FMA
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2020 FMA LEGISLATIVE REPORT

The 2020 Florida Legislative Session concluded on Thursday, March 19, marked by a sine die ceremony without an audience due to the novel coronavirus. Your FMA team of lobbyists tracked 305 bills and numerous amendments that either directly or indirectly concerned the practice of medicine in Florida. In a disappointing turn of events, House Speaker José Oliva was successful in passing his number-one priority – expanded scope for certain Advanced Practice Registered Nurses. The FMA will not stop fighting for the highest quality of care for Floridians, even when the Legislature disregards patient safety.

The following is a summary of key legislative issues that the FMA worked on during session to help our members practice medicine.

LEGISLATION THAT FAILED

Prescriptive Authority for Psychologists (SB 448, Sen. Brandes/HB 1443, Rep. Santiago)
This is the second year in a row that this bill was filed, seeking to grant psychologists prescriptive authority to prescribe medication – including controlled substances. The FMA vehemently opposes this legislation as psychologists, while important members of the mental healthcare team, receive no medical or psychopharmacology training. In anticipation of this legislation, the FMA has been working closely with the Florida Psychiatric Society to educate legislators on this dangerous proposal. HB 1443 died in committee and SB 448 was never heard in the Senate. We anticipate that this legislation will resurface in future sessions.

Chiropractic Medicine (HB 677, Rep. Smith/SB 1138, Sen. Brandes)
HB 677 was yet another attempt to expand mid-level healthcare providers' scope of practice. This legislation would have authorized chiropractors to order, prescribe, and administer "articles of natural origin." While it is still unclear what "articles of natural origin" legally means, this bill was a step in the wrong direction for chiropractors to seek full prescriptive authority. Both versions of the bill died in their first committee of reference.

Legislative Review of Occupational Regulations (HB 707, Rep. Renner/SB 1124, Sen. Diaz)
HB 707 would have created a schedule for the systematic review and repeal of occupational regulatory programs. By July 1, 2022, this legislation would have repealed several provisions of Chapters 458 and 459, effectively deregulating the practice of medicine. The FMA was adamant that this would not be in the best interest of patient safety and opposed medicine's inclusion in this legislation. HB 707 was voted out of the House, but the Senate companion died in the Appropriations Committee.

Damages (HB 9, Rep. Leek/SB 1668, Sen. Simmons)
HB 9, dubbed by proponents as the "Truth in Damages" bill and the "Limitations in Medical Payments" by opponents was introduced yet again this session. The House language initially mirrored compromise language worked out last session between the FMA and the Florida Justice Reform Institute. The Senate sponsor, however, would not accept the compromise language and instead drafted SB 1668, which would have imposed unfair limits on physician payments in personal injury suits. The FMA strongly opposed this version, and the bill died in the Senate Banking and Insurance Committee. The sponsor of HB 9 amended his bill to mirror the Senate version, which wound up dying on the House calendar.

Prohibited Acts by Health Care Practitioners (SB 500, Sen. Harrell/HB 309, Rep. Masullo)
This bill was filed at the request of the Florida Society of Anesthesiologists in response to a declaratory statement issued by the Board of Nursing allowing a nurse anesthetist to identify as a "nurse anesthesiologist." This legislation hoped to cure that misguided declaratory statement by prohibiting certain licensed healthcare practitioners from using specified names or titles unless that practitioner held the requisite training and certifications. This legislation suffered from several technical flaws throughout the process and was subject to disagreement between specialties. While both versions of the bill made it to the floor, the House bill died on second reading and the Senate bill died in messages.

Stem Cell Legislation (HB 313, Rep. Donalds/SB 512, Sen. Hutson)
In response to the proliferation of dubious "stem cell" therapies, both chambers have filed legislation in the past couple of years to address the issue. The Senate version this year would have imposed extensive state regulatory requirements on certain establishments that manufacture adult human nonembryonic HCT/Ps and would have prohibited physicians from practicing in a nonembryonic stem cell bank that was not licensed by the state. The House version would have only established a voluntary registration system for "stem cell providers." While the Senate bill was well intentioned, there were several problems the FMA identified in the legislation and extensive discussions were had with the bill sponsor and Senate staff. SB 512 passed the Senate but died in messages, with HB 313 not making it out of the Health and Human Services Committee.

