

ORDINANCE NO. 2012 - 34

AN ORDINANCE OF OSCEOLA COUNTY, FLORIDA RELATING TO PAIN MANAGEMENT CLINICS; REPEALING IN ITS ENTIRETY, ARTICLE VII, "PAIN MANAGEMENT CLINICS," OF CHAPTER 14, "MISCELLANEOUS PROVISIONS AND OFFENSES," OF THE COUNTY CODE OF ORDINANCES, AND ENACTING NEW ARTICLE VII, "PAIN MANAGEMENT CLINICS," PROVIDING REGULATIONS FOR THE OPERATION OF PAIN MANAGEMENT CLINICS; PROVIDING DEFINITIONS; PROVIDING PROVISIONS REGARDING BUSINESS TAX RECEIPTS FOR PAIN MANAGEMENT CLINICS; PROVIDING FOR ENFORCEMENT AND SETTING PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Osceola County Investigative Bureau has conducted research and analysis of the crime related activities located at or in near proximity to the existing pain management clinics operating in and around Osceola County; and

WHEREAS, the Osceola County Board of County Commissioners ("Board") has been informed that a pattern of illegal drug use and distribution of certain dangerous drugs has been linked to certain pain management clinics operating in and around Osceola County; and

WHEREAS, the Osceola County Investigative Bureau ("OCIB") has found that an analysis of Pain Management Clinics published by the Florida Department of Law Enforcement in May of 2011 showed that there were 25 deaths in Osceola County during 2010 which involved lethal amounts of Oxycodone, or the mix of Oxycodone and other drugs; and

WHEREAS, the OCIB has intelligence from numerous law enforcement sources that drug trafficking organizations from the states of Ohio, Kentucky and Tennessee have and continue to visit an existing pain management clinic in Osceola County; and

WHEREAS, certain opiate analgesic dangerous drugs, that may be safe when used moderately or properly, have been shown to be particularly dangerous when over-prescribed by doctors in specialized businesses that are primarily focused on treating large numbers of persons who complain of any pain with very high doses of opiate drugs, and have been shown to be particularly dangerous when over- consumed by citizens and visitors who may obtain a large number of such opiate drugs by engaging in doctor shopping to obtain multiple prescriptions, closing in time, from multiple doctors, by failing to disclose prior recent prescriptions to subsequent doctors, and then obtaining the prescriptions from multiple dispensing pharmacies, often by using multiple and false identities at both medical clinics and pharmacies; and

WHEREAS, the dangerous overprescribing and excessive consumption of high amounts of those dangerous opiate prescription drugs has resulted in increased addiction of persons, increased crime associated with such activity and deaths in Osceola County related to prescription drug abuse, and has created the need for action to reduce the threat to the health, safety and welfare of county citizens and visitors; and

WHEREAS, the State of Florida has implemented a Prescription Drug Monitoring Program which could be an effective tool in Osceola County to reduce successful doctor shopping, or multiple prescriptions, or multiple pharmacy filling of prescriptions and dispensing of potentially dangerous opiate drugs, if local physicians are careful to check the database before prescribing potentially dangerous opiate drugs; and if reports are made to the database immediately when potentially dangerous opiate drugs are prescribed by local physicians or dispensed by local pharmacies so that other physicians and pharmacies can know that information; and

WHEREAS, on May 2, 2011, the Board adopted Ordinance No. 11-12 to establish a moratorium on the issuance of any new Business Tax Receipts for pain management clinics, to direct County staff to analyze the effects of pain management clinics in the community and prepare recommendations regarding promoting the health, safety; and

WHEREAS, in November of 2011 a report was presented to the Board regarding pain management clinics in Osceola County and recommending the County implement regulations of said clinics, including certain land use regulations; and

WHEREAS, the Board directed the creation of ordinances regulating the operation of pain management clinics as well as the land use of same; and

WHEREAS, the moratorium on the issuance of any new Business Tax Receipts for pain management clinics was extended to November 1, 2012 in Ordinance 12-09; and

WHEREAS, with the adoption of this regulatory ordinance and the adoption of revised Chapter 14, Zoning, of the Osceola County Land Development Code, the Board intends to lift

the moratorium imposed by Ordinance No. 11-12, as amended by Ordinance No. 12-09, and impose these regulations on pain management clinics in Osceola County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF OSCEOLA COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. Repeal of current Moratorium Ordinance and Creation of Pain Management Clinic Ordinance. Ordinance 11-12 and Ordinance 12-09, codified at Article VII, "Pain Management Clinics," of Chapter 14, "Miscellaneous Provisions and Offenses," of the Osceola County Code are hereby repealed in their entirety and new Article VII, "Pain Management Clinics," of Chapter 14, "Miscellaneous Provisions and Offenses," Osceola County Code is hereby enacted to read as follows:

Section 14-110. Findings of Fact.

