

ORDINANCE NO. 11-44

AN ORDINANCE OF THE COUNTY OF PINELLAS RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING ARTICLE V OF CHAPTER 86 OF THE PINELLAS COUNTY CODE BY AMENDING SECTIONS 86-126 THROUGH 86-140; PROVIDING AN AMENDED TITLE TO BE NAMED "PRESCRIPTION MANAGEMENT"; AMENDING DEFINITION OF TERMS; AMENDING ALLOWABLE EXEMPTIONS; AMENDING REGISTRATION PROCESS; REPEALING THE MORATORIUM AS TO THE FILING AND/OR RECEIVING OF ANY APPLICATION FOR THE ESTABLISHMENT OF A PAIN MANAGEMENT CLINIC; AMENDING OPERATIONS REQUIREMENTS; PROVIDING FOR PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE COUNTY CODE; AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, the County Commission is aware of the continued pattern of illegal drug use and distribution associated with the prescribing patterns of certain health care clinics in Pinellas County; and

WHEREAS, the threat of illegal narcotic activity and increased crime associated with such prescribing is significant and could undermine the economic health of the County's development and redevelopment efforts; and

WHEREAS, the prevalence of prescription drug abuse continues to be a serious problem within Pinellas County causing 207 deaths in 2010, an increase of 28 deaths over 2009; and

WHEREAS, Pinellas County has seen 109 youth sheltered due to prescription medication abuse during the first eight (8) months of 2011; and

WHEREAS, Pinellas County has the highest number of drug addicted newborns within the State of Florida with 114 in 2009, over a 400% increase since 2005; and

WHEREAS, The number of Opioid related incidents presented at Pinellas County Emergency Rooms increased by 97% from 2005 through 2008; and

WHEREAS, drug-related deaths have now surpassed traffic fatalities across the country killing at least 37,485 people in 2009, one every 14 minutes, having doubled in the last decade; and

WHEREAS, measures adopted by the State of Florida continue to move forward with uncertain timing and impact; and

WHEREAS, Pinellas County seeks to establish strong communication and partnerships with the medical community; and

WHEREAS, registration under this ordinance does not suggest that the facility is operating outside of normal standards of medical care; and

WHEREAS, the Advisory Board has reviewed the ordinance prior to presentation to the Board of County Commissioners; and

WHEREAS, the Board of County Commissioners finds and declares a need to continue this temporary measure until such time that appropriate regulations can be adopted and made effective in connection with Prescription Pain Medication.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA, that:

Section 1. Section 86-126 of the Pinellas County Code is amended to read as follows:

**Sec. 86-126. - Legislative findings of fact.**

The county commission finds and declares that it is in the best interest of the general public and there exists a need to enact an ordinance requiring the registration of pain management clinics operating in Pinellas County. The county commission further finds the use of this term, pain management, has negative implications and also limited application. These concerns create inconsistencies with the intent of the Board, as such in order to more accurately reflect the purpose of this ordinance, the terminology referencing pain management will be amended to reference "high prescribing" health care providers.

Section 2. Section 86-127 of the Pinellas County Code is amended to read as follows:

**Sec. 86-127. - Intent and purpose.**

It is the purpose and intent of this article to promote the health and general welfare of the residents of Pinellas County through the analysis of any impacts from high prescribing health clinics, the effectiveness of existing and emerging regulatory efforts and education and prevention efforts within Pinellas County.

Section 3. Section 86-128 of the Pinellas County Code is amended to read as follows:

**Sec. 86-128. - Definitions.**

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

*Chronic nonmalignant pain* means pain unrelated to cancer, which persists beyond the usual course of the disease of the injury that is the cause of the pain for more than 90 days after surgery.

*Code enforcement officer* means those employees designated as code enforcement officers pursuant to F.S. § 125.69.

*Department* shall mean the department designated by the county administrator through the board of county commissioners to administer the mandates of this article.

*High prescribing health clinic* means a privately owned health care clinic, facility or office which:

- a) advertises in any medium for any type of pain management services; or
- b) employs a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain or who issues more than thirty-four (34) prescriptions of CII and CIII controlled substances for treatment of pain in a single day; or
- c) prescribes controlled substance medications and is registered with the Florida Department of Health pursuant to F.S. § 458.309 or § 459.005, or any successor state law; or
- d) is otherwise registered with the state as a pain management clinic.