Sale of Sunscreen (SB 318, Sen. Stewart)
Citing environmental concerns, this legislation would have prohibited the sale or distribution of certain sunscreen products to a consumer who did not have a prescription for such product. Dermatologists were concerned that restricted access to sunscreen would increase the occurrence of dangerous skin conditions such as cancer. This also would have placed a greater burden on physician offices if a prescription were required for sunscreen in Florida. SB 318 was not heard in committee and there was no House companion.

Podiatric Medicine and Physician Assistants (HB 351, Rep. Ponder/SB 744, Sen. Hooper)
Current law does not allow podiatric physicians to delegate tasks to physician assistants (PAs) or medical assistants. HB 351 would have authorized a podiatric physician to delegate the performance of healthcare services to a PA if the podiatric physician, PA, and the PA's supervising physician had ownership in or were employed by the same group practice. The supervising physician would have remained liable for the performance and the acts or omissions of the PA. This bill also would have allowed podiatric physicians to employ and supervise medical assistants. HB 351 passed through the House, but the Senate companion died in the Appropriations Committee.

Personal Injury Protection (SB 378, Sen. Lee/HB 771, Rep. Grall)
This bill would have repealed the motor vehicle no-fault system (of which PIP is a component) and replace this coverage with a mandatory bodily injury system. The Senate bill would have required automobile insurers to offer medical payments coverage, but such coverage would be an optional purchase. The House version would not have provided for any medical payments coverage at all. The FMA opposed both bills and worked to make sure that if no-fault was repealed, that physicians providing emergency care to auto-accident victims would be paid through mandatory medical payments coverage. The House bill died on the floor, and the Senate bill stalled in the Banking and Insurance Committee.

Interstate Medical Licensure Compact (SB 926, Sen. Harrell/HB 1269, Rep. Gregory)
This legislation would have authorized Florida to join the Interstate Medical Licensure Compact. The Interstate Medical Licensure Compact is a voluntary, expedited pathway to licensure for physicians interested in practicing in multiple states. Currently, there are 29 states in the Compact. The FMA supports this initiative so long as the Compact remains voluntary and non-participating Florida physicians are not financially affected. Unfortunately, this legislation stalled in committee.

Electronic Prescribing (HB 1103, Rep. Mariano/SB 1830, Sen. Baxley)
Last year, the Legislature passed HB 831 (2019), which mandates electronic prescribing in most instances. However, the FMA, FOMA and other specialties vigorously fought for exceptions such as an exception for prescribers who do not maintain EMR systems, or in instances where it would be in the patient's best interest to receive a written prescription. In a blatant act to further disrespect physicians and their patients, the House filed legislation that would remove all the exceptions fought for and won in the previous year's legislation. Unsurprisingly, HB 1103 passed through the House; however, the FMA was successful in defeating this legislation in the Senate.

Patient Access to Records (HB 1147, Rep. Payne/SB 1882, Sen. Lee)
This bill would have required all healthcare practitioners and facilities to provide medical records within 14 days of a request. It also would have required facilities and practitioners to provide access to examine original records within 10 days of a patient's request. It is unclear how a physician would be obligated to provide access for inspection of the original records. Would a separate room be required? Would practices have to purchase an additional device for patients to view the original

records? Would physicians have to hire an additional staffer to supervise the record examination so that other records are not viewed? While this legislation sounds helpful to patients in theory, it is ambiguous and impractical and would have spurred frivolous lawsuits. The Legislature and the Board of Medicine have enacted laws and rules that provide for the reproduction of medical records within a reasonable time. This bill was the wrong solution to a problem that does not exist. HB 1147 passed through the House and SB 1882 was not heard in the Senate.

Hospital and Provider Mergers (HB 711, Rep. Burton/SB 758, Sen. Albritton)
HB 711 would have required any hospital, hospital system, or provider organization conducting business in Florida that is required to file the Notification and Report Form for Certain Mergers and Acquisitions to provide written notice of such filing to the Office of the Attorney General (OAG) at the same time. Further, HB 711 would have required written notice to the OAG at least 90 days before the effective date of any transaction that would result in a merger, acquisition, or contracting affiliation that generates a combined revenue of $50 million or more between two or more entities of hospitals, hospital systems, or provider organizations. A "provider organization" included any physician group practice with four or more providers.
This costly legislation would have been unduly burdensome and made these business transactions more complicated for physician groups. If a large hospital acquired a small physician practice, both parties would have to file these documents – the failure of which would result in a $500,000 penalty. HB 711 passed through the House, but thanks to the FMA's efforts, the Senate companion was not heard in committee.