- (1) Osceola County has broad home rule powers granted by the Florida Constitution to enact ordinances which are not inconsistent with general or special law for the purposes of protecting the public health, safety, and welfare of its citizens. Accordingly, because the activities of illicit pain management clinics, also known as "pill mills," threatens the health, safety and welfare of its citizens, Osceola County may regulate certain aspects of pain management clinic operations not reserved to the State of Florida.
- (2) the State of Florida has implemented a Prescription Drug Monitoring Program which would be an effective tool in Osceola County to reduce successful doctor shopping, or multiple prescriptions, or multiple pharmacy filling of prescriptions and dispensing of potentially dangerous opiate drugs, if local physicians are careful to check the database before prescribing potentially dangerous opiate drugs; and if reports are made to the database immediately when potentially dangerous opiate drugs are prescribed by local physicians or dispensed by local pharmacies so that other physicians and pharmacies can know that information.
- (3) The Osceola County Investigative Bureau has conducted research and analysis of the crime related activities located at or in near proximity to the existing pain management clinics operating in and around Osceola County and has informed the Board that a pattern of illegal drug use and distribution of certain dangerous drugs has been linked to certain pain management clinics operating in and around Osceola County.
- (4) The Osceola County Investigative Bureau ("OCIB") has found that an analysis of Pain Management Clinics published by the Florida Department of Law Enforcement in May of 2011 showed that there were 25 deaths in Osceola County in 2010 which involved lethal amounts of Oxycodone, or a mixture of Oxycodone and other drugs.

- (5) The OCIB has intelligence from numerous law enforcement sources that drug trafficking organizations from the states of Ohio, Kentucky and Tennessee have and continue to visit an existing pain management clinic in Osceola County.
- (6) There have been several newspaper articles and media reports illustrating a pattern of illegal drug use and distribution associated with pain management clinics in Florida, which dispense drugs on-site and are trafficked by users from other states, such as Kentucky, Ohio, Georgia, and West Virginia.
- (7) Certain opiate analgesic dangerous drugs, that may be safe when used moderately or properly, have been shown to be particularly dangerous when over-prescribed by doctors in specialized businesses that are primarily focused on treating large numbers of persons who complain of any pain with very high doses of opiate drugs, and have been shown to be particularly dangerous when over- consumed by citizens and visitors who may obtain a large number of such opiate drugs by engaging in doctor shopping to obtain multiple prescriptions, closing in time, from multiple doctors, by failing to disclose prior recent prescriptions to subsequent doctors, and then obtaining the prescriptions from multiple dispensing pharmacies, often by using multiple and false identities at both medical clinics and pharmacies.
- (8) Some pill mills and pharmacies have operated on a "cash only" basis.
- (9) Some pharmacies have been operated in conjunction with pill mills, including those that operate on a "cash only" basis have sales of controlled substances that exceed the industry norm.
- (10) Pill mills that illegally prescribe and dispense controlled substances for the treatment of pain, whether acute pain, intractable pain, or chronic pain, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, public safety risks, illicit drug use and drug trafficking, undesirable and criminal behavior associated with alcohol consumption, and negative impacts on surrounding properties.

Sec. 14-111. - Applicability.

This Article shall be applicable in both the unincorporated and incorporated areas of Osceola County, except to the extent that a municipality has adopted or adopts its own ordinance in conflict with this ordinance. To the extent that this ordinance is applicable within a municipality, the County and the municipality shall have concurrent authority and jurisdiction to apply and enforce the ordinance within the entirety of their jurisdictional boundaries.

Sec. 14-112. Definitions.

For purposes of this Article, the following definitions shall apply:

- (1) Acute pain is the normal, predicted physiological response to an adverse chemical, thermal or mechanical stimulus and is associated with surgery, trauma, or illness. It is generally short-lived. Acute pain responses may vary between patients and between pain episodes within an individual patient. Acute pain episodes may be present in patients with chronic pain.
- (2) Business, Profession, or Occupation means either a commercial enterprise, vocation requiring advanced education and training, activity or employment, engaged in for livelihood or gain. It does not include the customary religious, charitable or educational activities of nonprofit Religious, Charitable or Educational Institutions in this County, which institutions are more particularly defined and limited as follows:
 - a. Religious Institutions means churches and ecclesiastical or denominational organizations or established physical places for worship in this State at which nonprofit religious services and activities are regularly conducted and carried on, and also means church cemeteries.
 - b. Educational Institutions means State tax-supported or parochial, church and nonprofit private schools, colleges, or universities conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Secondary Schools, the Florida Department of Education, or the Florida Council of Independent Schools. Nonprofit libraries, art galleries, and museums open to the public are defined as Educational Institutions and eligible for exemption.
 - c. Charitable Institutions means only nonprofit corporations operating physical facilities in this State at which are provided charitable services, a reasonable percentage of which are without cost to those unable to pay.
- (3) Chronic Pain means pain which includes one or more of the following characteristics: (a) the pain persists beyond the usual course of a disease that is the cause of the pain; (b) the pain persists beyond the expected time for healing from an injury or trauma that is the cause of the pain; or (c) the pain is associated with long-term incurable or intractable medical illness or disease. It is not amenable to routine pain control methods. Patients with chronic pain may have either continuous or intermittent pain, including episodes of acute pain related to disease progression or reoccurrence.
- (4) Code Enforcement Officer means any designated employee or agent of Osceola County whose duty it is to enforce codes and ordinances enacted by Osceola County, or

