

ORDINANCE NO. 2011-\_\_\_

2 AN ORDINANCE OF ORANGE COUNTY, FLORIDA  
4 RELATING TO PAIN MANAGEMENT CLINICS  
6 AND PHARMACIES; REPEALING THE  
8 MORATORIUM ON PAIN MANAGEMENT  
10 CLINICS ADOPTED BY ORDINANCE NO. 2010-17  
12 AND CODIFIED AT SECTIONS 2-461 THROUGH 2-  
14 471, ARTICLE XIV, CHAPTER 2, ORANGE  
16 COUNTY CODE; CREATING THE “CHAD  
18 PHILLIPS ACT”, A PHARMACY AND PAIN  
20 MANAGEMENT CLINIC ORDINANCE TO BE  
22 CODIFIED AT ARTICLE XIV, CHAPTER 2,  
24 ORANGE COUNTY CODE; CREATING  
26 REGISTRATION AND SUPPLEMENTAL  
28 MONTHLY REPORTING REQUIREMENTS FOR  
30 ALL PAIN MANAGEMENT CLINICS; CREATING  
32 SUPPLEMENTAL ZONING REGULATIONS FOR  
34 NEW PAIN MANAGEMENT CLINICS; CREATING  
36 SUPPLEMENTAL REGULATIONS FOR ALL  
38 PHARMACIES; PROVIDING THAT PHARMACIES  
AND PAIN MANAGEMENT CLINICS SHALL NOT  
COLOCATE; ALLOWING FOR APPLICATION  
FOR VARIANCE FROM THE COLOCATION BAN;  
CREATING A REQUIREMENT FOR ALL  
PHYSICIANS AND PHARMACISTS TO CHECK  
THE PRESCRIPTION DRUG MONITORING  
PROGRAM PRIOR TO PRESCRIBING OR  
DISPENSING DANGEROUS DRUGS; PROVIDING  
DEFINITIONS; AMENDING SECTION 38-1,  
ZONING DEFINITIONS, TO ADD A DEFINITION  
FOR “PAIN MANAGEMENT CLINIC” AND TO  
EXCLUDE PAIN MANAGEMENT CLINIC FROM  
THE TERM “CLINIC”; AMENDING SECTION 38-  
77, ZONING USE TABLE, ADDING PAIN  
MANAGEMENT CLINIC AS A PERMITTED USE IN  
I-4 ZONE; AND PROVIDING AN EFFECTIVE  
DATE.

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42 **WHEREAS**, the Orange County Sheriff’s Office and the Metropolitan Bureau of  
44 Investigation for the Ninth Judicial Circuit have informed the Orange County Board of  
46 County Commissioners (“Board”) that a pattern of illegal drug use and distribution of  
certain dangerous drugs has been linked in large part to certain pain management clinics  
operating in and around Orange County; and

**WHEREAS**, certain opiate analgesic dangerous drugs, that may be safe when

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

58 **WHEREAS**, the dangerous overprescribing and excessive consumption of high  
60 amounts of those dangerous opiate prescription drugs has resulted in increased addiction  
62 of persons, increased crime associated with such activity, and resulted in a high number  
64 of deaths in Orange County related to prescription drug abuse and has created an urgent  
situation requiring immediate action to reduce the threat to the health, safety and welfare  
of county citizens; and

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

74 **WHEREAS**, on December 7, 2010 the Board adopted Ordinance No. 2010-17 to  
76 implement a moratorium on the issuance of any new Business Tax Receipts for pain  
78 management clinics, to direct County staff to analyze the effects of pain management  
80 clinics on our community and prepare recommendations to better promote, protect and  
improve the health, safety and welfare of the citizens of the county by local regulation of  
pain management clinics, to restrict cash only operations, and to regulate hours of  
operation of existing clinics through the period of the moratorium; and

82 **WHEREAS**, on July 19, 2011 Orange County Mayor Teresa Jacobs' Prescription  
84 Drug Task Force (Task Force) began a series of meetings to address the serious issue of  
prescription drug abuse in our community through law enforcement, healthcare and  
pharmacies, prevention, education, and public policy; and

86 **WHEREAS**, the Task Force and County staff have identified negative adverse  
88 secondary effects associated with pain management clinics that necessitate a  
90 recommendation for certain changes to the Orange County code that will result in  
92 additional substantive and zoning regulations for pain management clinics and  
pharmacies in Orange County; and

94 **WHEREAS**, with the adoption of this ordinance, the Board intends to lift the  
moratorium implemented in Ordinance No. 2010-17 and impose those substantive and

zoning regulations on pain management clinics and pharmacies in Orange County.

