY SOCIETIES SHOULD ENGAGE IN PUBLIC EDUCATION PROGRAMS DISTINGUISHING THEMSELVES BY EDUCATION, COMPETENCE AND OTHER FACTORS FROM NON-PHYSICIAN GROUPS. THE FMA SHOULD ASSIST SOCIETIES IN DISSEMINATING THIS INFORMATION TO LEGISLATORS AND THE PUBLIC.

As discussed in Recommendation 6, patients are often unaware of the distinctions between physicians and non-physician health care providers. Certain specialties may be more acutely affected from time to time as the medical profession and health care providers become increasingly specialized. For example, anesthesiologists are particularly impacted when patients do not understand the distinction between an anesthesiologist and a "certified registered nurse anesthetist". Similarly, neurologists are impacted when chiropractors refer to themselves as "chiropractic neurologists". Specialty societies are in the best position to take the lead in developing materials to distinguish and differentiate themselves from non-physician practitioners. The Task Force recommends the FMA stand ready to assist societies that choose to engage in such public education programs by helping them disseminate materials to legislators and the public.

This recommendation was unanimously adopted by the Task Force with no abstentions.

Fiscal Note: Can be accomplished with current staff.

RECOMMENDATION ON SPECIFIC SCOPE ISSUES RAISED BY SPECIALTIES

The Task Force received testimony from various specialty society representatives requesting the FMA take a position on specialty-specific scope of practice issues. The following issues were raised:

OPHTHALMOLOGY:

RECOMMENDATION NO. 9:

THE BOARD OF GOVERNORS CONSIDER WHETHER ANY ACTION ON APPLICABLE FMA POLICIES SHOULD BE IN ACCORDANCE WITH THE PROTOCOL PROPOSED IN TASK FORCE RECOMMENDATION #2, OR AS PART OF THE COALITION APPROACH SUGGESTED IN TASK FORCE RECOMMENDATION #3, ABOVE.

For many decades, the Florida Medical Association has been engaged in legislative advocacy on behalf of patient eye care in general and ophthalmology in particular in this state. Initiatives include an Act to allow corneal transplant (Section 732.9185) which was passed in 1977 and remains the law of our state. This initiative has greatly facilitated continuing sight restoring procedures in our state. Also in the 1970's, repeated legislative efforts to establish a state supported school of optometry eventually passed the legislature (HB 10-A). Intense lobbying by the FMA resulted in this bill's veto by then Governor Reuben Askew and this issue has not resurfaced. The long history and financial commitment of FMA support of the specialty of ophthalmology is well known to the Board of Governors.

Testimony urged the Task Force to recommend the FMA continue to oppose expansion in scope of practice for Optometrists that would allow Optometrists to prescribe oral medications or to perform

surgery. In July 2012, the FMA House of Delegates resolved to reaffirm existing FMA policies (Policies 450.014, 450.001, 450.009, et al.) to oppose scope of practice expansion for optometry. Given this recent action by the House of Delegates, the Task Force does not recommend any changes to these policies.

This recommendation passed with only one "no" vote and no abstentions.

Fiscal Note: None.

CERTIFIED REGISTERED NURSE ANESTHETISTS:

RECOMMENDATION NO. 10:

THE BOARD OF GOVERNORS CONSIDER WHETHER ANY ACTION ON APPLICABLE FMA POLICY SHOULD BE IN ACCORDANCE WITH THE PROTOCOL PROPOSED IN TASK FORCE RECOMMENDATION #2, OR AS PART OF THE COALITION APPROACH SUGGESTED IN TASK FORCE RECOMMENDATION #3, ABOVE.

Testimony urged the Task Force to recommend the FMA oppose efforts by CRNAs to expand their scope of practice to include interventional pain management. It should be noted the FMA's 2012 legislative agenda included Policy 400.009, which directed the FMA to support legislation in the 2012 legislative session identifying interventional pain medicine as the practice of medicine by medical and osteopathic physicians, and to oppose any attempt to limit interventional pain medicine to specific specialties to be subject to excessive regulations. The Task Force does not recommend any change to this policy other than updating the date reference.

This recommendation was unanimously adopted by the Task Force with no abstentions.

Fiscal Note: None.

RECOMMENDATION NO. 11:

THE FMA BOARD SEEK ADDITIONAL INFORMATION FROM THE FLORIDA SOCIETY OF INTERVENTIONAL PAIN PHYSICIANS ABOUT A PUBLIC AWARENESS CAMPAIGN AND WHAT SPECIFICALLY IS BEING REQUESTED OF THE FMA IN THIS REGARD. ADDITIONALLY, THE TASK FORCE RECOMMENDS THE BOARD OF GOVERNORS CONSIDER WHETHER ANY FMA ACTION ON SUCH REQUEST SHOULD BE IN ACCORDANCE WITH THE PROTOCOL PROPOSED IN TASK FORCE RECOMMENDATION #2, OR AS PART OF THE COALITION APPROACH SUGGESTED IN TASK FORCE RECOMMENDATION #3, ABOVE. FINALLY, THE PIVOTAL ROLE OF STATE GOVERNORS IN THIS ARENA REINFORCES THE IMPORTANCE OF SPECIALTY SOCIETIES DEVELOPING STRONG RELATIONSHIPS WITH GUBERNATORIAL CANDIDATES AS WELL AS ENHANCING THEIR INVOLVEMENT IN THESE ELECTIONS.