designated employee or agent of the municipalities whose duty it is to enforce codes and ordinances of the municipalities, respectively. Employees or agents who may be Code Enforcement Officers for purposes of this Article may include, but are not limited to, code inspectors, law enforcement officers and law enforcement civilian employees, animal control officers, building inspectors, or fire safety inspectors.

- (5) Controlled Substance means controlled substances listed in Schedule II, Schedule III, or Schedule IV, in F.S. § 893.03, recognized as effective for pain relief, including, but not limited to, the following: buprenorphine, butorphenol, carisoprodol, codeine, fentanyl, hydrocodone, hydromorphone, levorphanol, methadone, morphine, oxycodone, and propoxyphene. Additionally, the term includes benzodiazepines, such as alprazolam, when prescribed in addition to or directly preceding or following another prescription for a controlled substance for pain relief. However, the term does not include suboxone, which contains a mixture of buprenorphine and naloxone.
- (6) Employee, employs, employed, employ or employment shall include persons who are salaried, hourly, full-time, part-time, independent contractors, sub-contractors, persons receiving 1099 IRS forms, or volunteers.
- (7) Health care physician or physician means any practitioner who is subject to licensure or regulation by the Florida Department of Health under F.S. ch. 458 (physician) or F.S. ch. 459 (osteopathic physician).
- (8) Intractable pain means pain for which, in the generally accepted course of medical practice, the cause cannot be removed or otherwise treated.
- (9) Occupational License or Local Business Tax Receipt means the method by which Osceola County government grants the privilege of engaging in or managing any Business, Profession or Occupation within its jurisdiction, and evidences that the Person in whose name the document is issued has complied with the provisions of F.S. Ch. 205. It does not mean any fees paid to or licenses received from any board, commission, officer or municipality for permits, registration, examination, or inspection. Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any Occupational License imposed under the provisions of Chapter 13, Article II of the Code of Ordinances of Osceola County, Florida.
- (10) Pain means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. Categories of pain include acute pain, intractable pain, or chronic pain.

(11) Pain management means the use of pharmacological and non pharmacological interventions to control the patient's identified pain. Pain management often extends beyond pain relief, encompassing the patient's quality of life, ability to work productively, to enjoy recreation, and to function normally in family and society.

(12) Pain Management Clinic means a privately owned clinic, facility, or office, whatever its title, including, but not limited to, a "wellness center," "urgent care facility," or "detox center," which engages in pain management. This definition includes the following:

(a) A pain management clinic must have at least one of the following characteristics:

1. It employs one or more physicians licensed under F.S. ch. 458 or 459, or employs any other person with authority to issue prescriptions of controlled substances under the Florida Statutes, who in a single day issues more than 20 prescriptions of a controlled substance for the treatment of pain;

2. It holds itself out through advertising as being in business to prescribe or dispense a controlled substance for the treatment of pain;

3. It holds itself out through advertising as being in business to provide services for the treatment of pain wherein the services are accompanied with prescription of or dispensing of a controlled substance for the treatment of pain; or

4. It meets the definition of pain management clinic in F.S. § 458.3265, as may be amended from time to time.

(b) A pain management clinic does not include any privately owned clinic, medical facility or office which has at least one of the following characteristics:

1. It employs physicians, the majority of whom provide services in the clinic, facility, or office; primarily provide surgical services as measured over a month time period and which limit pain management services to a period of no greater than 90 days for any patient;

2. It is licensed as a facility pursuant to F.S. ch. 395 (hospitals, etc.), excluding outpatient facilities that provide pain management services as outlined in subsection (12)(a) above; or

3. It does not prescribe or dispense controlled substances for the treatment of pain.

(13) Person means any individual, firm, partnership, joint venture, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee,

executor, Manager, receiver, or other fiduciary, and includes the plural as well as the singular.