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**THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**

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**COMMISSIONERS OF ORANGE COUNTY, FLORIDA:**

*Section 1. Repeal of Moratorium Ordinance.* The moratorium ordinance

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against pain management clinics implemented by Ordinance No. 2010-17, codified at Article XIV, Chapter 2, Orange County Code, is hereby repealed.

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*Section 2. Creation of Pain Management Clinic Ordinance.* A Pain

Management Clinic Ordinance, is hereby created to read as follows, to be codified at

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Article XIV, Chapter 2, Orange County Code.

**Sec. 2-461. Title.**

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This ordinance shall be known as the “Chad Phillips Act.”

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**Sec. 2-462. Findings of Fact; Intent and Purpose.**

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(a) The Orange County Sheriff’s Office and the Metropolitan Bureau of Investigation for the Ninth Judicial Circuit have informed the Orange County Board of County Commissioners (“Board”) that a pattern of illegal drug use and distribution has been linked in large part to certain pain management clinics operating in and around Orange County and distributing or prescribing dangerous drugs; and

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

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134 by using multiple and false identities at both medical  
135 clinics and pharmacies; and

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137 (c) The dangerous overprescribing and  
138 excessive consumption of high amounts of those dangerous  
139 opiate prescription drugs has resulted in increased addiction  
140 of persons, increased crime associated with such activity,  
141 and resulted in a high number of deaths in Orange County  
142 related to prescription drug abuse and has created an urgent  
143 situation requiring immediate action to reduce the threat to  
144 the health, safety and welfare of county citizens; and

145 (d) The State of Florida has implemented a  
146 Prescription Drug Monitoring Program which could be an  
147 effective tool in Orange County to reduce successful doctor  
148 shopping, or multiple prescriptions, or multiple pharmacy  
149 filling of prescriptions and dispensing of potentially  
150 dangerous opiate drugs, if local physicians are careful to  
151 check the database before prescribing potentially dangerous  
152 opiate drugs; and, if reports are made to the database  
153 immediately when potentially dangerous opiate drugs are  
154 prescribed by local physicians or dispensed by local  
155 pharmacies so that other physicians and pharmacies can  
156 know that information, and

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159 (e) Certain opiate analgesic drugs have been  
160 shown to be particularly dangerous when over-prescribed  
161 by doctors or over-consumed by citizens and visitors; and

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163 (f) The illegal distribution of these dangerous  
164 prescription drugs, increased crime associated with such  
165 activity, and the high number of deaths in Orange County  
166 relating to prescription drug abuse has created an urgent  
167 situation requiring immediate action to reduce the threat to  
168 the health, safety and welfare of county citizens; and

169 (g) On July 19, 2011 Orange County Mayor  
170 Teresa Jacobs' Prescription Drug Task Force (Task Force)  
171 began a series of meetings to address the serious issue of  
172 prescription drug abuse in our community through law  
173 enforcement, healthcare and pharmacies, prevention,  
174 education, and public policy; and

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177 (h) The Florida Legislature has identified  
178 concerns regarding the increased use and abuse of  
179 substances controlled by federal and/or state law and the  
180 frequency of injury and death occurring as a result of the

182 increased availability of controlled substances and certain  
dangerous prescription drugs via medical practitioners  
operating in pain management clinics or facilities; and

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186 (i) Florida Statutes require physicians and other  
persons dispensing prescription drugs through pain  
management clinics, facilities or offices, to register with the  
188 State Department of Health in order to conduct such  
business; and

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192 (j) The negative adverse secondary impacts  
associated with certain pain management clinics includes  
194 the congregation of drug users and drug addicted persons  
outside of pain management clinics in a manner that has a  
negative effect on the willingness of residents to patronize  
196 nearby business and which disturbs nearby residents all  
hours of the day but particularly in the early morning and  
198 late evening hours thus disrupting other businesses and  
disturbing the peace and quiet of affected parts of the  
200 community; and