*Permit* shall mean a certificate issued by Pinellas County acknowledging the submission and accurate completion of the high prescribing health clinic registration forms required to be completed in order to conduct business in Pinellas County as a high prescribing health clinic.

Section 4. Section 86-129 of the Pinellas County Code is amended to read as follows:

**Sec. 86-129. - Exemptions.**

- (a) The following are exempted from this article:
  - (1) Any clinic licensed by the state health department as a facility pursuant to F.S. Ch. 395;
  - (2) Any clinic, facility, or office in which the majority of the patients primarily receive surgical services;
  - (3) The clinic is owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded \$50,000,000.00;

- (4) The clinic is owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3);
  - (5) Any clinic, facility, or office in which the majority of the patients receive treatment for terminal illness;
  - (6) Any clinic, facility, or office in which the majority of the patients receive cancer treatment; and
  - (7) Any clinic, facility, or office in which the majority of the patients receive Hospice treatment.
- (b) Physicians shall provide documentation supporting any claimed exemption upon request.

Section 5. Section 86-132 of the Pinellas County Code is amended to read as follows:

**Sec. 86-132. - Registration.**

- (a) No high prescribing health clinic, unless otherwise exempted, shall operate in Pinellas County by any means without having been issued a high prescribing health clinic permit by the department. High prescribing health clinics, operating as of the effective date of this ordinance unless otherwise exempted, shall register with the department within 30 days of the effective date of this ordinance.
- (b) The department shall maintain a database of registered high prescribing health clinics operating in Pinellas County.
- (c) Proof of registration shall be prominently displayed in the common public area of the high prescribing health clinic.

Section 6. Section 86-133 of the Pinellas County Code is amended to read as follows:

**Sec. 86-133. - Application.**

- (a) *Application required.* Any high prescribing health clinic operating in Pinellas County shall file a sworn application created by the department, which shall contain at least the following information:
  - (1) Applicants that are registered with the state department of health as of the effective date of this ordinance as required by F.S. § 458.309 or § 459.005, or any successor state law, shall provide proof of current registration, including copy of the applicant's state application form, including all information required for the state department of health registration.

- (2) A sworn statement by the clinic owner and medical director attesting to the veracity and accuracy of the information provided in the application.
  - (3) A typewritten, signed and notarized application that shall include the post office address of the applicant and the property owner. The application shall not be signed by an authorized agent.
  - (4) A statement including the following information:
    - i. The professional license numbers of the medical director, including DEA number;
    - ii. A list of all persons associated with the management or operation of the high prescribing health clinic whether paid or unpaid, part time or full time. The list must include, but is not limited to, all owners, operators, physicians, physicians' assistants, employees or authorized agents;
    - iii. For persons listed, the following information must be provided: title; current home address; telephone numbers and date of birth; all criminal convictions whether misdemeanor or felony; photocopy of current Florida driver's license; and
    - iv. For physicians, physicians' assistants, medical director, office managers, and owners, a fingerprint card completed at the Pinellas County Sheriff's Office must be included.
  - (5) Information provided in the application shall be updated within ten days of any new person becoming associated with the high prescribing health clinic.
  - (6) That no employees of the facility have been convicted of a drug-related felony within the five-year period to the date of application.
  - (7) That the high prescribing health clinic will not knowingly employ any such convicted felons.
  - (8) A floor plan of the high prescribing health clinic showing the location and size of the waiting area, location of and size of the patient rooms and location and type of diagnostic equipment.
- (b) *Incomplete application.* If the application for a high prescribing health clinic permit is not properly completed, the department shall notify in writing the person designated for service in the application. The applicant then has 15 days from the date of such notice to properly complete the application. Failure to respond within 30 days to a request for information necessary to complete the application shall result in a denial of the application.