- (14) Pharmacy shall mean the same as that term is defined in F.S. § 465.003, as may be amended from time to time, and includes community pharmacy, internet pharmacy, and special pharmacy, but does not include institutional pharmacy or nuclear pharmacy, as each of those terms are used in that section.
- (15) Pill mill is a doctor, or other person with authority to issue prescriptions of controlled substances under the Florida Statutes, clinic, or pharmacy that is prescribing or dispensing controlled substances inappropriately, unlawfully, or for nonmedical reasons. Its operations and practices do not comply with the requirements of federal law, Florida Statutes and regulations, or this Article.
- (16) Surgical services shall mean the practice that deals with the diagnosis and treatment of oral health, injury, deformity, and disease by in which part of the body is entered by puncture or incision and treatment takes place through manual and instrumental means.

Sec. 14-113. New Local Business Tax Receipts/Occupational Licenses for Pain Management Clinics.

- (1) Prior to the issuance of a Local Business Tax Receipt/Occupational License, a person desiring to obtain a Local Business Tax Receipt/Occupational License for any of the following classifications as set forth in Chapter 13 of the County Code, must fill out the Pain Management Clinic Affidavit stating that the proposed business will not be operated as a Pain Management Clinic, which affidavit is attached to this ordinance and incorporated herein as Exhibit "A":

LOCAL BUSINESS TAX RECEIPT CATEGORY NUMBER	DESCRIPTION
14001	Amusement Center
9170	Physician
9170	Dentist
9182	Massage Therapist (state certified)
9170	Chiropractor
9170	Ophthalmologist

9170	Psychologist
8001	Miscellaneous professional

- (2) For Local Business Tax Receipt/Occupational License applications for the operation of a pain management clinic, if a Pain Management Clinic is not registered with the Department of Health as required by Chapter 458 or 459, Florida Statutes, and otherwise fails to meet the criteria in the Osceola County Code, then it is ineligible for issuance or renewal of a Local Business Tax Receipt/Occupational License. As a condition to the issuance of a Local Business Tax Receipt/Occupational License, the designated physician, or other person with authority to issue prescriptions of controlled substances under the Florida Statutes, of a pain management clinic, and every employee and/or subcontractor of same, shall execute and deliver to the Tax Collector a sworn statement certifying that the pain management clinic will be operated in compliance with the Osceola County Code, and applicable Florida law, including rules and regulations promulgated by the Department of Health, the Board of Medicine, and the Board of Osteopathic Medicine, and applicable federal law. Said sworn statement is attached to this ordinance and incorporated herein as Exhibit "B". If, during the term of the Local Business Tax Receipt/Occupational License, the pain management clinic in fact operates contrary to the sworn statement, then same shall be subject to revocation by the Board of County Commissioners. Additionally, operation contrary to the sworn statement may constitute perjury subject to prosecution in a court of competent jurisdiction. Failure or refusal to execute and deliver the sworn statement shall result in denial of the issuance or renewal of the Local Business Tax Receipt/Occupational License.
- (3) Suspension or Revocation. Consistent with the provisions of Chapter 13 of this Code, a Local Business Tax Receipt/Occupational License for a pain management clinic may be subject to suspension or revocation by order of the Board of County Commissioners in the event that any of the following occur:
- (a) The clinic is no longer registered with the Department of Health, pursuant to F.S. § 458.3265 or 459.0137, or no longer holds a current Local Business Tax Receipt, or the controlled substance registration issued by the United States Department of Justice, Drug Enforcement Administration to any person prescribing, administering, or dispensing controlled substances at the pain management clinic has been suspended, revoked, or denied renewal.
 - (b) The designated physician, clinic owner, or any person with authority to issue prescriptions under Florida Statutes has been convicted of a crime or had final administrative action taken against him or her under the same criteria as set forth in subsection (7) of this section above.
 - (c) Failure to uphold patient rights whereby deficient practice may result in significant harm or injury to, or the death of, a patient.

