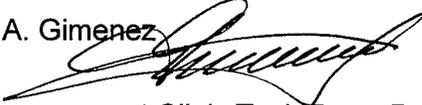


Memorandum



Date: December 1, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Pain Management Clinic Task Force Report

The attached report is being provided by the Pain Management Clinic Task Force as required by Ordinance 11-61, adopted by the Miami-Dade County Board of County Commissioners on August 2, 2011. Ordinance 11-61 created a pain management clinic registration program, administered by Business Affairs and Consumer Protection (BACP), for clinics operating in incorporated and unincorporated Miami-Dade County.

Section 8A-416 of the Ordinance established a temporary moratorium on registrations while a Task Force was to convene to investigate complaints about pain clinics. This section also provides that the Task Force make recommendations to the Board of County Commissioners within 120 days from the August 12, 2011, effective date of the ordinance.

BACP staff convened the Task Force and commenced its meetings on August 24, 2011, and the group conducted regular meetings through the month of November. As can be seen from the list of Task Force Members and Participants (page 3 of the report) there was a broad spectrum of representation in putting together these recommendations.

The attached report contains a review of the effectiveness of CS/CS/HB 7095 Engrossed, which took effect on July 1, 2011. In addition, the Task Force has provided recommendations on potential amendments to local ordinances they feel would best address the complaints surrounding pain clinics. The recommendations include changes to the Miami-Dade County, Zoning Ordinance, Pain Management Clinic Registration Ordinance and the Nuisance Abatement Ordinance.

The findings and recommendations of the Pain Management Clinic Task Force are being presented in this report to the Board of County Commissioners for your consideration.

Attachment

- c: Jack Osterholt, Deputy Mayor
Office of the Mayor Senior Staff
- Mario Goderich, Assistant Director, Economic Enhancement, Sustainability, Planning, and Economic Enhancement Department
- Charles Danger, Interim Director, Permitting, Environment and Regulatory Affairs Department
- James Loftus, Director, Miami-Dade Police Department



**Report to the Miami-Dade County
Board of County Commissioners**

**PAIN CLINIC
TASK FORCE**

November 28, 2011

Table of Contents

	Page
TASK FORCE MEMBERS & PARTICIPANTS	3
INTRODUCTION	4
EXECUTIVE SUMMARY	4
HOUSE BILL 7095	4
ZONING, REGULATORY AND ENFORCEMENT	5
FINDINGS AND RECOMMENDATIONS	7
CS/CS/HB 7095 ENGROSSED 3	7
ZONING ORDINANCE	13
PAIN MANAGEMENT CLINIC REGISTRATION ORDINANCE	15
NUISANCE ABATEMENT ORDINANCE	24

TASK FORCE MEMBERS AND PARTICIPANTS

Members:

- ❖ **Mario Goderich, Assistant Director, Economic Enhancement**
Miami-Dade County Sustainability, Planning & Economic Enhancement Department
- ❖ **David Kahn, Private Attorney**
Member, Miami-Dade County Addiction Services Board
- ❖ **Wally Livingstone, Retired, Florida Department of Health**
Member, Miami-Dade Nuisance Abatement Board
- ❖ **Gabriel Rodriguez, Detective**
Miami-Dade County Police Department
- ❖ **Sydney Vincent, Permit Manager, Planning and Zoning**
Miami-Dade County Permitting, Environment and Regulatory Affairs Department

Participants:

- ❖ **Candido Cerda, Detective**
Miami-Dade County Police Department
- ❖ **Frank Figueredo, Investigation Supervisor, Medical Quality Assurance**
Florida Department of Health
- ❖ **Frank Lola, Detective**
Florida Highway Patrol, DEA Task Force
- ❖ **Jennifer Macias, Investigation Manager, Medical Quality Assurance**
Florida Department of Health
- ❖ **Luis Nieves, Investigator, Medical Quality Assurance**
Florida Department of Health
- ❖ **John Robitaille, Division Administrator**
University of Miami, Medical Pain Management Clinic

Staff:

- ❖ **Gregory Baker, Director, Business Affairs and Consumer Protection**
Miami-Dade County Sustainability, Planning & Economic Enhancement Department
- ❖ **Jack DiCarlo, Coordinator, Nuisance Abatement Board**
Miami-Dade County Police Department
- ❖ **Jorge Herrera, Enforcement Supervisor, Business Affairs and Consumer Protection**
Miami-Dade County Sustainability, Planning & Economic Enhancement Department

INTRODUCTION

Ordinance 11-61 was adopted by the Miami-Dade County Board of County Commissioners on August 2, 2011, and become effective August 12, 2011, establishing a registration program for Pain Management Clinics operating in the County (See Exhibit 1). This program is being administered by the Business Affairs and Consumer Protection Division (BACP) of the Sustainability, Planning & Economic Enhancement Department. Section 8A-416 provided for a temporary moratorium of registrations for any new pain clinics that were not fully licensed with the Florida Department of Health as of August 12, 2011. This provided a period of time for the convening of a Task Force to investigate and develop recommendations to be presented to the Board of County Commissioners (BCC). The Task Force was directed to consider the effectiveness of CS/CS/HB 7095 Engrossed 3 in addressing the complaints surrounding pain clinics, and whether or not it is necessary for Miami-Dade County to take further action in the areas of zoning, regulatory and enforcement.

BACP staff convened the Task Force and commenced its meetings on August 24, 2011. There was broad representation at these meetings including the Addiction Services Board, the Nuisance Abatement Board, the Miami-Dade Police Department, the Florida Highway Patrol DEA Task Force, the Department of Planning and Zoning, the Sustainability, Planning & Economic Enhancement Department, the Florida Department of Health and the University of Miami Miller School of Medicine. The findings and recommendations of the Task Force are being presented in this report to the BCC. These findings and recommendations are summarized in the Executive Summary, and fully set forth in the Findings and Recommendation section that follows.

EXECUTIVE SUMMARY

House Bill 7095

The Task Force reviewed the effectiveness of CS/CS/HB 7095 Engrossed 3, since its passage this past summer focusing on the pain management clinic aspects. The bill was approved by the Governor on June 3, 2011, and took effect July 1, 2011. As described in the Final Bill Analysis prepared by the Florida Legislature the bill was intended to address the problem of prescription drug abuse in Florida by amending regulation of each entity in the supply chain: wholesale distributors, pain-management clinics, pharmacies, pharmacists, and physicians. The bill created criminal violations, amended the prescription drug monitoring program, and required immediate action by law enforcement and regulators.

The bill amended the definition of "pain-management clinic," and set standards for the operation of pain-management clinics, which physicians practicing in the clinics must meet. The bill also banned the dispensing of Schedule II and Schedule III controlled substances by physicians. Additionally, physicians that did previously dispense were required to return existing inventories of these controlled substances to the wholesale distributors from which they were purchased within 10 days of enactment of the bill, or their inventories were to be turned in to law enforcement to be destroyed. The Florida Department of Law Enforcement and local law enforcement were authorized to seize all unreturned inventories of Schedule II and Schedule III controlled substances, and destroy it pursuant to applicable law.

Prescriptions for controlled substances now must be written on counterfeit-proof prescription pads purchased from a Florida Department of Health (DOH)-approved vendor or electronically prescribed. The bill also created additional standards for obtaining and maintaining a pharmacy permit, including onsite inspections, financial disclosures, and exclusions based on criminal or permitting discipline history.

Based on the expertise and experience of the Pain Clinic Task Force participants it was determined that the changes that have been implemented under the provisions of HB7095 have had a significant impact in aiding local efforts to control nefarious pain management clinic activities. Probably the most significant provision which appears to have had the greatest impact on pain clinic operations is the prohibition of physician dispensing of controlled substances in Schedules II and III. This provision essentially prohibits these drugs from being distributed from a pain management clinic site. Consequently, there appears to be a decrease in the number of registered clinics. At the time the bill became effective there were approximately 104 registered clinics located in Miami-Dade County. As of the writing of this report, DOH reports that approximately 76 remain.