- (c) Any person with multiple physical business locations shall submit a separate registration for each business location.
- (d) *Time period for granting or denying.*
  - (1) The department shall grant a new or renewal high prescribing health clinic permit within 30 days from the date of its proper filing provided the applicant is registered with the state department of health pursuant to F.S. § 458.309 or § 459.005, or any successor state law, as of the effective date of the ordinance from which this article derives.
  - (2) The director or his or her designee shall mail a notice of intent to deny a high prescribing health clinic permit within 15 days from the date of its filing.
  - (3) The director shall send a notice of denial based on any of the grounds set forth herein.
  - (4) Any applicant who received a notice of denial of a high prescribing health clinic permit may request a hearing before the director of the department within 15 days of the date of the mailing of the notice of denial. The director shall set a date for the requested hearing and decide whether to maintain the denial within 15 days of receipt of the request for hearing.
- (e) *Granting of permit.* If there is no basis for denial of a high prescribing health clinic permit pursuant to the criteria set forth herein, the department shall grant the permit, notify the applicant and issue the permit to the applicant.
- (f) *Denial of permit.* The department shall deny a high prescribing health clinic permit on the basis of any one of the following grounds:
  - (1) An applicant has submitted an application which contains material false information.
  - (2) An applicant has had a registration issued under either F.S. § 458.309 or § 459.005 suspended or revoked.
  - (3) An applicant has submitted an incomplete application.
  - (4) The owner or physician has been convicted of violating a pain management ordinance in any city, county or state.
  - (5) The facility is owned by or has any contractual or employment relationship with a physician:

- i. Whose drug enforcement administration number has ever been revoked.
  - ii. Whose application for a license to prescribe, dispense or administer a controlled substance has been denied, revoked, voluntarily relinquished, or otherwise encumbered due to final disciplinary actions of the State or by any jurisdiction.
  - iii. Who has been convicted of or plead guilty within the last five years to an offense that constitutes a felony for receipt of illicit and diverted drugs, including any controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV or Schedule V of F.S. § 893.03, or any other state, or the United States. Physicians shall not be subject to this provision if their conviction or plea occurred more than five years prior to the application.
- (g) *Application fee.* Each application for a high prescribing health clinic permit shall be accompanied by a nonrefundable \$250.00 application fee to offset the cost of processing the application. Any changes to the application fees authorized by this article shall be accomplished by resolution of the county commissioners.

Section 7. Section 86-135 of the Pinellas County Code is amended to read as follows:

**Sec. 86-135. - Registration moratorium maintained.**

- (a) It is the legislative determination of the county commission that the moratorium on submission of applications for issuance of permits for high prescribing health clinics as to any property located in whole or part within Pinellas County be maintained pending further review by the Board of County Commissioners no later than 60 days after the close of the 2012 Legislative Session.
- (b) High prescribing health clinics currently registered with Pinellas County may retain their status until November 30, 2011 subject to their continued compliance with this ordinance as codified and applicable administrative rules. All other high prescribing health clinics shall register with Pinellas County as provided for in this ordinance.
- (c) The county commission shall receive a semi-annual report from the county administrator or designee outlining the effectiveness of the regulation of high prescribing health clinic in achieving the purpose of this ordinance.

Section 8. Section 86-138 of the Pinellas County Code is amended to read as follows:

**Sec. 86-138. - Permit requirements.**

- (a) *[Requirements.]* A separate permit is required for each high prescribing health clinic location. At least one applicant for a permit shall be the medical director of the high prescribing health clinic. The applicant(s) shall be fully responsible for compliance with this section.
- (b) *Permit fee.* Each high prescribing health clinic operating in Pinellas County under this article shall pay an annual fee of \$ 1500.00 to recoup the cost of maintaining this article.
  - (1) The permittee may receive a permit rate reduction equal to the application fee of \$250.00 by providing:
    - i. A clear operational plan that explains the patient assessment procedures, referral opportunities discussed, pregnancy assessment procedures, and any other screening procedures conducted by the permittee. The operational plan must clearly explain how these areas are approached and must be accompanied by a copy of the valid assessment tool being used prior to prescribing pain medication; and
    - ii. Verification of user access to the Florida prescription drug monitoring program to enable patient due diligence by the physicians.
  - (2) This information must accompany the notarized application packet and is subject to further verification during site visits.
- (c) *Permit renewal.* The permit required for operating a high prescribing health clinic under this article shall be valid for one year beginning upon date of issuance by the department, unless otherwise provided for in this article. If required, a renewal permit shall be issued by the department after payment of the annual application and permit fee provided the high prescribing health clinic named in the renewal application and all information on the application is in compliance with this article and applicable administrative rules.