202 (k) It is not the intent of this Ordinance to  
interfere with the legal and safe prescription, dispensation,  
204 or use of controlled substances. It is the excessive  
distribution of a narrow class of opiate analgesic  
206 prescription drugs that are Schedule II and III controlled  
substances that this Ordinance seeks to regulate; and

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210 (l) Under its home rule authority Orange  
County can pass additional legislation to further regulate  
212 pain management clinics and pharmacies as long as these  
additional regulations are not preempted in the law and are  
not inconsistent with the statutory provisions.

214 **Sec. 2-463. Definitions.**

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218 For purposes of this article, the following terms,  
whether appearing in the singular or plural form, shall have  
220 the following meanings. All other terms used in this article  
shall have the meaning provided in Chapter 2011-141,  
Laws of Florida, as it may be amended from time to time.

222  
224 *Acute Pain* means the normal, predicted,  
physiological response to an adverse chemical, thermal, or  
226 mechanical stimulus and is associated with surgery, trauma,  
or illness. It is generally short-lived. Acute Pain responses  
may vary between patients and between pain episodes

228 within an individual patient. Acute Pain episodes may be  
230 present in patients with Chronic Pain.

232 *Chronic Pain* means pain, which includes one or  
234 more of the following characteristics: (a) the pain persists  
236 beyond the usual course of a disease that is the cause of the  
238 pain; (b) the pain persists beyond the expected time for  
healing from an injury or trauma that is the cause of the  
pain; or (c) the pain is associated with a long-term  
incurable or intractable medical illness or disease and is not  
amenable to routine pain control methods.

240 *Controlled substance* means any substance named  
or described in Schedules I-V of s. 893.03, Florida Statutes.

242 *Dangerous Drugs* means a controlled substance,  
244 specifically an opiate analgesic, listed in Schedule II and  
Schedule III, in section 893.03, Florida Statutes.

246 *Health Care Physician* or *Physician* means any  
248 practitioner who is subject to licensure or regulation by the  
Florida Department of Health under Chapters 458  
250 (physician) or 459 (osteopathic physician), Florida Statutes.

252 *Pain* means an unpleasant sensory and emotional  
254 experience associated with actual or potential tissue  
damage or described in terms of such damage. Categories  
of pain include Acute Pain or Chronic Pain.

256 *Pain Management* means the use of  
258 pharmacological and non-pharmacological interventions to  
control a patient's identified pain. Pain Management often  
260 extends beyond pain relief, encompassing the patient's  
quality of life, ability to work productively, to enjoy  
262 recreation, and to function normally in family and society.

264 *Pain Management Clinic* means any privately-  
owned clinic, facility or office, whatever its title, including  
266 but not limited to a "wellness center," "urgent care  
facility," or "detox center," which has at least one of the  
268 following characteristics:

- 270 1. Where a physician practices who issues  
272 prescriptions for a Dangerous Drug to more than twenty  
(20) patients in a single day;

274                   2.     It holds itself out through a sign or  
276     advertising in any medium as being in business to prescribe  
   or dispense pain medication whether for Acute Pain or  
   Chronic Pain;

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280                   3.     It holds itself out through a sign or  
   advertising in any medium as being in business to provide  
282     services for the treatment or management of pain and  
   where the services are also accompanied with the  
284     prescription or dispensing of a Dangerous Drug for the  
   treatment of pain, whether Acute Pain or Chronic Pain; or

286                   4.     It meets the definition of Pain Management  
288     Clinic in section 458.3265, Florida Statutes, as may be  
   amended from time to time, or is registered as a Pain  
   Management Clinic with the State.

290                   Exceptions. There is an affirmative defense that a  
292     business is not a Pain Management Clinic if it has at least  
   one of the following characteristics:

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296                   1.     Licensed as a hospital or other licensed  
   facility pursuant to Chapter 395, Florida Statutes, as may  
   be amended;

298                   2.     The majority of the physicians who provide  
300     services in the clinic primarily provide surgical services;

302                   3.     Affiliated with an accredited medical school  
   at which training is provided for medical students,  
304     residents, or fellows;

306                   4.     Does not prescribe or dispense controlled  
   substance for the treatment of pain; or

308                   5.     Operated for the sole purpose of serving a  
310     governmental entity.