- (d) Failure of the clinic to notify proper authorities of all suspected cases of criminal activity on the premises.
- (e) Failure to allow entry to a clinic for inspection.
- (f) Failure to make or maintain personnel records.
- (g) Failure to make or maintain operational records.
- (h) Failure to display prominently in a public area near their front entrance copies of all state and County licenses, and the name of the owner, operator, and designated physician responsible for compliance with state and County law.
- (i) Any statement of material fact by the clinic owner, medical director, physician, or other clinic employee which is made knowingly, or with reason to know, is false in any of the following:
 - 1. Application for a Local Business Tax Receipt/Occupational License;
 - 2. Personnel records;
 - 3. Operational records;
 - 4. Information submitted for reimbursement from any payment source; or
 - 5. Advertisement.
- (j) Failure to confirm the identity of each patient seen and treated for pain.
- (k) The pain management clinic fails to comply with any other provisions of this Article or any other provision of the Osceola County Code.
- (l) The failure to prohibit loitering on the premises of a pain management clinic or outside of a pain management clinic where the clinic operates, including in any parking areas, sidewalks, right-of-way, or neighboring properties.
- (m) The failure to post signage prohibiting loitering outside of a pain management clinic.
- (n) The failure to prohibit the cueing of vehicles on the premises on or surrounding a pain management clinic.
- (o) The failure to prohibit the consumption of alcohol on the premises of a pain management clinic or outside of a pain management clinic where the clinic operates, including in any parking areas, sidewalks, right-of-way, or neighboring properties.
- (p) The operation of a pain management clinic for the purpose of seeing patients or writing prescriptions during prohibited days or hours.

- (q) The failure to protect all patient privacy rights under state or federal law.
- (r) The failure to prohibit unlawful conduct from occurring by any person on the premises of a pain management clinic or outside of a pain management clinic where the clinic operates, including in any parking areas, sidewalks, right-of-way, or neighboring properties.

Sec. 14-114. - Regulation of Pain Management Clinics.

- (1) **Inspection.** Code enforcement officers may enter and inspect those portions of a suspected pill mill open to the public to determine compliance with federal law, Florida Statutes and rules, and this Article. Additionally, code enforcement officers may enter and inspect those portions of a pain management clinic open to the public to verify compliance with federal law, Florida Statutes and rules, and this Article. Entry and inspection shall be limited to only those times where the suspected pill mill or pain management clinic is open for business and shall not include a review of patient medical records unless authorized by state or federal law. No person who operates a suspected pill mill or pain management clinic shall refuse to permit a lawful inspection of those areas open to the public by a code enforcement officer. In the event that a suspected pill mill or pain management clinic refuses a lawful inspection, then a code enforcement officer may seek all remedies available in law or equity, including, but not limited to, a criminal warrant, inspection warrant pursuant to F.S. §§ 933.20—933.30, subpoena after any required notice, or other court order from a court of competent jurisdiction.
- (2) **Display of Licenses.** Pain management clinics shall prominently display in a public area near their front entrance copies of all state licenses, County licenses, and Local Business Tax Receipt/Occupational License, and the name of the owner and designated physician responsible for compliance with state and County law.
- (3) **Payment for Prescriptions and Services.** No pain management clinic or pharmacy shall limit the form of payment for goods or services to "cash only." "Cash only" shall mean paper currency or coins.
- (4) **Landlord Responsibility.** Any landlord which knows, or in the exercise of reasonable care should know, that a pain management clinic is operating in violation of the Osceola County Code, or applicable Florida law, including the rules and regulations promulgated by the Department of Health, Board of Medicine, or Board of Osteopathic Medicine, shall have the responsibility to stop or take reasonable steps to prevent the continued illegal activity on the leased premises. Landlords who lease space to a pain management clinic must expressly incorporate the provisions of this subsection into their leases with the clinic, and must state that failure to comply with the Osceola County Code is a material breach of the lease and shall constitute grounds for termination and eviction by the landlord.

- (5) Personnel Records. Pain management clinics shall maintain personnel records for all owners, operators, employees, and volunteers on site for each pain management clinic, and make them available during any inspection. Personnel records shall, at a minimum, contain the following information: the person's name and title; a current home address, telephone number, and date of birth; a list of all criminal convictions whether misdemeanor or felony; a copy of a current driver's license or a government issued photo identification; and a set of fingerprints. Pain management clinics shall keep all personnel records complete, accurate, and up-to-date. Employees of pain management clinics shall promptly report any new arrests, withhold of adjudications, or convictions in any criminal matter to the designated record keeper at the pain management clinic so that the pain management clinic can keep all records complete, accurate, and up-to-date. Personnel records as described in this paragraph shall be submitted by existing pain management clinics to the County Manager or his or her designee by no later than January 10, 2013. Any new clinic shall submit their personnel records to the County Manager or his or her designee within two weeks of beginning operation. Upon any change in personnel, or upon the occurrence of an arrest, adjudication withheld, or conviction in any criminal matter of any employee of a pain management clinic, a pain management clinic shall submit an update to its personnel records to the County Manager or the County Manager's designee within two weeks of the change or occurrence.
- (6) Operational Records. For the purpose of study of the patterns of health and illness and prescriptions issued within Osceola County, and to verify that a pain management clinic is operating within the requirements of federal law, Florida Statutes and rules, and this Article, pain management clinics shall make and maintain monthly operational records for a period of one year. The operational records shall consist of a monthly register of the following information for each patient: gender; race; age group (under 20, 20—29, 30—39, 40—49, 50—59, 60—69, 70—79, and 80 and above); the initial two digits of the zip code of the patient's address; and a statement acknowledging use of the Department of Health's Prescription Drug Monitoring Program. In addition, the records shall include a list of the total number of prescriptions for schedule II drugs, schedule III drugs, and drugs containing Alprazolam, prescribed per physician licensed under F.S. Chs. 458 and 459, (or other person authorized under Florida Statutes to issue prescriptions of controlled substances) per month. Each physician, or other person authorized under Florida Statutes to issue prescriptions of controlled substances, who prescribes schedule II drugs, schedule III drugs, or drugs containing Alprazolam shall swear to the veracity of the information contained in this list. The one-month period for the purpose of collection of the operational records described in this paragraph shall begin on the first day of the calendar month. Each physician, or other person authorized under Florida Statutes to issue prescriptions of controlled substances, in his or her own submission shall swear that, "Under penalty of perjury, I swear that the submitted records contain true and