LEGISLATION THAT PASSED

Licensure Requirements for Osteopathic Physicians (SB 218, Sen. Harrell/HB 221, Rep. Roach)
SB 218 updates the osteopathic internship and residency accrediting agencies to include the Accreditation Council for Graduate Medical Education (ACGME) and repeals the Board of Osteopathic Medicine's authority to approve other internship programs. Both osteopathic and allopathic medical school graduates will be able to seek residencies and fellowship programs accredited by the ACGME. This will enable osteopathic medical school graduates, residents, and fellows to apply to the National Resident Match Program and participate in the Main Residency Match for internships, residencies, and fellowships, thereby creating more residency opportunities for osteopathic residents.

Department of Health Package (HB 713, Rep. Rodriguez/SB 230, Sen. Harrell)
HB 713 was this year's major Department of Health (DOH) package, which makes several changes to programs and healthcare professions regulated under the DOH. While initially filed as a separate bill, which was unsuccessful in making it to the floor, the House pushed through a last-minute amendment changing the composition of the PA Council. HB 713 changes the PA Council from three allopathic physicians, one osteopathic physician and one PA to one allopathic physician, one osteopathic physician and three PAs. However, the PA Council remains under the Board of

Medicine. The FMA has opposed and defeated this initiative for years, and it was yet again another issue that Speaker Olivia forced upon the people of Florida.

Practice of Pharmacy (HB 389, Rep. Sirois/SB 714, Sen. Hutson)
This ill-conceived bill greatly expands the role pharmacists play in Florida's healthcare system. HB 389 is best characterized as having two major pieces of legislation wrapped up in one. First, it creates the option for a collaborative pharmacy practice agreement between a physician and qualified pharmacist for the management of chronic conditions. Second, it creates the option for a protocol between a physician and qualified pharmacist for the testing and treating of minor, nonchronic conditions.

HB 389 will effectively allow pharmacists to practice medicine without any requirement that they receive the education and training required to do so safely and effectively. With the completion of a mere 20-hour course, pharmacists will be allowed to provide medical care for patients with chronic health conditions such as arthritis, asthma, COPD, HIV/AIDS, obesity, and any other condition that the Board of Pharmacy decides pharmacists should be able to treat. To provide services to patients with chronic health conditions, a pharmacist must enter a "collaborative pharmacy practice agreement" with an MD or a DO. The agreement must limit the pharmacist to providing such services to the collaborating physician's patients only.

This legislation also allows pharmacists to test, screen for and treat minor, nonchronic health conditions under the framework of an established written protocol with an MD or DO. The bill defines a minor, nonchronic health condition as a short-term condition that is generally managed with minimal treatment or self-care and includes: influenza, streptococcus, lice, skin conditions such as ringworm and athlete's foot, and minor uncomplicated infections. Unlike for chronic conditions, there is no authority for the Board of Pharmacy to add other conditions by rule. The FMA will argue that pharmacists can only test for and treat the enumerated conditions. Exactly which skin conditions and minor infections a pharmacist can test and treat will have to be worked out via rule and/or litigation.

There are several provisions in the bill that require rulemaking by the Board of Pharmacy in consultation with the Boards of Medicine and Osteopathic Medicine. The FMA will be an active participant in this process to continue fighting for patient safety.
For a more **detailed summary of HB 389, click here.**

Consultant Pharmacist (HB 599, Rep. Rodriguez/SB 1094, Sen. Diaz)
This legislation allows a consultant pharmacist to provide medication management services in a healthcare facility within the framework of a written collaborative practice agreement between the pharmacist and a healthcare facility medical director, a Florida-licensed MD or DO, a podiatric physician, or a dentist who is authorized to prescribe medicinal drugs. A consultant pharmacist may only provide medication management services, conduct patient assessments, and order and

evaluate laboratory or clinical testing for patients of the practitioner with whom the consultant pharmacist has a written collaborative practice agreement. A consultant pharmacist can only enter into these agreements when practicing in an ambulatory surgical center, hospital, an alcohol or chemical dependency treatment center, an inpatient hospice, a nursing home, or an ambulatory care center. HB 599 prohibits consultant pharmacists from diagnosing any disease or condition. This bill is different than HB 389 in that consultant pharmacists, as opposed to retail pharmacists, are typically part of a more team-based system of care.