312                   *Pharmacist* means any person licensed pursuant to  
314     chapter 465, Florida Statutes, to practice the profession of  
   pharmacy.

316                   *Pharmacy* means the same as that term is defined in  
318     section 465.003, Florida Statutes, as may be amended from  
   time to time, and includes community pharmacy, internet  
   pharmacy, and special pharmacy, but does not include

320 institutional pharmacy or nuclear pharmacy, as each of  
322 those terms are used in that section.

324 *Physician Primarily Engaged in the Treatment of*  
326 *Pain* means a physician who prescribes or dispenses  
328 Dangerous Drugs when a substantial portion of the patients  
330 seen are prescribed or dispensed Dangerous Drugs for the  
332 treatment of chronic pain. For purposes of this definition,  
the term "substantial portion" means more than an  
insignificant or incidental portion. The term "substantial  
portion" does not necessarily mean a majority or  
predominant amount.

334 **Sec. 2-464. Registration; Operational Regulations for  
Pain Management Clinics.**

336 (a) *Registration Required.* Upon adoption of this  
338 ordinance and annually thereafter, all Pain Management  
340 Clinics shall register with the County by completing and  
342 submitting to the County Administrator, or his/her  
designee, a registration form that is obtained from that  
official.

344 (b) *Persons Responsible.* A physician shall be  
346 designated as responsible for complying with all  
348 requirements related to registration and operation of the  
350 Pain Management Clinic. The designated physician, and all  
other persons operating the Pain Management Clinic, shall  
ensure compliance with the following regulations. Failure  
to so comply shall be deemed a violation of this ordinance  
and shall be punishable as provided in section 2-471.

352 (c) All registered Pain Management Clinics shall be  
354 subject to the supplemental regulations provided in this  
subsection.

356 (d) *Display of licenses.* Any Pain Management  
358 Clinic shall be validly registered with the State of Florida,  
360 if required, and with the County and shall prominently  
362 display in a public area near its main entrance copies of all  
state licenses, County licenses, County Registration, and  
Occupational License/Local Business Tax Receipt, and the  
364 name of the owner and designated physician responsible for  
compliance with state and County law. A Pain  
Management Clinic shall register with the County by  
completing and submitting to the County Administrator, or

366 his/her designee, a registration form that is obtained from  
368 that official.

370 (e) *Controlled Substances.* The on-site sale,  
372 provision, or dispensing of controlled substances at a Pain  
Management Clinic shall be prohibited except as is  
specifically set forth in applicable federal or state law.

374 (f) *Alcoholic beverages.* Alcoholic beverages  
376 shall be prohibited from being consumed or served on the  
premises, including in the parking areas, sidewalks, or  
378 adjacent right-of-way.

380 (g) *Adequate inside waiting area required.* No  
382 pain management clinic shall provide or allow outdoor  
seating areas, queues, or customer waiting areas. All  
384 activities shall be conducted within the building and  
adequate indoor waiting areas shall be provided for all  
386 patients and business invitees. The Pain Management  
Clinic shall not direct or encourage any patient or business  
388 invitee to stand, sit (including in a parked car), gather, or  
loiter outside of the building where the clinic operates,  
390 including in any parking area, sidewalk adjacent, right-of-  
way, or neighboring property for any period of time longer  
392 than that reasonably required to arrive and depart. The  
Pain Management Clinic shall post a conspicuous sign  
stating that no loitering is allowed on the property.

394 (h) *Operating hours.* A Pain Management  
396 Clinic may operate only Monday through Friday and only  
during the hours of 7:00 a.m. to 7:00 p.m. Exception - It  
398 is an affirmative defense that the business was open after the  
above-stated hours for a bona fide medical emergency  
400 reported by an established patient who has been previously  
treated at that Pain Management Clinic.