Another positive effect of HB7095 has been a change in the DOH pain management clinic inspection process. The enhanced inspection process covers all areas of the clinic operations to more appropriately determine that it is a legitimate operation. Furthermore, as a result of the changes brought forth by HB7095, the local DOH, Investigative Services Unit now has a physician on staff. This allows the inspection process to now include a review of patient records to ensure proper medical management and treatment procedures are being conducted before prescriptions are issued and that they are following medical protocol for prescription dosage and quantities.

From the criminal enforcement perspective it is clear that the provisions in HB7095 requiring the return and/or confiscation of undispensed Schedule II and III controlled substances have been successful. At this point in time the Pain Clinic Task Force felt that it was too early to assess the effectiveness of the changes to the criminal statutes, however law enforcement is optimistic that these enhanced provisions will become very effective and add to the success of closing down illegitimate clinics. The Task Force believes that if County and Municipal regulations require that Pain Clinics and/or Pharmacies are required to follow (through County Ordinances and Zoning) the state regulations, it will be further emphasized to all participants the interests that the County and Miami-Dade partner municipalities have in protecting the Public Health, Safety, and Welfare in partnership with the State and Federal agencies.

Zoning, Regulatory and Enforcement

With respect to regulatory and enforcement aspects, the Task Force reviewed and developed recommendations relating to the Miami-Dade County, Zoning Ordinance, Pain Management Clinic Registration Ordinance, and the Nuisance Abatement Ordinance. The Task Force is putting forth several recommendations it feels will enhance the administration of the program and assist in cross agency cooperation. It should be understood that in each case the recommendations will need to be vetted by the professional staff in the respective areas, along with the County Attorney's Office prior to moving forward.

Zoning Ordinance:

In considering recommendations with respect to the Miami-Dade County Zoning Ordinance, the Task Force reviewed and considered the types of aberrant activities that set the illegitimate clinics apart from the legitimate clinics. The recommendations focus on the requirements for issuance and maintenance of a Certificate of Use. The intended result is to achieve coordination of cross agency compliance, avoiding fragmented approvals that may allow illegitimate clinics to operate, if only for a temporary period.

Also captured within these recommendations are provisions that address typical characteristics found at illegitimate clinics. These characteristics include: patrons loitering on the premises and causing a nuisance; patrons drinking alcoholic beverage on premises; outdoor seating areas or queuing areas; late hours of operation; inadequate parking; and close proximity to a pharmacy (or a pharmacy under the same management or ownership as the pain management clinic).

Pain Management Clinic Registration Ordinance:

The Task Force is recommending some minor changes in the definition of Pain Clinic to provide more regulatory reach where operators might attempt minor structural changes to legally avoid registration. The group is also recommending more comprehensive provisions in the requirements for registration. These provisions track tested requirements from several other licensing ordinances within the Miami-Dade Code of Ordinances. It is anticipated that sophisticated, well funded operators will challenge agency actions attempting to deny an application. These tighter ordinance provisions should assist the Department in defending its actions.

The recommendations on the registration requirements are also meant to provide the Department with additional tools to gather information and investigate participants in the clinics operation. This includes the ability to request information about corporate principles, partnership partners, or members in limited liability structures. Additionally, information regarding landlords (and their understanding of the type of business entering into a lease) would become more readily available, which again may assist in more expedited closure of a facility where appropriate.

Following from these registration provisions, are Task Force recommendations to add sections that specifically outline denial, revocation and suspension criteria, along with appeal provisions for those actions. Again these provisions track tested language from licensing ordinances within the County. These provisions should provide the ability to expedite action needed to close clinics operating outside of the law, while ensuring that any due process challenges can be defended.

Final recommendations in this area relate to increasing the civil penalties, and outlining in more detail the civil enforcement actions available to the Department. The legal challenges can be costly and the potential for increased penalties will assist in providing for funding to ensure that an appropriate level of enforcement activities can be maintained.

Nuisance Abatement Ordinance and Enforcement:

The Florida Legislature, in conjunction with the State Pain Management Clinic and Medication legislation, in 2011 passed amendments to Florida Statute 893.138, the Statute that enables Counties and Municipalities to establish Nuisance Abatement Ordinances and Boards that will assist with communities abating public nuisances that constitute a danger to the Public Health, Safety, and Welfare.

It is recommended that the Nuisance Abatement Ordinance be amended in conjunction with the amendments to 893.138. This will enable the Nuisance Abatement Board to address public nuisances associated with properties where pain management clinics are located, pain management medications are being prescribed, and where they are being filled in an illegal and medically inappropriate manner against local, state, and federal laws.

Conclusion:

The Pain Clinic Task Force is confident that the implementation of the recommendations contained in this report will better facilitate combined efforts of Miami-Dade County, the State of Florida and municipalities in stopping illegal pain clinic operations. Additionally, after these changes are implemented, the Temporary Moratorium should be allowed to expire, to avoid penalizing any new, legitimate operations that may be seeking registration. Given the limited time frame in investigating and developing its findings, the Members understand that the recommendations as submitted will need to be reviewed and revised by the County Attorney's office before moving forward.

The Mayor and the County Commission may elect to sponsor a resolution commending the State of Florida for their actions in this battle against illegitimate pain management clinics and medication dispensing and advising the state of the County's actions in partnership with the State and Federal Agencies.

The Pain Clinic Task Force would like to thank the Miami-Dade County Board of County Commissioners for the opportunity to work together in improving this regulatory program. The Pain Clinic Task Force Findings and Recommendation are set forth in greater detail below.

FINDINGS AND RECOMMENDATIONS

CS/CS/HB 7095 ENGROSSED 3

CS/CS/HB 7095, Engrossed 3, was approved by the Governor on June 3, 2011, and took effect July 1, 2011. As described in the Final Bill Analysis prepared by the Florida Legislature the bill was intended to address the problem of prescription drug abuse in Florida by amending regulation of each entity in the supply chain: wholesale distributors, pain-management clinics, pharmacies, pharmacists, and physicians. The bill made various regulatory changes to licensure and permitting requirements for entities in the

controlled substance distribution chain, created or modified disciplinary and criminal penalties. The bill amended the prescription drug monitoring program, and required immediate action by law enforcement and regulators. Below is a summary of the bill's provisions, excerpted from the June 28, 2011, Final Bill Analysis prepared by legislative staff, followed by a discussion of the Pain Clinic Task Force's finding with respect to its effectiveness.

Immediate Actions

The bill required all physicians, within ten days of the effective date of the bill, to return all undispensed Schedule II and Schedule III controlled substances purchased under each physician's DEA number to the wholesale distributor from which the controlled substances were purchased or turn in all such undispensed controlled substances to law enforcement and abandon the medication. The bill established a buy-back program which required wholesale distributors to purchase the remaining Schedule II and Schedule III controlled substance inventory of each physician at the original purchase price. Distributors were obligated to buy back drugs which were in the manufacturer's original packing, were unopened, had not expired, and in accordance with the distributor's own policies or the terms of a contract with the provider.

Pain-Management Clinics

The bill amended pain-management clinic regulation laws in ss. 458.3265 and 459.0137. Specifically, the bill modified the definition of "pain-management clinic" to a facility that advertises for pain-management services or in which a majority of patients are prescribed opioids, barbiturates, benzodiazepines or carisoprodol to treat chronic nonmalignant pain. The bill also amended the definition of "chronic nonmalignant pain" to exclude pain related to rheumatoid arthritis.

The bill provided an exemption from pain-management clinic registration if the clinic is wholly owned by board-certified anesthesiologists, physiatrists or neurologists, or by one or a group of board-certified medical specialists who are also board-certified in pain management or have completed a fellowship in pain medicine, and who perform interventional pain procedures routinely billed using surgical codes. In addition, the bill removed a requirement for all physicians practicing in pain clinics to have completed a pain medicine fellowship or residency by July 1, 2012.