Testimony also urged the Task Force to recommend that the FMA aid anesthesiologists in their efforts to prevent Florida and additional states from opting out of federal regulations that prohibit CRNAs from unsupervised practice. The state governors possess the authority to petition CMS requesting a waiver of such regulations. 17 states have exercised this opt-out, in many instances with the support of hospitals (particularly rural hospitals). The FMA was urged to help with a public awareness campaign on the issue.

This recommendation was unanimously adopted by the Task Force with no abstentions.

Fiscal Note: None.

NURSES/ADVANCE REGISTERED NURSE PRACTITIONERS:

RECOMMENDATION NO. 12:

THE FMA SUPPORT THE EFFORTS OF FAFP AND ACP IN THEIR DISCUSSIONS WITH NURSING GROUPS AND WITHHOLD ACTION PENDING OUTCOME OF THESE DISCUSSIONS.

Testimony urged Task Force members to recommend the FMA oppose efforts by nurses who obtain doctorate degrees from identifying themselves with the title of "Doctor" in a healthcare setting. In July 2012 the FMA House of Delegates adopted Resolution 304 and referred Resolution 316 to the Board of Governors. As noted above in Recommendation 7, both of these resolutions essentially reaffirmed the FMA's existing policies to support legislation to penalize individuals who misrepresent themselves as physicians and to oppose proposals to create "Doctor of Nursing" degrees. The Task Force does not recommend any changes to these recently re-affirmed Resolutions. Further, it should be noted this issue was the subject of HB 587, which passed in the 2006 legislative session, and is discussed in Task Force Recommendation #7, above.

Testimony and opinions varied on the issue of whether ARNPs should be authorized to prescribe narcotics. Some testimony opposed ARNP prescribing controlled substances under any circumstances and some testimony (and Task Force member discussion) suggested the FMA should explore and try to define circumstances under which ARNPs may be permitted to prescribe. The issue did not receive much detailed discussion because Task Force members are aware that the FAFP and ACP are engaged in active discussions with ARNP representatives on this issue.

This recommendation was unanimously adopted by the Task Force with one abstention.

Fiscal Note: Can be accomplished with current staff.

PSYCHOLOGISTS:

RECOMMENDATION NO. 13:

THE BOARD OF GOVERNORS CONSIDER WHETHER ANY ACTION ON APPLICABLE FMA POLICIES SHOULD BE IN ACCORDANCE WITH THE PROTOCOL PROPOSED IN TASK FORCE RECOMMENDATION #2, OR AS PART OF THE COALITION APPROACH SUGGESTED IN TASK FORCE RECOMMENDATION #3, ABOVE.

Testimony urged the Task Force to recommend that the FMA oppose any efforts by psychologists to expand their scope of practice by obtaining the authority to prescribe controlled substances or to seek designation as "psychological physicians". The FMA has consistently and successfully opposed such efforts by psychologists (see FMA Policies 450.009, Encroachment of Nonphysicians on the Practice of

Medicine; and Policy 450.014, Scope of Practice Expansion for Non-physicians). The Task Force does not recommend any changes in existing FMA policy on this issue, but recognizes the need to have data to support its position. It will be necessary for the Florida Psychiatric Society to obtain data describing any adverse events that may have occurred in the two states that currently authorize psychologists to prescribe controlled substances.

This recommendation was unanimously adopted by the Task Force with no abstentions.

Fiscal Note: None.

PHYSICAL THERAPISTS:

RECOMMENDATION NO. 14:

THE BOARD OF GOVERNORS CONSIDER WHETHER ANY ACTION ON APPLICABLE FMA POLICIES SHOULD BE IN ACCORDANCE WITH THE PROTOCOL PROPOSED IN TASK FORCE RECOMMENDATION #2, OR AS PART OF THE COALITION APPROACH SUGGESTED IN TASK FORCE RECOMMENDATION #3, ABOVE.

Testimony urged the Task Force to recommend that the FMA continue opposing efforts by physical therapists to practice independently beyond the current "21 day" window. The FMA has successfully opposed efforts by physical therapists to obtain additional independent practice authority (see FMA Policies 450.009, Encroachment of Nonphysicians on the Practice of Medicine; and Policy 450.014, Scope of Practice Expansion for Non-physicians). The Task Force does not recommend any changes in the FMA's approach to this issue.

This recommendation passed with only one "no" vote and no abstentions.

Fiscal Note: None