402 (i) *Monthly business records.* Each business  
404 day a Pain Management Clinic shall provide to the County  
Administrator or his or her designee on a monthly basis by  
406 the fifth day of each calendar month a sworn summary of  
certain limited information from the prior calendar month  
408 that is prepared by the medical director and/or the person in  
charge of prescribing the drugs that month. To the extent  
410 such information is not otherwise required to be maintained  
by any other law, the back-up for the required monthly  
412 summary shall be maintained by the Pain Management  
Clinic for at least 24 months. The monthly summary shall

414 include the following information for the previous calendar  
month:

416 (1) The total number of prescriptions  
written for Dangerous Drugs listed separately by each  
418 physician;

420 (2) The total number of persons seen by  
the Pain Management Clinic;

422 (3) The state of residence of each person  
424 to whom Dangerous Drugs were prescribed or dispensed;  
and

426 (4) A log of all attempts, whether  
428 successful or unsuccessful, to access and review the state-  
maintained Prescription Drug Monitoring Program.

430 (j) *Personnel Records; Monthly Report.* A Pain  
432 Management Clinic shall maintain personnel records for all  
owners, operators, employees, workers, and volunteers on  
434 site at the Pain Management Clinic, and make those records  
available during any inspection. The Pain Management  
436 Clinic shall forward a sworn personnel record containing  
items (1), (2), and (3), below, to the County Administrator,  
438 or his/her designee, on a monthly basis by the fifth day of  
each calendar month for the previous calendar month.  
440 Personnel records shall, at a minimum, contain the  
following information about each of the above-described  
442 persons present for any day in the previous calendar month:

444 (1) name and title;

446 (2) current home address, telephone  
number, and date of birth; and

448 (3) a state or federally-issued driver's  
450 license or other identification number;

452 (4) a copy of a current driver's license or  
a government issued photo identification; and

454 (5) a list of all criminal convictions (if  
456 any), whether misdemeanor or felony for all persons hired  
in the previous calendar month, to be updated annually.  
458

460 (k) *Compliance with other laws.* A Pain  
Management Clinic shall at all times be in compliance with  
462 all federal and state laws and regulations and the Orange  
County Code.

464 **Sec. 2-465. Requirements for New Pain Management  
466 Clinics.**

468 (a) *Intent.* It is the intent of this article that the  
lawful use of any building, structure, or land existing at the  
470 time of adoption of this article may be continued although  
such use, building or structure does not conform with the  
472 provisions of this article provided the following conditions  
in the subsequent sections of this article are met.

474 (b) *Zoning and Locations.* Effective \_\_\_\_\_,  
2011, any new Pain Management Clinic shall be allowed  
476 only in the I-4, Industrial Zone, and shall be prohibited as a  
home occupation. Any new Pain Management Clinic  
478 applicant shall complete the appropriate building permit or  
Use permit applications and submit these application(s) to  
480 the County Building Division for review and approval prior  
to issuance of any permits.

482 (c) *Separation distances.* Effective \_\_\_\_, 2011, a  
new Pain Management Clinic shall not co-locate on the  
484 same property as a preexisting Pharmacy. Furthermore, a  
new Pain Management Clinic shall not operate within one  
486 thousand (1,000) feet of any pre-existing pharmacy, school,  
as that term is defined in sections 1002.01 or 1003.01,  
488 Florida Statutes, as it may be amended, day care center or  
home, or religious institution. Distance requirements shall  
490 be documented by the applicant and submitted to the  
Zoning Division with the application. All distance  
492 requirements pertaining to Pain Management Clinics shall  
be measured by drawing a straight line from the nearest  
494 property line of the pre-existing use to the nearest property  
line of the proposed use. Applicant may request a variance  
496 from the requirements of this paragraph as provided in  
section 30-43 of this Code.

498 (d) *Parking.* Any parking demand created by a  
500 Pain Management Clinic shall not exceed the parking  
spaces located or allocated on site, as required by the  
502 County's parking regulations. Effective \_\_\_\_, 2011, an  
applicant shall be required to demonstrate to the

504 appropriate County staff that on-site traffic and parking  
506 attributable to the Pain Management Clinic will be  
508 sufficient to accommodate traffic and parking demands  
510 generated by the Pain Management Clinic, based upon a  
512 current traffic and parking study prepared by a certified  
514 professional. Traffic and parking analyses shall be  
516 predicated in part upon traffic and parking impacts from  
518 other existing pain management clinics in Florida but shall  
520 in no case be less than one (1) space per 200 sq. ft. of gross  
bldg. square feet. The source of any such information shall  
be provided to the County for purposes of verification.  
County staff shall be required to verify the information  
contained in traffic and parking study(ies) with the  
appropriate official(s) of the local government(s) where the  
comparable information is derived. The owner of the Pain  
Management Clinic shall be responsible for ensuring that  
there is no queuing of vehicles in the public right-of-way.