The bill requires physicians practicing in pain-management clinics to notify the relevant board in writing within 10 days of starting or ending practice at the pain-management clinic. The bill imposed certain requirements for physicians practicing in pain-management clinics and physicians are responsible for ensuring the clinic's compliance with requirements for facility and physical operations, infection control, health and safety, quality assurance, and data collection and reporting.

Physicians

The bill prohibits physician dispensing of controlled substances in Schedules II and III, making such dispensing a third degree felony and grounds for disciplinary action against a physician or osteopathic

physician. Such disciplinary action includes license restriction, suspension, revocation and probation, or fines, letters of reprimand, remedial education, or corrective action. The bill created new regulatory requirements for physicians who prescribe controlled substances to treat chronic, non-cancer pain, regardless of the setting in which the physician practices.

Effective January 1, 2012, such physicians must register with their respective boards by designating themselves as controlled substance prescribing practitioners on their online practitioner profiles. Physicians must comply with standards of care for prescribing controlled substances, including:

- ✓ A complete medical history and physical examination of the patient;
- ✓ A medical record which documents the medical indications for use of a controlled substance;
- ✓ An assessment of the patients' risk for aberrant drug-related behavior, such as abuse, and ongoing monitoring of the patient's risk;
- ✓ A written treatment plan for the patient;
- ✓ An informed consent agreement;
- ✓ Periodic review of the treatment and regular patient visits; and
- ✓ Referral to specialists as necessary to achieve treatment objectives, with particular attention to certain high-risk patients, and mandatory referral for patients with symptoms of substance abuse.

The bill requires physicians prescribing a controlled substance to use a counterfeit-proof prescription pad purchased from an approved vendor. DOH is required to approve the prescription pad vendors, and vendors must report practitioner purchases of prescription pads to DOH.

Criminal Penalties and Access to Records

The bill added new criminal penalties and clarifies existing violations. Two provisions that may be especially useful to local government are:

- ✓ The bill amended s. 893.138, F.S., to authorize a local government to declare a pain management clinic a public nuisance, under certain circumstances, and making it subject to the abatement procedures of that section.
- ✓ The bill also amended s. 893.07, F.S., to provide that law enforcement officials may have access to prescription drug records required by ch. 893 without a subpoena, court order, or warrant.

Additional changes to criminal statutes are:

- ✓ The bill made it a first-degree misdemeanor for a pharmacist, pharmacy intern, or other employee working for or at a pharmacy to fail to report to the county sheriff, within 24 hours or on the next business day (whichever later), an individual obtaining or attempting to obtain a controlled substance through fraudulent methods or representations. Included was a definition of what constitutes a sufficient report to include a copy of the prescription and information identifying the prescriber and patient.

- ✓ The bill amended s. 810.02, F.S., the burglary statute, adding burglary of a structure or conveyance with the intent to steal controlled substances and making such a burglary a second degree felony. The changes allow for separate judgments and sentences for applicable possession of a controlled substance offense or trafficking in a controlled substance offense when all offenses include the same amount of a controlled substance.
- ✓ The bill amended s. 812.014, F.S., to make theft of any amount of a controlled substance grand theft in the third degree, punishable as a third degree felony. The changes allow for separate judgments and separate sentences for possession of a controlled substance or trafficking in a controlled substance if all offenses include the same amount of controlled substance.
- ✓ The bill amended s. 893.07, F.S., to require all thefts or loss of controlled substances to be reported to the sheriff of the county where the theft or loss occurred within 24 hours of discovery of the theft or loss. Failure to report the theft or loss of a controlled substance listed in Schedule III, IV, or V within 48 hours of discovery of the theft or loss is a second degree misdemeanor. Failure to report the theft or loss of a controlled substance listed in Schedule II within 48 hours of discovery of the theft or loss is a first degree misdemeanor.
- ✓ The bill amended s. 893.13, F.S., to make obtaining (or attempting to obtain) a medically unnecessary controlled substance by fraud, misrepresentation, or other deception a 3rd degree felony.
- ✓ The bill amended s. 893.13, F.S., to make providing a medically unnecessary controlled substance to a patient by fraud, misrepresentation, or other deception, a 3rd degree felony.
- ✓ The bill made knowingly submitting a false drug distribution report a 3rd degree felony.
- ✓ The bill made distributing controlled substances improperly a 3rd degree felony.

Prescription Drug Monitoring Program

The bill modified current law related to the prescription drug monitoring program. Pharmacies and dispensing practitioners were required to submit dispensing information to the state database within 15 days. The bill reduced the reporting time to 7 days. The bill prohibits donations of pharmaceutical manufacturers from being used to support the monitoring program through the direct support organization.

Pharmacists

The bill provides new grounds for denial of a pharmacist license or disciplinary action on the license. Pharmacists who commit an error or omission in processing prescription drugs are subject to fine, probation, corrective action, refund of patient fees, a letter of reprimand, remedial education, or suspension, revocation, or restriction of their licenses. The bill delineates the errors or omissions

subject to such actions including, for example, an error in interpreting or validating a prescription, performing pharmaceutical calculations, or providing patient counseling.

Pharmacies

The bill added new permitting requirements for all pharmacies. All applicants and all affiliated persons must be over the age of 18. Business entity applicants must register with the Department of State and have a federal employer tax identification number. The bill added the following requirements for pharmacy applicants:

- ✓ Submit a signed affidavit disclosing financial interests in other pharmacies in the last 5 years which have closed or which permit has been relinquished, suspended or revoked and explaining the reasons for those actions;
- ✓ Submit written policies and procedures for dispensing controlled substances to minimize dispensing based on fraud or invalid practitioner-patient relationships. The bill allows DOH to phase-in this requirement over an 18-month period beginning July 1, 2011.
- ✓ The bill requires the Board of Pharmacy to deny a pharmacy permit application if any affiliated person:
 - Has been convicted of, or entered a guilty or no contest plea to, a felony under chapters 409, 817, or 893 or a similar offense in any other jurisdiction since July 1, 2009;
 - Has been convicted of, or entered a guilty or no contest plea to, a felony under certain federal Medicare and Medicaid laws since July 1, 2009;
 - Has been terminated for cause from the Florida Medicaid program, unless in good standing for the last 5 years;
 - Has been terminated for cause from any other state Medicaid program, unless in good standing for the last 5 years and the termination occurred at least 20 years prior;
 - Is listed on the federal HHS list of excluded individuals and entities; or
 - Has violated any provision of ch. 465, F.S., ch. 499, F.S., or certain federal drug laws.

The bill requires the Board of Pharmacy to adopt rules for procedures for dispensing controlled substances to minimize dispensing based on fraud or invalid practitioner-patient relationships. The Board must also adopt rules for recordkeeping necessary to ensure public protection. The bill requires such records to be maintained at least 4 years and to be readily available for inspection by DOH.

The bill creates new requirements to maintain a pharmacy permit. Current law requires permittees to have a designated prescription department manager. The bill provides that the designated prescription department manager is responsible for maintaining all pharmacy drug records required by state or federal law, and for ensuring compliance with laws and rules for the practice of pharmacy. In addition, the designated prescription department manager is responsible for ensuring the security of the prescription department, and must notify the Board of any theft or significant loss of a controlled substance within one business day. The permittee must notify DOH within 10 days of employing a designated prescription department manager, and must notify DOH within 10 days of any change in the designated pharmacy manager or consultant pharmacist. The bill provides that a designated

prescription department manager may not manage more than one pharmacy location unless approved by the Board. The bill also requires DOH to conduct pharmacy criminal background checks annually, instead of biennially with permit renewal, and to forward the results of the background checks to permitted wholesale distributors for credentialing purposes.