complete information." All signature blocks for these monthly registers shall include the printed full name of the signing party, the printed title of the signing party, the printed name of the pain management clinic, the printed mailing address of the pain management clinic, and a signature of the signing party presented in a legible manner. Operational records as described in this paragraph shall be submitted on a monthly basis by the fifth day of every month or upon completion to the County Manager or the County Manager's designee. Copies of this monthly register shall be made available to a code enforcement officer upon demand.

- (7) Management. A pain management clinic shall be managed by a designated physician who is recognized as meeting the training requirements for physicians practicing in pain management clinics established by rules promulgated by the Board of Medicine and Board of Osteopathic Medicine. The designated physician shall be responsible for ensuring compliance with all federal, state, and local regulations including this Article.
- (8) Ownership, Business Relationship, and Employment Restrictions. No pain management clinic shall be wholly or partially owned by, have any contractual relationship with (whether as a principal, partner, officer, member, managing member, employee, or independent contractor), or employ any person who has been convicted of a crime, has adjudication withheld for a crime, or had final administrative action taken:

(a) Involving:

1. Any felony; any misdemeanor involving the possession, sale, delivery, fraudulently obtaining, distribution, or manufacture of any controlled substance, narcotic, or prescription drug; or any misdemeanor involving a crime of dishonesty or false statement;

2. Any violation of pain management clinic regulations of any county, city, state or government;

3. Any administrative or other similar action in which the applicant has been denied the privilege of prescribing, dispensing, administering, supplying or selling any controlled substance by this state or any other state; or

4. Any administrative or other similar action in which the state or any other state's medical board action taken against the applicant's medical license as a result of dependency on drugs or alcohol.

(b) For which:

1. Less than two years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense;

3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period;

4. Less than five years have elapsed for any final administrative or other action.

(c) The fact that a conviction is being appealed has no effect on the disqualifications of the applicant under subsection (a) above.

(9) Prescription Drug Monitoring Program (PDMP). All physicians licensed under F.S. chs. 458 and 459, or other persons authorized under Florida Statutes to issue prescriptions for controlled substances, shall, prior to the prescribing of a controlled substance, request a "patient advisory report" from the PDMP and review its contents. All physicians licensed under F.S. chs. 458 and 459, or other persons authorized to issue prescriptions for controlled substances, shall also document in their patient's file that they have reviewed the patient advisory report by placing a printout of the patient advisory report in each patient's file.

Sec. 14-115. Violations and Penalties.

(1) All violations of Florida Statutes and rules promulgated by the Board of Medicine and Board of Osteopathic Medicine regarding pain management clinics, and the Zoning Regulations, Osceola County Land Development Code, as may be enacted from time to time, shall also constitute violations of this Article. Investigations related to possible violations of this Article shall be conducted by code enforcement officers. Any code enforcement officer may seek all available remedies in law or equity, including, but not limited to, an administrative search warrant from a court of competent jurisdiction, a criminal search warrant from a court of competent jurisdiction, a subpoena for records once any required notice is given, or an injunction from a court of competent jurisdiction to enforce or restrict any relevant law.

(2) All violations of this Article will be processed according to Chapter 7, of the Osceola County Code of Ordinances, per the provisions of any municipal ordinances for code enforcement, as applicable, and per provisions of F.S. ch. 162, pt. I or II, as may be applicable. A code enforcement officer is specifically authorized to issue a citation for each violation. Each day of any such violation shall constitute a separate and distinct offense. Further, each failure to properly document patient information in an operational record shall constitute a separate and distinct offense.