522 **Sec. 2-466. Landlord Responsibility.**

524 (a) Any landlord, leasing agent, or owner of  
526 property upon which a pain management clinic operates  
528 who knows, or in the exercise of reasonable care should  
530 know, that a Pain Management Clinic or Pharmacy is  
532 operating in violation of the Orange County Code, or  
534 applicable Florida law, including the rules and regulations  
promulgated by the Department of Health, Board of  
Medicine, or Board of Osteopathic Medicine, must prevent,  
stop, or take reasonable steps to prevent the continued  
illegal activity on the leased premises.

536 (b) Landlords who lease space to a Pain  
538 Management Clinic or Pharmacy after the effective date of  
540 this article must expressly incorporate language into the  
542 lease or rental agreement stating that failure to comply with  
the Orange County Code is a material breach of the lease  
and shall constitute grounds for termination and eviction by  
the landlord.

544 **Sec. 2-467. Certification Affidavit by Applicants for  
Related Uses.**

546 (a) *Certification Affidavit by Applicants for*  
548 *Related Uses.* Any application for a Business Tax Receipt  
550 in all of the following categories shall be accompanied by  
an executed affidavit certifying registration with the State  
of Florida, if applicable, and Orange County as a Pain

552 Management Clinic, or certifying that the business activity  
 554 does not meet the local definition of Pain Management  
 556 Clinic or does not otherwise require registration as a Pain  
 Management Clinic prior to the Business Tax Receipt  
 application being sent to the County Zoning Division.

<b>Local Business Tax Receipt Category Number</b>	<b>Description</b>
2711	Amusement Center
3001	Physician
3005	Dentist
3011	Massage Therapist (state certified)
3012	Chiropractor
3014	Ophthalmologist
3016	Psychologist
3020	Miscellaneous professional
3100	Miscellaneous
3110	Consulting
3200	Retail store
3502	Wholesale
5000	Business

558 (b) Any applicant’s application for a Business  
 560 Tax Receipt and executed affidavit relating to use as a Pain  
 562 Management Clinic, where applicable, shall be provided to  
 the County Zoning Division at the time of zoning  
 classification review of a proposed use.

564 **Sec. 2-468. Regulation of Pharmacies.**

566 (a) All Pharmacies shall be subject to the  
 568 following supplemental regulations:

570 (1) *Identification Requirement.* Prior to  
 572 filling or dispensing any prescription for a Dangerous  
 574 Drug, for or to a person for whom verification of insurance  
 576 or health plan coverage through a state-licensed insurance  
 578 company has not been done, a Pharmacist or the  
 Pharmacist’s agent shall require and photocopy, scan, or  
 580 otherwise digitally record at least one (1) form of  
 582 identification of the patient for whom the medication is  
 prescribed or, if a minor, the minor’s parent or guardian.  
 Identification shall be also obtained and recorded in the  
 same manner from the person who picks up or obtains the  
 Dangerous Drugs, if not the same person for whom the  
 Dangerous Drugs are prescribed. Such identification shall  
 consist of an original or certified copy of one of the

584 following and must include a photograph of the applicant  
and have both the applicant's full name and date of birth:

- 586 a. Current driver's license;
- 588 b. Current federal or state issued  
identification card;
- 590 c. United States valid Passport  
or Passport Card;
- 592 d. Unexpired foreign passport  
with valid, unexpired United  
594 States visa affixed  
accompanied by the approved  
I-94 form documenting  
596 applicant's most recent  
admittance to the United  
598 States;
- 600 e. Valid United States  
Citizenship and Immigration  
602 Services (USCIS) documents  
(Certificate of Naturalization,  
604 Certificate of Citizenship,  
and/or Permanent Resident  
Card);
- 606 f. Military ID or dependent card  
with photograph; or
- 608 g. State or Federal government  
employee identification card  
610 with name and photograph  
and/or physical description  
612 with or without a date of  
birth.

614 (2) *Verification of Prescription.* Prior to  
616 filling a prescription for a Dangerous Drug about which the  
Pharmacist has any reasonable cause to doubt the validity  
618 of the prescription, a Pharmacist or the Pharmacist's agent  
shall personally contact the prescribing physician or the  
620 prescribing physician's agent in order to verify the  
prescription. Based on the contact, the Pharmacist or  
622 pharmacist's agent shall document in writing the date and  
name of contact.

624 (3) *Records.* A Pharmacy shall keep  
626 records of all prescription fills in compliance with section  
893.07, Florida Statutes, for no less than two (2) years and  
628 records of Dangerous Drug prescription fills shall be made  
available to law enforcement or code enforcement within

630 seventy-two (72) hours of the request and which shall  
632 include:

- 634 a. All information required by  
636 section 893.07, Florida  
638 Statutes;
- 640 b. Copies of all personal  
642 identification obtained by the  
644 Pharmacist in compliance  
646 with this Article; and
- 648 c. If applicable, all written  
650 verification records required  
652 in this Article.

646 In the event that a records  
648 request is made by code  
650 enforcement personnel, the  
652 Pharmacist shall redact all  
654 identifying information of the  
656 patient or person who  
658 requested mediation before  
660 providing the requested  
662 records in compliance with  
664 this section; provided  
666 however, this requirement to  
668 redact does not apply to  
670 lawful requests by law  
672 enforcement personnel.

660 (4) *Pharmacist compensation.* It shall be  
662 unlawful to pay any Pharmacist a bonus, incentive  
664 compensation, or reward solely for filling a prescription for  
666 a specific Dangerous Drug.

666 (5) *Compliance with other laws.* A  
668 Pharmacy shall at all times be in compliance with all  
670 federal and state laws and regulations and the Orange  
672 County Code.

670 (b) *Separation distances.* A new Pharmacy shall  
672 not co-locate on the same property as a preexisting Pain  
674 Management Clinic; provided, however, that an Applicant  
676 for a new Pharmacy may request a variance from the  
678 requirements of this paragraph as provided in section 30-43  
680 of this Code.

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**Sec. 2-469. Prescription Drug Monitoring Program.**

(a) *Requirement of prescribing physician or physician's agent to check Prescription Drug Monitoring Program.* Medication shall only be prescribed on the business premises and shall only be prescribed during regular office hours. Within 24 hours prior to prescribing any Dangerous Drug to a patient, the prescribing physician or physician's agent shall access the information for the purpose of reviewing the patient's controlled drug prescription history in the Prescription Drug Monitoring Program described at section 893.055, Florida Statutes.

(b) *Requirement of pharmacist or pharmacist's agent to check Prescription Drug Monitoring Program.* Prior to dispensing any Dangerous Drug for or to a person for whom verification of insurance or health plan coverage through a state-licensed insurance company has not been done, the dispensing Pharmacy shall access the information in the Prescription Drug Monitoring Program for the purpose of reviewing the patient's controlled drug prescription history and shall report the Dangerous Drug dispensed and to whom the Dangerous Drug will be dispensed in the Prescription Drug Monitoring Program described at section 893.055, Florida Statutes.

(c) *When the Prescription Drug Monitoring Program is not available.* Compliance with the requirements of sub-sections (a) and (b) is not required before prescribing or dispensing dangerous drugs if the Prescription Drug Monitoring Program is not available, or does not reasonably respond, and three good-faith but unsuccessful attempts have first been made to access and review the state-maintained Prescription Drug Monitoring Program. A record of the dates and times of such attempts to access the state maintained Prescription Drug Monitoring Program shall be kept and maintained for 24 months. A Pain Management Clinic shall also include such log information with the daily summary record required in this ordinance.

**Sec. 2-470. Applicability.**

This article shall be applicable in both the unincorporated and incorporated areas of Orange County, except that this article shall not be applicable within a

724 municipality if the municipality maintains an ordinance  
726 covering subject matter, activity, or conduct. To the extent  
728 that this ordinance is applicable within a municipality, the  
730 County and the municipality shall have concurrent  
authority and jurisdiction to apply and enforce the  
ordinance within the entirety of their jurisdictional  
boundaries.