Effectiveness of CS/CS/HB 7095, Engrossed 3

Based on the expertise and experience of the Pain Clinic Task Force participants it was determined that the changes that have been implemented under the provisions of HB7095 have had a significant effect in local efforts at controlling nefarious pain management clinic activities. Probably the most significant provision which appears to have had the greatest impact on pain clinic operations is the prohibition of physician dispensing of controlled substances in Schedules II and III. The result is that the pain management clinic has been removed from the dispensing business. Consequently, there appears to be a decrease in the number of registered clinics. According to representative from DOH, at the time the bill became effective there were approximately 104 registered clinics located in Miami-Dade County. As of the writing of this report, DOH reports that approximately 76 remain. An interesting phenomenon that DOH indicates appears to be occurring is an increase in new pharmacy applications. It is unclear whether this is the result of HB7095, or an improving economy.

Another positive effect of HB7095 has been a change in the DOH pain management clinic inspection process. The enhanced inspection process covers all areas of the clinic operations, and includes an assessment of the location including its location, grounds, buildings, contents and equipment in terms of the compatibility for the treatment of patients. The signage, published phone numbers, emergency equipment and protocol, infection control, and quality assurance programs are also assessed. Additional emphasis is focused on the Designated Physician with respect to quality assurance, prescription pads, and reporting requirements, along with physicians practicing from the clinic.

Furthermore, as a result of the changes brought forth by HB7095, the local DOH, Investigative Services Unit now has a physician on staff. This allows the inspection process to now include a review of patient records to ensure proper medical treatment procedures are being conducted. Historically, the illegitimate clinics in soliciting patients for their services would require them to bring an x-ray, and in many instances the patient would never actually see the prescribing physician. The staff physician should be able to quickly identify where proper medical treatment procedures are not being followed, and clinics can be cited with deficiencies. On January 1, 2012, additional treatment protocols for pain management practitioners will become effective.

From the criminal enforcement perspective, it is clear that the provisions in HB7095 requiring immediate action on the part of law enforcement have been very effective. The program requiring the return and/or confiscation of undispensed Schedule II and III controlled substances appears to have been successful. At this point in time the Pain Clinic Task Force felt that it was too early to assess the effectiveness of the changes to the criminal statutes. However, law enforcement representatives are optimistic that these enhanced provisions will assist in curtailing new methods of criminal activity that are anticipated as individuals explore ways to work around the provisions of the bill.

ZONING ORDINANCE

In considering recommendations with respect to the Miami-Dade County Zoning Ordinance, the Task Force reviewed and considered the types of aberrant activities that set the illegitimate clinics apart from the legitimate clinics. Because the zoning and certificate of use requirements relate to land use, the group focused the types of activities that occur in and around the location, and considered provisions that would present obstacles for illegitimate operators. Understanding that there are limits to the types of land use restrictions that can legally be implemented, the Task Force reviewed several zoning amendments from different jurisdictions that have recently been enacted in an effort to control problematic pain clinic activities.

The recommendations below focus on the requirements for issuance and maintenance of a Certificate of Use. An attempt has been made to tie the initial Miami-Dade County Certificate of Use approvals to the registration requirements of both the Florida Department of Health and the Miami-Dade County registration requirements. The intended result is to achieve coordination of cross agency compliance, avoiding fragmented approvals that may allow illegitimate clinics to operate, if only for a temporary period. Additionally, it is intended that a certificate of use be revocable should a clinic not maintain compliance with all applicable regulations.

Also captured within these recommendations are provisions that address typical characteristics found at illegitimate clinics. These characteristics include: patrons loitering on the premises and causing a nuisance; patrons drinking alcoholic beverage on premises; outdoor seating areas or queuing areas; late hours of operation; inadequate medical examination rooms and record management practices; inadequate parking; and close proximity to a pharmacy.

The Task Force is presenting the following recommended provisions after a review of provisions in zoning amendments from other jurisdictions. The group understands that this format may need to be revised to fit within the current Miami-Dade County Zoning Ordinance structure. Also, further vetting will need to be done by the Miami-Dade County Zoning experts, as well as by the County Attorney's Office to determine the viability and legality of the recommended provisions.

RECOMMENDATION: *Add a section to the Zoning Ordinance that specifically addresses the Certificate of Use requirements for Pain Management Clinics, or incorporate several of the following provisions throughout the Zoning ordinance as necessary to achieve tighter land use requirements for pain management clinic operations.*

The following suggested language is provided for consideration:

>>Sec. 33- xx . - Pain management clinics.

Notwithstanding any other provision of the Miami-Dade County Code of Ordinances that allows medical clinics, doctors' offices, or pharmacies as a permitted use in any other zoning district, Pain Management Clinics, as defined by, and subject to registration requirements by F.S. §§ 458.3265(1) and 459.0137(1), shall be allowed only as a conditional use in the specific zoning relating to Professional Office Building. In order to provide adequate protection to the community and establish the legitimacy of the business, the following regulations shall apply to the location, design, operation, and

maintenance of Pain Management Clinics, and shall be in addition to all other requirements or limitations of this chapter:

- (a) A Certificate of Use, in accordance with Chapter 33-8, shall be obtained from the zoning official prior to the establishment of any Pain Management Clinic.
- (b) The application for a Certificate of Use for a Pain Management Clinic shall disclose, in detail, the owners and operators of the facility, and shall be updated by the owner/operator annually at the time of renewal of the business tax receipt for the business, or at any time that there is a change of owner or the physician of record pursuant to F.S. §§ 458.3265 or 459.0137, as amended.
- (c) The Pain Management Clinic Owner/Physician/Manager shall register with the Miami-Dade County, Sustainability, Planning, and Economic Enhancement Department, Business Affairs and Consumer Protection office and meet all registration requirements. The applicant shall provide to the County proof of registration with the Florida Department of Health, pursuant to F.S. §§ 458.3265 or 459.0137, as amended, prior to the issuance of a Certificate of Use for the business. If the registration of a Pain Management Clinic is revoked or suspended by the Florida Department of Health or the Miami-Dade County, Sustainability, Planning, and Economic Enhancement Department, Business Affairs and Consumer Protection office, the County's Certificate of Use shall be revoked automatically and shall not be subject to the provisions of Subsection (k) of this section.
- (d) The application for a Certificate of Use shall include an affidavit by the owner or the physician of record pursuant to F.S. §§ 458.3265 or 459.0137, as amended, attesting to the fact that no employee of the business, nor any independent contractor or volunteer having regular contact with customers of the business, has been convicted of a drug-related felony within the five (5) year period prior to the date of the application, and that the business shall not employ or allow any such convicted employee, independent contractor, or volunteer on the premises thereafter.
- (e) A Pain Management Clinic shall be limited to the hours of operation between 8:00 a.m. and 7:00 p.m., Monday through Saturday.
- (f) A Pain Management Clinic shall post the required Certificate of Use in a conspicuous location at or near the entrance to the facility so that it may be easily read at any time.
- (g) No Pain Management Clinic shall be permitted to be located within one thousand two hundred (1,200) feet of another Pain Management Clinic, or a pharmacy with direct or indirect ownership links to the owner/physician/manager of the Pain Management Clinic.
- (h) A Pain Management Clinic shall comply with Section 33-124 (m) of Miami-Dade County Zoning Code's parking standards for Professional Office Buildings.
- (i) Pain Management Clinics are prohibited from having any outdoor seating areas, queues, or customer waiting areas. All activities of the Pain Management Clinic, including sale, display, preparation, and storage, shall be conducted entirely within a completely enclosed building. The Pain Management Clinic shall have adequate medical examination rooms and equipment to conduct physicals within acceptable medical and

sanitary standards as required by the Florida Department of Health for those medications being prescribed.

- (j) Pain management clinics may not dispense or distribute prescribed drugs pursuant to F.S. §§ 458.3265 or 459.0137, as amended.
- (k) That the owner of the premises where the Pain Management Clinic is located shall be provided written notification of the type of business and provide written sworn authorization for such use of the subject premises.
- (l) The businesses shall obtain building permits and install adequate fire and safety protection, including electrical, plumbing, structural, alarms (Fire, smoke, carbon monoxide, building security & burglary, and hold-up alarms) to provide for the public health, safety, welfare, and protection of the people, confidential records, prescription devices, medicines, and samples of medicines.
- (m) The Pain Management Clinic shall be in compliance with all requirements in F.S. §§ 458.3265 or 459.0137, as amended, regarding physician requirements, registration requirements, and any suspensions or revocations of licenses or physician licenses.
- (n) No sign of any type or character except for the required Certificate of Use and Medical Licenses, shall be exhibited or displayed on the subject premises to the outside or on outdoor display advertisements denoting that pain management medications are obtainable within, either by prescription or by filling of prescription or dispensing of medicines.
- (o) No consumption of alcoholic beverages shall be allowed on the premises, including in the parking areas, sidewalks, or right-of-way. The pain management clinic shall take all necessary and immediate steps to ensure compliance with this paragraph.
- (p) With the exception of Subsections (g) and (h), all Pain Management Clinics legally in existence prior to the effective date of this section shall comply with the requirements herein within sixty (60) days of the effective date of this section. Any Pain Management Clinic legally in existence prior to the effective date of this section, but now in violation of its provisions due to the Pain Management Clinic's failure to meet the requirements of Subsections (g) and (h), shall be considered a legal nonconforming use for a period of one (1) year from the effective date of this section. After the one (1) year period of time, such nonconforming use shall be removed or discontinued.
- (q) If at any time the County determines that a Pain Management Clinic is operating in any manner that is inconsistent with, or contrary to, the provisions of this chapter or any other applicable code or statute, including licensing and inspection requirements of the Florida Department of Health, state, and federal statutes, and Miami-Dade County Code, the County may revoke the Certificate of Use through the process outlined in Section 33-?? .<<

PAIN MANAGEMENT CLINIC REGISTRATION ORDINANCE

The Task Force reviewed and considered Ordinance 11-61 to determine its effectiveness from the regulatory and enforcement perspective. Members considered several ordinances from around the State as well as other registration ordinances within the Miami-Dade County Code of Ordinances. Also,

several areas of expertise were present around the Task Force table in developing these recommendations. The Ordinance as drafted was considered to be a good starting point; however the Task Force is recommending some additional provisions to ensure an efficient administration, and to ensure that the Ordinance will achieve its objectives. These recommendations are set forth below:¹

RECOMMENDATION: *Revise the definition of Pain Clinic as contained in Section 8A-411, to add language that will ensure that operators are not able to avoid registration by altering the form of operations.*

The following suggested language is provided for consideration:

“Pain Clinic” and “Pain Management Clinic” (hereinafter “pain clinics” shall be inclusive of pain clinics and pain management clinics) shall have the same meanings and same exemptions as provided for in F.S. §§ 458.3265(1) and 459.0137(1), as amended, or any successor state law. >>This definition is to be interpreted by the scope of business operations, medical or otherwise, regardless of name. <<

RECOMMENDATION: *Clarify with better specificity the application requirements as contained in Section 8A-414. Application; Review to facilitate an efficient and comprehensive registration process and ensure proper agency action which may be scrutinized under appellate review.*

The following suggested language is provided for consideration:

Sec. 8A-414. - Application; review.

>>(a) Every application for a pain clinic registration shall be in writing, signed and verified by the applicant, and filed with the Department together with an application fee, registration fee, investigative processing fee, or late fee as applicable, established by administrative order of the County Commission. That application and registration fees shall be non-refundable and shall be deposited in a separate Miami-Dade County fund and shall be used exclusively to accomplish the purposes of this article. The amount of the application and registration fees shall be reasonably related to the cost of the services and regulation provided.

(b) Each application for registration shall contain the following information:

- (1) Sufficient information to identify the applicant, including but not limited to, full legal name, date of birth or date of formation of legal entity, telephone numbers, and all business and residence addresses. If the applicant is a corporation, the foregoing information shall also be provided for each corporate officer, director, registered agent and shareholder. If the applicant is a

¹ In this section words stricken through and/or [[double bracketed]] would be deleted. Words underscored and/or >>double arrowed<< constitute the recommended amendments. Remaining provisions are now in effect and remain unchanged.

partnership, the foregoing information shall also be provided for each general and each limited partner. Post office box addresses shall not be accepted.

- (2) A list of all persons with any ownership interest in the applicant who have previously been denied a license.
- (3) The property owner's name, address and telephone number, and a copy of the lease agreement if property owner is different than the clinic owner. A signed and sworn affidavit from the property owner that they are aware and approve of the use of the property as a pain management clinic.
- (4) Copy of County Business Tax receipt.
- (5) Copy of Municipal Business Tax receipt, if appropriate.
- (6) Photocopy of the valid certificate of use and occupancy of the applicant, indicating authorization for the business use of the applicant. A valid certificate of use may be submitted within 60 days following the approval of an application where the Zoning Department requires proof of this registration for issuance.
- (7) Fictitious Name Registration or Articles of Incorporation Certificate.
- (8) Other information and items as the Director shall require to enforce the provisions of this article.<<

~~[[a]]>>(c)<< [[Any pain clinic operating in Miami Dade County shall file a]] >>The<< sworn and notarized application [[which]]shall >>also<< include proof of the following:~~

- (1) That the applicant is registered with the State Department of Health as required by state law and is in good standing with the Department of Health, has not received notification of a pending investigation by the Department of Health, has not received a probable cause finding as a result of a Department of Health investigation, is not currently suspended, and has not received notice of any deficiencies from the most recent Department of Health inspection>> applicant shall provide a copy of the most recent Department of Health inspection reports and their compliance with any applicable deficiencies;<<
- (2) That the pain clinic is fully owned by a duly licensed medical or osteopathic physician or group of medical or osteopathic physicians, or is licensed as a health care clinic under F.S. Ch. 400, Pt. X; and
- (3) That all physicians who own the clinic or are employed by or have a contractual relationship with the clinic: have never had a Drug Enforcement Administration number revoked; have never had a license to prescribe, dispense, or administer a controlled substance denied by any jurisdiction; and have never been convicted of or pled guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs,

including a controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV or Schedule V of F.S. § 893.03, or of any state or the United States; and

- (4) Ownership, >>employment or any verbal or written contractual relationship<< in other pharmacies or pain clinics and the percentage of such ownership by any and all physicians who own the clinic seeking registration.
- (5) In addition, the application shall designate a physician who is responsible for complying with all requirements related to registration and operation of the clinic. If that physician ceases to be affiliated with the pain clinic, another physician must be so designated within ten (10) days. The designated physician must have a clear and active license under F.S. Ch. 458 (medical) or under F.S. Ch. 459 (osteopathic), an active DEA registration; and shall practice at the clinic location for which the physician has assumed responsibility.
- (6) Any and all physicians associated with the pain clinic as owners, employees, contractors and specifically the physician designated to comply with all the requirements of registration and operations of the clinic shall provide the following:
 - a. A sworn and notarized statement that attests: the physician owns, is employed by or has a contractual relationship with the pain clinic; and when applicable, agrees and accepts the designation to comply with all the requirements of registration and operations of the clinic;
 - b. A copy of the physician's driver's license or other government issued photographic identification; and
 - c. A copy of the physician's active State of Florida medical license.

>>(d) A person operating a Pain Clinic at more than one (1) location in Miami-Dade County, Florida, shall file a separate application for registration annually for each location, together with the other information required by this article. Application and registration fees shall be required for each Pain Clinic location.

(e) A Pain Clinic registration shall become effective upon the date the application is approved by the Director. Notwithstanding any provision in this article, the Director may stagger the registration over an annual period, may shorten or extend the one-year period to facilitate the workload, and prorate the fee accordingly. A Pain Clinic registration shall be renewed annually by the Pain Clinic. A Pain Clinic shall file the application for renewal of the registration with the Director no later than thirty (30) days prior to the expiration of the registration of the Pain Clinic.

(f) A Pain Clinic may continue to operate after the expiration date of the registration, pending approval of the renewal application by the Director, if the completed renewal application with applicable fees has been received by the Director on or before the expiration date. If a completed renewal application with applicable fees is filed after the expiration date, the Pain Clinic may operate from and after the date on which the completed application with applicable fees is received by the Director, pending approval of the renewal application by the Director. <<

RECOMMENDATION: *Delete Section 8A-414(c)(3) of the Ordinance and add a section to the Ordinance that specifically outlines the mechanism for, and the reasons why a registration may be denied, suspended or revoked.*

The following suggested language is provided for consideration:

Section 8A-414. Application, Review.

* * * *

~~[(3) If the applicant does not satisfy the criteria in subsection (a), the clinic shall not be registered. The applicant shall be notified in writing of the decision to not register the pain clinic and of the reasons for not registering the clinic within thirty (30) days of submission or fifteen (15) days from the date that the applicant corrects deficiencies. The applicant shall have fifteen (15) days from the date of such notice to request a hearing in writing before the Department Director or designee. The Department Director or designee shall conduct the hearing within twenty (20) days of the date of the request for hearing. The Department Director or designee shall issue a written decision within fifteen (15) days of the hearing.]]~~

>>8A-414. Denial, Revocation or Suspension of Registration.

The Director may deny, revoke, or suspend a registration issued pursuant to the provisions of this article if the Director determines that the Pain Clinic applicant, owner, designated physician or associated physician has:

- (a) Failed to meet or maintain the minimum registration requirements set forth in this article, or
- (b) Violated any provision of this article, or
- (c) Misrepresented or concealed a fact on the application, renewal application, or replacement application for a registration, or
- (d) Aided or abetted a person who has not obtained a registration to evade or avoid the provisions of this article, or
- (e) Engaged in any conduct as part of the provision of pain management clinic services which constitutes fraud, or
- (f) Violated any condition, limitation, or restriction of a registration imposed by the Director, or
- (g) Was enjoined by a court of competent jurisdiction from engaging in the trade or business of pain management services or was enjoined by a court of competent jurisdiction with respect to any of the requirements of this article, or

- (h) If the person is a corporation or partnership, a stockholder, officer, director, or partner thereof committed an act or omission which would be a cause for denying, revoking, or suspending a registration, certificate, or permit issued to the officer, director, stockholder, or partner as an individual, or
- (i) Failed to comply with the terms of a cease and desist order, notice to correct a violation, written assurance of compliance, or any other lawful order of the Director, or
- (j) Was convicted of a violation of this article.
- (k) In addition to the foregoing, a registration issued pursuant to this article shall be automatically suspended without a hearing when the Director shall receive written notification that the registrant's owner, designated physician, associated physician, responsible employee, officer, director or partner, or any other stockholder owning, holding, controlling or having beneficial interest in five (5) percent or more of the issued and outstanding stock of the registrant or of the issued and outstanding stock of a corporate partner of a partnership licensee, has had their license suspended or revoked by the Florida Department of Health, or a court of competent jurisdiction, or has been arrested, prosecuted or convicted of an offense as listed in Section 8A-414, or any other offense that would disqualify them from being registered by the County or State Department of Health at this or any other pain management clinic after receiving a registration. In addition to such suspension, the Director shall forthwith initiate a hearing as hereinafter specified to consider revocation of such registration.

Notwithstanding the foregoing, no revocation or suspension of a registration by the Director shall be effective until the rendition of the appeal, if any, of such revocation or suspension pursuant to Section 8A-41 of the Code of Miami-Dade County, Florida, or until the time period for filing such appeal has expired, whichever is later; the Director may elect to temporarily suspend prior to an appeal for the protection of the public health, safety, and welfare based on competent evidence that would require such a suspension, pending the opportunity to review the evidence, and appeal the suspension or the grounds for the suspension. <<

RECOMMENDATION: *Add a section to the Ordinance that specifically outlines the mechanism for appealing a decision or action of the Director.*

The following suggested language is provided for consideration:

>>Section 8A-41. Appeals from actions, decisions or determinations of the director; judicial review.

- (a) Any person regulated by this article who is aggrieved by any action, decision or determination of the Director pursuant to this article may request an administrative hearing before a hearing officer to appeal the action, decision or

determination of the Director which resulted in the grievance. Appeal by administrative hearing of the action, decision or determination complained of shall be accomplished by filing a written request with the Director within five (5) days after the date of the action, decision or determination complained of, a written notice of appeal which shall set forth the nature of the action, decision or determination to be reviewed and the basis for the administrative hearing. A timely request for administrative hearing shall be scheduled and heard by a Hearing Officer pursuant to Section 8CC of the Code of Miami-Dade County, Florida. Customers shall not be deemed to be persons regulated by this article for the purposes of this section. The Hearing Officer shall set the matter for hearing on the earliest practicable regularly scheduled hearing date or as soon as possible, but no sooner than ten (10) days after the request has been filed and shall cause notice of the hearing to be served upon the aggrieved party by first class mail. The notice may include, but not be limited to, the applicable Sections of 8CC-6(b)(2) through (9) of the Code of Miami-Dade County, Florida. The Hearing Officer shall hear and consider all relevant facts in accordance with the procedures set forth in Sections 8CC-6(e), (f), (g), (i), (j), (k), (l), (m)(2), and (n) of the Code of Miami-Dade County (any reference in these sections to Inspector shall mean "Director" and to violator shall mean "the person filing the appeal", and may affirm, modify or reverse the action, decision or determination appealed from. The decision of the Hearing Officer shall constitute final administrative review and no rehearing shall be permitted. Nothing herein shall be construed to prevent or prohibit the Director from instituting any civil or criminal action or proceeding authorized by this article at any time.

- (b) The Director, the Miami-Dade County Consumer Advocate, or any person regulated by this article who is aggrieved by any decision of the Hearing Officer may appeal a final order of the Hearing Officer by filing a notice of appeal in the Circuit Court in and for Miami-Dade County, Florida, in accordance with procedures and within the time provided by the Florida Rules of Appellate Procedure for review of administrative action. The words "action," "decision" and "determination" as used herein shall not include the filing or institution of any action, conference or proceeding by the Director in any court or otherwise. Customers shall not be deemed to be persons regulated by this article for the purposes of this section.

- (c) If any appeal deadlines are not met, the Owners, Managers, and Physicians, forfeit any additional right of appeal and all applicable registrations, Certificates of Use, and Zoning Waivers shall be forfeited and/or revoked immediately upon the conclusion of the allowable appeal period.<<

RECOMMENDATION: *Require that a Miami-Dade County registration number be included in all advertisements for Pain Clinic Services.*

The following suggested language is provided for consideration:

>>Section 8A-41. Prohibition on publication of advertising without Pain Clinic Registration number.

(a) No person, firm, corporation or other legal entity may knowingly publish an advertisement which is primarily circulated, displayed, distributed or marketed within Miami-Dade County, which advertisement offers services regulated by Chapter 8A, Business Regulations, Article XX "Pain Management Clinics," Code of Miami-Dade County, Florida, as it may be amended from time to time, unless the advertisement includes the registration number issued by Miami-Dade County to that entity, with the words "PC Reg. No. _____ / _____."

(b) Advertisement shall include all media, but not be limited to, free and paid listings in telephone directories, business forms, business cards, flyers, radio, television and internet ads, signs, announcements, displays, entries or other written statements containing the name of the registrant or identifying the services offered by the registrant or by a person regulated by this chapter. <<

RECOMMENDATION: *Expand and clarify the enforcement mechanisms for both civil and criminal options as contained in Section 8A-415. Violations, to ensure the Miami-Dade County has all necessary tools to close down an illegal operation and allow for appropriate recovery of costs and meaningful penalties.*

The following suggested language is provided for consideration:

Section 8A-415. Violation, >>enforcement procedure; remedies; attorney's fees; costs.<<

(a) It shall be unlawful for any person to operate a clinic without prior registration. Violations shall be enforced through and in accordance with Chapter 8CC of the Miami-Dade Code.>> In addition to any other judicial or administrative remedies provided by law, rule, regulation, ordinance, or this article, the Director shall have the following judicial remedies available to enforce the provisions of this article:

(1) The Director may institute a civil action in a court of competent jurisdiction to seek temporary or permanent, prohibitory or mandatory injunctive relief to enforce compliance with or prohibit the violation of any of the provisions of this article.

(2) The Director may institute a civil action in a court of competent jurisdiction to impose and recover a civil penalty in an amount of not more than ten thousand dollars (\$10,000.00) for each violation of any of the provisions of this article. Each day during any portion of which such violation occurs or continues to occur constitutes a separate violation. The right of trial by jury shall be available in any court to determine both liability for and the amount of the civil penalties to be imposed and recovered hereunder.

(3) The Director may institute a civil action in a court of competent jurisdiction to seek restitution and other equitable relief to recover any sums and costs

expended by the Director for tracing, investigating, preventing, controlling, abating or remedying any violation of any of the provisions of this article.

- (b) Upon the rendition of a judgment or decree by any of the courts of this state against any person and in favor of the Director under any of the provisions of this article, the trial court, or, in the event of an appeal in which the Director prevails, the appellate court, shall adjudge or decree against said person and in favor of the Director a reasonable sum as fees or compensation for the Director's attorney prosecuting the suit in which the recovery is had. Where so awarded, compensation or fees of the attorney shall be included in the judgment or decree rendered in the case. This provision shall apply to all civil actions, legal or equitable, filed after the effective date of this article by the Director. Cessation of any violation of any of the provisions of this article whatsoever, prior to rendition of a judgment or entry of a temporary or final decree, or prior to execution of a negotiated settlement, but after an action is filed by the Director under any of the provisions of this article, shall be deemed the functional equivalent of a confession of judgment or verdict in favor of the Director, for which attorney's fees shall be awarded by the trial court as set forth hereinabove.
- (c) All the judicial and administrative remedies in this article are independent and cumulative.<<

RECOMMENDATION: *Increase the 8CC fine amount to \$2500, from the current \$500.*

RECOMMENDATION: *Add an additional section to the ordinance which provides for a criminal penalty that tracks other Miami-Dade County regulatory ordinances and ensures that staff has all necessary tools to close down an illegal operation.*

The following suggested language is provided for consideration:

>>Section 8A- 41. Criminal penalties.

In addition to any other judicial or administrative remedies or penalties provided by law, rule, regulation or ordinance, if any person violates or fails or refuses to obey or comply with any of the provisions of this article or any lawful order of the Director or any cease and desist order of the Director or any notice to correct a violation of the Director or any condition, limitation, or restriction of a registration certificate issued by the Director, such person, upon conviction of any such offense, shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00), or by imprisonment not to exceed sixty (60) days in the county jail, or both, in the discretion of the court. Each day or portion thereof of continuing violation shall be deemed a separate offense.<<

RECOMMENDATION: *Any of the recommendations contained in the prior Zoning Ordinance section that may be deemed to be inappropriate in the Zoning Code, should be considered for inclusion in the applicable section of the Pain Management Clinic Registration Ordinance.*

NUISANCE ABATEMENT ORDINANCE

The Task Force reviewed and considered the Miami-Dade County, Nuisance Abatement Ordinance, in light of some recent changes to the Florida Statutes. The Florida Legislature passed amendments to Florida Statute 893.138, in 2011. This section enables Counties and Municipalities to establish Nuisance Abatement Ordinances and Boards that will assist with communities abating public nuisances that constitute a danger to the Public Health, Safety, and Welfare.

It is recommended that the Nuisance Abatement Ordinance be amended in conjunction with the amendments to 893.138. This will enable the Nuisance Abatement Board to address Public Nuisances associated with properties where Pain Management Clinics are located, Pain Management Medications are being prescribed, and where they are being filled in an illegal and medically careless manner against local, state, and federal laws. These recommendations are set forth below:²

RECOMMENDATION: *Revise the definition section of the local Nuisance Abatement ordinance to include the recent statutory changes and incorporate specific language relating to Pain Management Clinic to allow the Nuisance Abatement Board to more quickly deal with locations that may be problematic.*

The following suggested language is provided for consideration:

Sec. 2-98.5. Definitions.

For the purpose of this article the following definitions shall apply:

>>A<<Public nuisance: Any place or premise>>s<< which has been used

* * * *

>>(2) on more than two (2) occasions within a twelve month period:

[[1]] >>(a)<< As the site of the unlawful sale>>2<< [[e]] delivery>>2
manufacture, cultivation, or possession<< of controlled substances
>>(including, but not limited to substances and pharmaceuticals defined
and regulated under Federal controlled substance laws, Florida Statutes,
Chapters 893, and 499, any substance sold in lieu of a controlled
substance in violation of Florida Statutes Section 817.563 or any
imitation controlled substance defined in Section 817.564),<< or

² In this section words stricken through and/or [[double bracketed]] would be deleted. Words underscored and/or >>double arrowed<< constitute the recommended amendments. Remaining provisions are now in effect and remain unchanged.

* * * *

>>(f) As the site of Violations of Florida Statute 812.019, Dealing in Stolen Property, as it may be renumbered or amended from time to time, or

(~~7~~)>>g<<) Any premise>>s<< or place >>that could be<< declared to be a nuisance by Florida Statutes, Section 823.05 or Section 823.10 as they may be renumbered or amended from time to time, >>or

(h) Any pain-management clinic, as described in s. 458.3265 or s. 459.0137 of the Florida Statutes, which has been used on more than two occasions within a 6-month period as the site of a violation of:

(i) Section 784.011, s. 784.021, s. 784.03, or s. 784.045 of the Florida Statutes, relating to assault and battery;

(ii) Section 810.02 of the Florida Statutes, relating to burglary;

(iii) Section 812.014 of the Florida Statutes, relating to dealing in theft;

(iv) Section 812.131 of the Florida Statutes, relating to robbery by sudden snatching; or

(v) Section 893.13 of the Florida Statutes, relating to the unlawful distribution of controlled substances,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in THIS Article XIII A of the Code of Miami-Dade County.

Evidence of violations of other federal, state, or local public nuisance laws, or other laws where a violation may create a danger to the public, health, safety, and welfare, or the failure to comply with the requirements, terms, and agreements in conjunction with these laws may be used to supplement and/or provide evidence of a public nuisance against a Premises in a Nuisance Abatement Board Hearing. As used herein, the term "Evidence" means any complaint, as defined in Paragraph B below, or findings of fact and conclusions of law of any federal, state, or local court or administrative entity.<<

EXHIBIT 1

Miami - Dade County, Florida, Code of Ordinances

PART III - CODE OF ORDINANCES >> Chapter 8A - BUSINESS REGULATIONS

ARTICLE XX. - PAIN MANAGEMENT CLINICS

ARTICLE XX. - PAIN MANAGEMENT CLINICS

Sec. 8A-411. - Definition.

Sec. 8A-412. - Registration.

Sec. 8A-413. - Designated department.

Sec. 8A-414. - Application; review.

Sec. 8A-415. - Violation.

Sec. 8A-416. - Temporary moratorium.

Sec. 8A-411. - Definition.

Pain Clinic" and "Pain Management Clinic" (hereinafter "pain clinics" shall be inclusive of pain clinics and pain management clinics) shall have the same meanings and same exemptions as provided for in F.S. §§ 458.3265(1) and 459.0137(1), as amended, or any successor state law.

(Ord. No. 11-61, § 2, 8-2-11)

Sec. 8A-412. - Registration.