Autonomous Primary Care Practice for APRNs (HB 607, Rep. Pigman/SB 7053, Sen. Albritton)
HB 607, as originally filed, would have allowed PAs and all APRNs, including CRNAs, to practice without physician supervision and with little restrictions on the type of practice they could engage in. The final product, passed by the Senate, the House and signed by the Governor on the same day (March 11, 2020) is a more restrictive approach, as it only provides for autonomous practice for APRNs and certified nurse midwives. PAs, CRNAs and psychiatric nurses will still have to work under a protocol with a supervising physician. APRNs will be restricted to autonomous practice only in primary care fields, such as family medicine, general pediatrics and general internal medicine. Unfortunately, the Board of Nursing will be in charge of adopting rules that define exactly what primary care is. In this not yet fully defined field of primary care, autonomous APRNs will be able to perform any function they can perform within a protocol under current law.
HB 607 does contain a couple of small limitations: An autonomous APRN may not perform any surgical procedure other than a subcutaneous procedure, and a certified nurse midwife must have a written patient transfer agreement with a hospital and written referral agreement with an MD or DO. Perhaps the only bright spot of the bill is a half-measure. Health insurance companies are prohibited from requiring an insured person to receive services from an autonomous APRN in place of a physician. Insurers, however, are not prohibited from incentivizing treatment from autonomous APRNs in place of physicians — meaning that insurers can’t require a patient to see an APRN but can offer lower copayments if the patient does.
For a more **detailed summary of HB 389, click here**.

Reproductive Procedures & Pelvic Examinations (SB 698, Sen. Book/HB 1287, Rep. Jenne)
In response to recent disturbing stories in the media, SB 698 establishes protections for patients seeking medical assistance to conceive a child. Effective October 1, 2020, this legislation creates a new crime called reproductive battery, making it a third-degree felony if a healthcare practitioner intentionally inseminates a patient knowing that the patient did not consent to the implantation of the reproductive material or embryo from that donor. Reproductive battery is a second-degree felony when the donor of the implanted reproductive material is the healthcare practitioner. If a physician is convicted of reproductive battery, his or her license shall be immediately suspended by emergency order. SB 698 updates the grounds for discipline in the medical practice act to include inseminating or implanting a patient with the reproductive material of the licensee.
This legislation also prohibits a healthcare practitioner, medical student, or any other student receiving training as a healthcare practitioner from performing pelvic examinations without the

written consent of the patient or legal representative. This informed consent cannot be general in nature but must be executed specific to, and expressly identifying the pelvic examination. This includes circumstances where the patient is under anesthesia for a gynecologic or any other procedure. SB 698 removes the written consent requirement where there is a court order for a pelvic examination for the collection of evidence, or if the pelvic examination is immediately necessary to avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the patient. This provision is effective July 1, 2020.

Nonopioid Alternatives (HB 743, Rep. Plakon/SB 1080, Sen. Perry)
Last year, the Florida Legislature passed HB 451 (2019), which requires healthcare practitioners to provide information and a pamphlet regarding nonopioid alternatives to their patients before administering anesthesia or prescribing, ordering, dispensing or administering a Schedule II opioid drug for the treatment of pain. Effective July 1, 2020, HB 743 revises these requirements by: exempting providers when a patient is receiving care in a hospital critical care unit, the emergency department, or hospice; clarifying that the nonalternative opioid information will only be required before administering anesthesia involving the use of a Schedule II opioid, or prescribing or ordering a Schedule II opioid for the treatment of pain (removes dispensing and administering); and unfortunately, requiring that the educational pamphlet be printed. The FMA argued that prescribers should have the option of offering the pamphlet in an electronic format to offset the cost to physician offices. Strangely, the Legislature seems to think a paper pamphlet will make more of an impact than an electronic version, even though the Legislature continuously pushes physicians to prescribe and maintain records electronically.
For a full **summary of this legislation, click here**.

Substance Abuse and Mental Health (SB 7012, Sen. Book/HB 1081, Rep. Stevenson)
Spearheaded by Senator Book, SB 7012 makes several changes to laws relating to substance abuse and mental health. This bill primarily focuses on programs housed under the Department of Children and Families and tackles suicide deterrence for first responders. The bill also included a requirement that physicians take a two-hour continuing education course in suicide prevention. The FMA was successful in removing this unnecessary CME from the bill.

You Make Medicine Stronger
Having Friends of Medicine in the Legislature makes it possible for the FMA to successfully advocate for Florida's physicians, year in and year out. You can make medicine even stronger by **supporting the FMA PAC.** The FMA PAC works to get pro-medicine candidates elected so that they can champion legislation to help physicians practice medicine and protect Florida's patients. If you are already an FMA PAC member, please consider increasing your level of involvement by **joining the 1000+ Club.** Thank you for your support.