732 **Sec. 2-471. Penalties.**

734 Unless otherwise provided herein, violations of this  
736 Article shall be punishable in accordance with Section 1-9  
738 of the Orange County Code. In addition, the County may  
bring any other action available at law or equity to penalize  
or enjoin violations of this Article.

740 **Sec. 2-472 – Sec. 2-475. Reserved.**

742 **Section 3. Amendments to Section 38-1.** Section 38-1, Orange County Code,  
the definition sections, is hereby amended by revising the definition of the term “clinic”  
744 and by creating a definition for the term “Pain Management Clinic,” respectively to read  
as follows, with strikethroughs indicating deletions and underlines showing additions:

746 *Clinic* shall mean an establishment where patients  
748 who are not lodged overnight are admitted for examination  
and treatment by one (1) person or a group of persons,  
750 practicing any form of healing or health building services  
to individuals, whether such persons be medical doctors,  
752 chiropractors, osteopaths, chiroprodists, naturopaths,  
optometrists, dentists, or any such profession the practice of  
754 which is lawful in the state, excluding pain management  
clinics.

756 *Pain Management Clinic* means any privately-  
758 owned clinic, facility or office, whatever its title, including  
but not limited to a “wellness center,” “urgent care  
760 facility,” or “detox center,” which has at least one of the  
following characteristics:

762 5. Where a physician practices who issues  
764 prescriptions for a Dangerous Drug to more than twenty  
(20) patients in a single day;

766                   6.     It holds itself out through a sign or  
768                   advertising in any medium as being in business to prescribe  
or dispense pain medication whether for Acute Pain or  
770                   Chronic Pain;

772                   7.     It holds itself out through a sign or  
advertising in any medium as being in business to provide  
774                   services for the treatment or management of pain and  
where the services are also accompanied with the  
776                   prescription or dispensing of a Dangerous Drug for the  
treatment of pain, whether Acute Pain or Chronic Pain; or

778                   8.     It meets the definition of Pain Management  
780                   Clinic in section 458.3265, Florida Statutes, as may be  
amended from time to time, or is registered as a Pain  
782                   Management Clinic with the State.

784                   Exceptions. A business is not a Pain Management  
Clinic if it has at least one of the following characteristics:

786                   1.     Licensed as a hospital or other licensed  
788                   facility pursuant to Chapter 395, Florida Statutes, as may  
be amended;

790                   2.     The majority of the physicians who provide  
792                   services in the clinic primarily provide surgical services;

794                   3.     Affiliated with an accredited medical school  
at which training is provided for medical students,  
796                   residents, or fellows;

798                   4.     Does not prescribe or dispense controlled  
substance for the treatment of pain; or

800                   5.     Operated for the sole purpose of serving a  
802                   governmental entity.

804                   In all other respects, section 38-1 shall remain unchanged.

806                   **Section 4.     Amendment to Section 38-77.** In Section 38-77, Orange County  
808                   Code, the Use Table, is hereby amended to add “Pain Management Clinic” to the Use  
Table with underlines showing additions as follows:

Uses Per Zoning Code	SIC Group	Land Use	A-1	A-2	A-R	RCE-5	RCE-2	RCE	R-1AAAA	R-1AAA	R-1AA	R-1A	R-1	R-2	R-3	Cluster
pain management clinic																

RT	RT-1	RT-2	P-O	C-1	C-2	C-3	I-1A	I-1, I-5	I-2, I-3	I-4	U-V (see 29)	R-L-D	UR-3	NC	NAC	NR	Conditions
										P							

810

In all other respects, section 38-77 shall remain unchanged.

812            **Section 5.      Effective Date.** This Ordinance shall become effective on \_\_\_\_, 2011.

814

**ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2011.**

816

**ORANGE COUNTY, FLORIDA**  
By: Board of County Commissioners

818

By: \_\_\_\_\_  
Teresa Jacobs  
County Mayor

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ATTEST: Martha O. Haynie, County Comptroller  
As Clerk of the Board of County Commissioners

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By: \_\_\_\_\_  
Deputy Clerk

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