- (a) All pain clinics operating within the geographic boundaries of Miami-Dade County shall register with Miami-Dade County's Consumer Services Department immediately upon issuance of implementing policies and procedures which shall occur no later than ninety (90) days from the effective date of this article [August 12, 2011], and annually thereafter.
- (b) Proof of registration with the County shall be prominently displayed in the common public area of the pain clinic.
- (c) Each pain clinic location shall be registered separately regardless of whether the clinic is operated under the same business name or management as another pain clinic.

- (d) A database of registered pain clinics operating in Miami-Dade County shall be maintained by the Miami-Dade Consumer Services Department.

(Ord. No. 11-61, § 2, 8-2-11)

Sec. 8A-413. - Designated department.

- (a) The Miami-Dade Consumer Services Department ("Department") shall: conduct the registration process; establish a database of pain clinics operating in Miami-Dade County; enforce the provisions of this article; and charge a reasonable fee for processing the applications and maintaining the database.
- (b) The Department shall establish policies and procedures necessary to implement the registration process, maintain the database, enforce the article, and through an implementing order charge reasonable fees.
- (c) The Department is authorized to inspect any pain clinic for proof of registration at any reasonable hour without prior notice.

(Ord. No. 11-61, § 2, 8-2-11)

Sec. 8A-414. - Application; review.

- (a) Any pain clinic operating in Miami-Dade County shall file a sworn and notarized application which shall include proof of the following:
 - (1) That the applicant is registered with the State Department of Health as required by state law and is in good standing with the Department of Health, has not received notification of a pending investigation by the Department of Health, has not received a probable cause finding as a result of a Department of Health investigation, is not currently suspended, and has not received notice of any deficiencies from the most recent Department of Health inspection;
 - (2) That the pain clinic is fully owned by a duly licensed medical or osteopathic physician or group of medical or osteopathic physicians, or is licensed as a health care clinic under F.S. Ch. 400, Pt. X; and
 - (3) That all physicians who own the clinic or are employed by or have a contractual relationship with the clinic: have never had a Drug Enforcement Administration number revoked; have never had a license to prescribe, dispense, or administer a controlled substance denied by any jurisdiction; and have never been convicted of or pled guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV or Schedule V of F.S. § 893.03, or of any state or the United States; and

Exhibit 1 continued

- (4) Ownership in other pharmacies or pain clinics and the percentage of such ownership by any and all physicians who own the clinic seeking registration.
- (5) In addition, the application shall designate a physician who is responsible for complying with all requirements related to registration and operation of the clinic. If that physician ceases to be affiliated with the pain clinic, another physician must be so designated within ten (10) days. The designated physician must have a clear and active license under F.S. Ch. 458 (medical) or under F.S. Ch. 459 (osteopathic), an active DEA registration; and shall practice at the clinic location for which the physician has assumed responsibility.
- (6) Any and all physicians associated with the pain clinic as owners, employees, contractors and specifically the physician designated to comply with all the requirements of registration and operations of the clinic shall provide the following:
 - a. A sworn and notarized statement that attests: the physician owns, is employed by or has a contractual relationship with the pain clinic; and when applicable, agrees and accepts the designation to comply with all the requirements of registration and operations of the clinic;
 - b. A copy of the physician's driver's license or other government issued photographic identification; and
 - c. A copy of the physician's active State of Florida medical license.
- (b) The Department may require any physician identified in subsection (a)(6) to complete an in-person interview to verify the information in the application and/or notarized statement.
- (c) Within thirty (30) days of submission, the Department shall verify the information in the application and determine whether or not the applicant meets all the criteria established in subsection (a) above.
 - (1) If the applicant satisfies all the criteria in subsection (a), the pain clinic shall be registered within thirty (30) days of submission.
 - (2) If the application is deemed incomplete, the applicant shall be notified in writing of the deficiencies within thirty (30) days of submission. The applicant shall have fifteen (15) days from the date of such notice to correct the deficiencies and complete the application. Failure to respond or make the corrections within the fifteen (15) days shall be considered a withdrawal of the application. The Department shall notify the applicant of the withdrawal upon expiration of the fifteen (15) days. If the applicant corrects the deficiencies within the fifteen (15) days, the Department shall have fifteen (15) additional days to verify that the application is complete and, if complete, register the pain clinic.

- (3) If the applicant does not satisfy the criteria in subsection (a), the clinic shall not be registered. The applicant shall be notified in writing of the decision to not register the pain clinic and of the reasons for not registering the clinic within thirty (30) days of submission or fifteen (15) days from the date that the applicant corrects deficiencies. The applicant shall have fifteen (15) days from the date of such notice to request a hearing in writing before the Department Director or designee. The Department Director or designee shall conduct the hearing within twenty (20) days of the date of the request for hearing. The Department Director or designee shall issue a written decision within fifteen (15) days of the hearing.

(Ord. No. 11-61, § 2, 8-2-11)

Sec. 8A-415. - Violation.

- (a) It shall be unlawful for any person to operate a clinic without prior registration. Violations shall be enforced through and in accordance with Chapter 8CC of the Miami-Dade County Code.
- (b) The Director of the Consumer Services Department is authorized to file any action in a court of competent jurisdiction to enforce the provisions of this article and to seek appropriate remedies. In any such action the department shall be entitled to recover its reasonable costs in the enforcement of this article, including reasonable attorney fees.

(Ord. No. 11-61, § 2, 8-2-11)

Sec. 8A-416. - Temporary moratorium.

- (a) The recitals of legislative intent and findings of Ordinance No. 11-61 are fully incorporated herein as part of this moratorium section. The Board of County Commissioners finds that it is in the best interest of and for the benefit of the health, safety, and welfare of the residents of Miami-Dade County to institute a temporary moratorium on the issuance of pain clinic registrations, occupational licenses/taxes, certificates of use, permits and development orders so that Miami-Dade County can investigate the complaints surrounding pain clinics including, but not limited to, illegal drug use and distribution, increased crime, drug-related deaths and addictions and other nuisance activities as well as study the effectiveness of recent legislative action, CS/CS/HB 7095 Engrossed 3, in addressing these complaints. For the duration of this temporary moratorium, the County shall cease accepting applications or requests for issuance of pain clinic registrations, occupational licenses/taxes, certificates of use, permits and development orders from pain clinics not registered with the State of Florida Department of Health as of the effective date of this article [August 12, 2011].
- (b) During the temporary moratorium, the Pain Clinic Task Force shall convene, with all deliberate speed, to investigate the complaints about pain clinics. The Pain Clinic Task Force shall consist of one representative from each of the following: the Miami-Dade County Addiction Services Board, the Nuisance Abatement Board, Consumer Services Department, Miami-Dade County Police Department, and Planning and Zoning Department. The Task Force shall seek

collaboration and input from other local, state and federal law enforcement, the State of Florida Department of Health and any other entity or person the Task Force deems appropriate.

- (c) The Mayor or designee shall provide appropriate staff support to the Task Force. The staff shall: comply with requests for information by the Task Force; assist the Task Force with its duties; maintain and keep the records of the Task Force; prepare, in cooperation with the Task Force, the agenda for each meeting; be responsible for the preparation of such reports, minutes, documents, resolutions or correspondence as the Task Force may direct; and generally administer the business and affairs of the Task Force.
- (d) The Pain Clinic Task Force shall make recommendations to the Board of County Commissioners within one hundred twenty (120) days from the effective date of this article [August 12, 2011] on: the effectiveness of CS/CS/HB 7095 Engrossed 3 in addressing the complaints surrounding pain clinics; whether or not it is necessary for the County to take any action to address the complaints surrounding plain clinics; and if so, how to best address the complaints surrounding pain clinics, including, but not limited to, zoning, regulatory, and enforcement recommendations.
- (e) The temporary moratorium shall expire upon enactment of any new ordinance(s) or resolution(s) addressing the underlying complaints or one hundred eighty (180) days from the effective date of this article [August 12, 2011], whichever date is earliest.

(Ord. No. 11-61, § 3, 8-2-11)