- (3) In addition to any fine or sanction based on any violation of this ordinance or of any zoning ordinance, a pain management clinic may have its Occupational License and/or Local Business Tax Receipt revoked or suspended as outlined by Section 14-113
- (4) In determining the amount of a fine in a code enforcement proceeding, the Code Enforcement Board and/or Special Magistrate shall take the following factors into consideration in making a decision:
 - (a) The gravity of any violation, including the probability that death or serious physical or emotional harm to a patient has resulted, or could have resulted, from the clinic's actions or the actions of the physician;
 - (b) The number of current violations;
 - (c) The number of repeat violations;
 - (d) The actions taken by the clinic or physician to correct a violation;
 - (e) The financial benefits that the clinic derived from committing or continuing to commit the violation.
- (5) The County, or its municipalities, may also enforce this Article by action in equity, including injunctive or declaratory relief, in the appropriate court of competent jurisdiction. In the event that the County, or the municipalities, prevail in any such action, the County, or the municipalities, shall be entitled to an award of its costs and reasonable attorneys' fees.
- (6) Any Person who operates or manages a Pain Management Clinic without an Occupational License and/or Local Business Tax Receipt, or any person who refuses a lawful inspection by a code enforcement officer, or any person who violates those provisions governing pain management clinics in the Zoning Regulations, Osceola County Land Development Code, shall also be punished in the same manner as a misdemeanor as provided by general law.

Sec. 14-116. Severability.

It is declared to by the intent of the Board of County Commissioners that any section, subsection, sentence, clause, phrase or provision of this ordinance is for any reason held or declared to be invalid, unconstitutional, inoperative or void, such ruling or holding shall not be so construed as to render invalid, unconstitutional, inoperative or void the remaining portions of this ordinance. If this ordinance or any provision thereof shall be held to be inapplicable to any person, property, or circumstances, such holding shall not affect its applicability to any other person, property or circumstances.

Sec. 14-117. Reserved.

SECTION 2. INCLUSION IN CODE. It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Osceola County Code and that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions.

SECTION 3. CONFLICTS. Any ordinance, resolution, or part thereof, in conflict with this Ordinance, or any part hereof, is hereby repealed to the extent of such conflict.

SECTION 4. SEVERABILITY. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5. FILING WITH THE DEPARTMENT OF STATE. The Clerk shall be and is hereby directed to forthwith send a certified copy of this Ordinance to the Secretary of State for the State of Florida within ten days after its enactment.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective on October 31, 2012, and shall be effective for a period of 10 years until October 31, 2022, when it shall expire. Prior to the expiration of this ordinance, the County shall convene a committee to study the ordinance and determine whether to recommend extending the ordinance, amending the ordinance or letting the ordinance expire.

Duly Enacted this ____ day of _____, 2012.

Filed with the Secretary of State _____, 2012.

Effective October 31, 2012.

BOARD OF COUNTY COMMISSIONERS OF
OSCEOLA COUNTY, FLORIDA

John Quinones, Chairman

This ____ day of _____, 2012.

ATTEST:

Clerk/Deputy Clerk to the Board
(SEAL)



PATSY HEFFNER, CFC
OSCEOLA COUNTY TAX COLLECTOR

2501 E. Irlo Bronson Memorial Hwy. • P.O. Box 422105 • Kissimmee, Florida 34742-2105
Phone 407-742-4000 • Fax 407-742-4009
www.osceolataxcollector.org

AFFIDAVIT REGARDING NON-PAIN MANAGEMENT CLINIC STATUS

Business Name: _____

Owner/Professional's Name: _____

Business Address: _____

Applicant's Name: _____

Signature: _____

Title: _____ Date: _____

Osceola County Ordinance # 2012-34, Article VII, Chapter 14, Osceola County Code of Ordinances, sets forth regulations on the operation of Pain Management Clinics in Osceola County.

(1) *Pain Management Clinic* means a privately owned clinic, facility, or office, whatever its title, including, but not limited to, a "wellness center," "urgent care facility," or "detox center," which engages in pain management. This definition includes the following:

(a) A pain management clinic must have at least one of the following characteristics:

1. It employs one or more physicians licensed under F.S. ch. 458 or 459, or employs any other person with authority to issue prescriptions of controlled substances under the Florida Statutes, who in a single day issues more than 20 prescriptions of a controlled substance for the treatment of pain;
2. It holds itself out through advertising as being in business to prescribe or dispense a controlled substance for the treatment of pain;
3. It holds itself out through advertising as being in business to provide services for the treatment of pain wherein the services are accompanied with prescription of or dispensing of a controlled substance for the treatment of pain; or
4. It meets the definition of pain management clinic in F.S. § 458.3265, as may be amended from time to time.