Section 9. Section 86-139 of the Pinellas County Code is amended to read as follows:

**Sec. 86-139. - Operation.**

- (a) It is the responsibility of a designated medical director, on-site physicians, or the clinic owner to adhere to all requirements contained within this article and applicable administrative rules.
- (b) A permit shall be issued to the person(s) deemed the permittee(s) for the particular location provided for in the application and shall not be transferable in any manner either to another person or for another location.

- (c) The grant of a permit is expressly conditioned upon compliance with the following operational standards:
- (1) The permit must be posted in a conspicuous place at or near the entrance to the high prescribing health clinic so that it may be easily read at any time.
  - (2) The high prescribing health clinic shall not limit the form of payment for services or prescriptions to cash only.
  - (3) The high prescribing health clinic shall be operated by a medical director or lead physician who is a licensed physician in the state.
  - (4) The hours of operation of the high prescribing health clinic shall be limited to 7:00 a.m. to 9:00 p.m. Monday through Sunday.
  - (5) The high prescribing health clinic shall maintain the routine diagnostic equipment to diagnose and treat patients complaining of chronic pain.
  - (6) The facility shall secure prescription pads so that only authorized persons may access them. All prescription pads shall contain the name of the high prescribing health clinic and the high prescribing health clinic permit number.
  - (7) The registered clinic shall be required to submit an accurate, semi-annual update containing the names of each owner, physician, employee, consultant, and agent, changes in facility, and changes in operation and services. These updates are to be completed on available county forms and mailed, faxed or hand delivered to the department by June 15. Failure to provide the updated information within the specified timeframes is a violation of this article.
  - (8) Upon the determination of the department, if a meeting is requested, the clinic owner shall coordinate to meet within 15 business days of the request.
  - (9) A physician or licensed medical professional is required to be on site at all times during operating hours.
  - (10) All permitted high prescribing health clinics shall request a "patient advisory report" from the Prescription Drug Monitoring Program (PDMP) and review its contents prior to prescribing a controlled substance.
  - (11) All permitted high prescribing health clinics, shall document in their patient files proof that they reviewed the patient advisory report by including a copy of the report in the patient's file.

- (12) All high prescribing health clinics must adhere to all codes set forth by code enforcement. High prescribing health clinics must provide ample parking for their patient flow and patient related vehicular traffic must not interfere with the normal flow of traffic on the streets adjacent to or influenced by the ingress and or egress to the parking area of the clinics.
  - (13) The high prescribing health clinic shall educate patients on the dangers and proper use of prescription pain medication, securing the medication to avoid diversion, and how to dispose of unused medication. Additionally, patients are to receive educational materials as provided for distribution.
  - (14) The high prescribing health clinic shall medically determine pregnancy status of female patients prior to prescribing prescription pain medication, and will educate the patient on the dangers of these medications when taken during pregnancy.
  - (15) The high prescribing health clinic shall perform an accepted patient assessment to determine possible addiction and mental health needs for referral prior to prescribing pain medication.
- (c) A violation of this article or the administrative rules created under this article shall be considered "Operation of a Non-Compliant High Prescribing Health Clinic" for purpose of enforcement.
- (d) *Incurable violations.*
- (1) Providing false information in statements or reports required to be filed with the department.
  - (2) Providing false information on application to State of Florida including materially false omissions.
  - (3) Providing false information on application to Pinellas County including materially false omissions.
  - (4) Refusing to allow for inspection of the clinic by a code enforcement officer, law enforcement officer, or any other person authorized to enforce ordinance violations in Pinellas County at any time the clinic is open or occupied.
  - (5) Failing to update the high prescribing health clinic application as necessary to maintain its accuracy or assure continued compliance with the requirements of this article and applicable administrative rules.

- (e) *Suspension/revocation.*
- (1) A conviction of violation of the Pinellas County high prescribing health clinic ordinance or commission of an incurable violation as provided for in the administrative rules created under this article shall constitute grounds for a suspension of the permit holder's high prescribing health clinic permit.
  - (2) A suspension shall be for a period of three months.
  - (3) Subsequent violations of the Pinellas County high prescribing health clinic ordinance or commission of an incurable violation as provided for in administrative rules created under this article shall constitute grounds for a revocation.
  - (4) Any revocation of a permit issued under these rules shall be for a minimum period of three years and shall require a new application for reinstatement.
  - (5) The permit holder shall surrender the permit to the department prior to the first day of the period of suspension or revocation of the permit.
- (f) *Effective date of suspension.* The period of suspension shall begin 20 days after the date the department mails the notice of suspension to the permit holder or on the date the permit holder delivers the permit to the department; whichever happens first. The department shall provide the basis for suspension in the notice to the permit holder.
- (g) *Right to appeal.* The permit holder shall have the right to request a hearing before the department. The request for hearing must be made prior to the effective date of the suspension. The hearing shall be commenced within at least 30 days of the date of the request for the hearing. During the pendency of the hearing the period of suspension shall be stayed until a final decision is issued by the department.
- (h) The permit holder may appeal any final decision of the Sixth Judicial Circuit Court of the State of Florida.

Section 10. Section 86-140 of the Pinellas County Code is amended to read as follows:

**Sec. 86-140. - Administrative rules.**

The department shall promulgate additional rules and forms deemed necessary to carry out the purposes of this article which shall include provisions consistent with the procedural requirements set forth in this ordinance for:

- (a) Suspension of a high prescribing health clinic permit for violating provisions of this article or applicable administrative rules.
- (b) Reporting requirements for high prescribing health clinic.
- (c) Operational guidelines for high prescribing health clinic.
- (d) Other rules as necessary to achieve the purposes of this article consistent with the purposes of this ordinance as designated by the Board of County Commissioners.

Section 11. Severability.

If any section, subsection, sentence, clause or phrase of this article, amendment or the particular application thereof, shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentence, clause or phrase and application shall not be affected thereby.

Section 12. Area Embraced.

This article shall be in effect in the incorporated and unincorporated areas of Pinellas County.

Section 13. Codification.

The provisions of this Ordinance shall be included and incorporated in the Pinellas County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Pinellas County Code.

Section 14. Filing Of Ordinance; Effective Date.

Pursuant to Section 125.66, Florida Statutes (2010), a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners, and shall become effective upon filing with the Department of State.

APPROVED AS THE  
OFFICE OF COUNTY ATTORNEY

By  \_\_\_\_\_

Attorney

STATE OF FLORIDA

COUNTY OF PINELLAS

I, KEN BURKE, Clerk of the Circuit Court and Ex-officio Clerk to the Board of County Commissioners, in and for the State and County aforesaid, DO HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance adopted by the Board of County Commissioners of Pinellas County, Florida, on November 8, 2011 relative to:

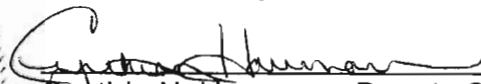
ORDINANCE NO. 11-44

AN ORDINANCE OF THE COUNTY OF PINELLAS RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING ARTICLE V OF CHAPTER 86 OF THE PINELLAS COUNTY CODE BY AMENDING SECTIONS 86-126 THROUGH 86-140; PROVIDING AN AMENDED TITLE TO BE NAMED "PRESCRIPTION MANAGEMENT"; AMENDING DEFINITION OF TERMS; AMENDING ALLOWABLE EXEMPTIONS; AMENDING REGISTRATION PROCESS; REPEALING THE MORATORIUM AS TO THE FILING AND/OR RECEIVING OF ANY APPLICATION FOR THE ESTABLISHMENT OF A PAIN MANAGEMENT CLINIC; AMENDING OPERATIONS REQUIREMENTS; PROVIDING FOR PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE COUNTY CODE; AND PROVIDING AN EFFECTIVE DATE.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this November 17, 2011.

KEN BURKE  
Clerk of the Circuit Court  
and Ex-officio Clerk to the  
Board of County Commissioners

By:

  
Cynthia N. Haumann, Deputy Clerk