St. Cloud Branch Office
1300 9th Street Ste. 101B
St. Cloud, Florida 34769

Buenaventura Lakes Branch Office
2539 Boggy Creek Rd.
Kissimmee, Florida 34744

Poinciana Branch Office
2924 Pleasant Hill Road
Kissimmee, Florida 34746

(b) A pain management clinic does not include any privately owned clinic, medical facility or office which has at least one of the following characteristics:

1. It employs physicians, the majority of whom provide services in the clinic, facility, or office; primarily provide surgical services as measured over a month time period and which limit pain management services to a period of no greater than 90 days for any patient;
2. It is licensed as a facility pursuant to F.S. ch. 395 (hospitals, etc.), excluding outpatient facilities that provide pain management services as outlined in subsection (1)(a) above; or
3. It does not prescribe or dispense controlled substances for the treatment of pain.

Is this business/practice/physician/other professional required under Florida law to register as a Pain Management Clinic with the Florida Department of Health, or does this business/practice/physician/other professional meet the County definition of Pain Management Clinic?

Yes No

I hereby certify that information provided in this application is true and correct based on my knowledge and belief. In accordance with s. 837.06, Florida Statutes, I understand and acknowledge that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor in the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

Date: _____

(Signature of Applicant)

STATE OF FLORIDA:
COUNTY OF _____:

I certify that the foregoing instrument was acknowledged before me this _____ day of _____ by _____. He/she is personally known to me or has produced _____ as identification and did/did not take an oath.

Witness my hand and official seal in the county and state stated above on the _____ day of _____, in the year _____.

(Notary Seal)

Signature of Notary Public
Notary Public for the State of Florida
My Commission Expires:



PATSY HEFFNER, CFC
OSCEOLA COUNTY TAX COLLECTOR

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PAIN MANAGEMENT CLINIC AFFIDAVIT

Business Name: _____
Name of Physician or other person authorized to issue prescriptions of controlled substances under Florida Statutes: _____
Business Address: _____
Applicant's Name: _____
Signature: _____
Title: _____ Date: _____

Osceola County Ordinance #2012-34, codified in Article VII, Chapter 14 of the County Code of Ordinances regulates the operation of Pain Management Clinics in Osceola County.

- (1) Pain Management Clinic means a privately owned clinic, facility, or office, whatever its title, including, but not limited to, a "wellness center," "urgent care facility," or "detox center," which engages in pain management. This definition includes the following:
- (a) A pain management clinic must have at least one of the following characteristics:
 - 1. Employs one or more physicians licensed under F.S. ch. 458 or 459, or employs any other person with authority to issue prescriptions of controlled substances under the Florida Statutes, who in a single day issues more than 20 prescriptions of a controlled substance for the treatment of pain
 - 2. It holds itself out through advertising as being in business to prescribe or dispense a controlled substance for the treatment of pain;
 - 3. It holds itself out through advertising as being in business to provide services for the treatment of pain wherein the services are accompanied with prescription of or dispensing of a controlled substance for the treatment of pain; or
 - 4. It meets the definition of pain management clinic in F.S. § 458.3265, as may be amended from time to time.
 - (b) A pain management clinic does not include any privately owned clinic, medical facility or office which has at least one of the following characteristics:
 - 1. It employs physicians, the majority of whom provide services in the clinic, facility, or office; primarily provide surgical services as measured over a month time period and which limit pain management services to a period of no greater than 90 days for any patient;
 - 2. It is licensed as a facility pursuant to F.S. ch. 395 (hospitals, etc.), excluding outpatient facilities that provide pain management services as outlined in subsection (1)(a) above; or
 - 3. It does not prescribe or dispense controlled substances for the treatment of pain.

Does this practice/physician meet the definition of Pain Management Clinic set forth in the Osceola County Code? Yes No

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Kissimmee, Florida 34746

I hereby certify that I intend to operate the proposed pain management clinic in accordance with all County ordinances and codes, as well as in full compliance with all federal and state laws, rules and regulations.

I hereby acknowledge that failure to fully comply with Article VII, Chapter 14 of the County Code of Ordinances, or with the County Land Development Code, or any federal or state law, rule or regulation is prima facie cause for the suspension or revocation of my Business Tax Receipt for the operation of a pain management clinic.

I hereby certify that information provided in this application is true and correct based on my knowledge and belief. In accordance with s. 837.06, Florida Statutes, I understand and acknowledge that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor in the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

Date: _____

(Signature of Applicant)

STATE OF FLORIDA:
COUNTY OF _____:

I certify that the foregoing instrument was acknowledged before me this _____ day of _____
by _____. He/she is personally known to me or has produced
_____ as identification and did/did not take an oath.

Witness my hand and official seal in the county and state stated above on the _____ day of _____, in the year _____.

(Notary Seal)

Signature of Notary Public
Notary Public for the State of Florida
My Commission Expires:
