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June 24, 2011

TO: State Medical Board of Ohio

FROM: Eric A. Jones, J.D., M.B.A.
Law Office of Eric A. Jones, LLC &
Ohio Osteopathic Association

RE: Proposed Rule 4731-29-01

Dear Members of the Board:

On behalf of the Ohio Osteopathic Association, I am pleased to have the opportunity to share our concerns about the Standard and Procedures for the Operation of a Pain Management Clinic in rule 4731-29-01. While the members of the Ohio Osteopathic Association support the intent of this rule to eliminate prescription drug abuse in Ohio, we believe that it places unfair restrictions on trade, creates arbitrary threshold requirements, and will have vast and undesired effects on physicians, Ohio workers, Ohio employers and the Ohio Bureau of Workers' Compensation ("BWC"). These undesired effects can be minimized if injured workers covered by the BWC are excluded from the "majority of patients" calculation contained in the definition of a "pain management clinic" in A(5)(B) of 4731-29-01.

The Ohio BWC administers over 1.2 million claims annually and covers workers' compensation insurance for over 260,000 Ohio employers. The BWC is a state insurance pool that is funded by Ohio businesses to treat workers injured on the job. By definition, industrial claims require a physical injury or occupational disease and almost always require some degree of treatment for pain. The BWC requires that each specific condition must be expressly recognized in a claim in order for treatment to be approved. The Ohio BWC system for treating injured workers is unique, and in fact adversarial. There is no other set or group of patients in Ohio that have their treatment and medications for pain more heavily scrutinized for appropriateness than injured workers. The BWC, Ohio employers and injured workers all have a vested interest in patients receiving appropriate care in a timely

manner so they may recover and be well enough to return to work, this rule as written will work contrary to this objective.

The Ohio BWC system has multiple levels of safeguards to ensure that injured workers are not receiving pain medications inappropriately. First, the injured worker must prove that he or she in fact sustained a physical injury and that it is work related. Without passing this first level of scrutiny no treatment or medications are approved. All industrial claims that are filed are reviewed by the BWC and the injured worker's employer and/or the employers' TPA. If there is any doubt about the validity of an alleged injury an administrative hearing will be held by the Industrial Commission where all medical records and related documents can be thoroughly reviewed and witnesses examined.

If an injury is sufficiently proven and the claim is allowed, the BWC and the employer have the opportunity to review all treatment and medications throughout the life of the claim. The BWC's claims management personnel are trained to review claims and use independent medical examiners to address any issues related to treatment for pain and can approve or deny such treatment or medications based on these reviews. The BWC's own P&T Committee has designed further prior authorization requirements to ensure that injured workers only receive appropriate pain medication.

The employer also has the right to appeal any treatment for pain that appears unwarranted or excessive. The employer also has the right to have any request for treatment subjected to an independent medical review and they have TPAs specifically to assist them with such reviews and appeals. It is not uncommon to have numerous hearings in a single claim. Furthermore, if the employer is dissatisfied with the outcome at the hearing, it has a right to a second level hearing and a discretionary third level hearing. If the administrative hearings are exhausted, the employer may appeal the decision in the court of common pleas.

The providers caring for injured workers must be "BWC Certified" based on their licensing, certifications, accreditations and a host of other requirements. Many of Ohio's physicians do not meet the qualifications to become BWC certified. Others have simply elected not to be BWC certified due to the vast layers of administrative requirements just mentioned. Treating injured workers involves significantly more paperwork and bureaucracy than any other insurance program and often requires additional staff just to manage the BWC paperwork. The reality is that physicians typically treat a substantial number of injured workers or none at all, thereby limiting the number of physicians injured workers may see. Similarly, although many physicians will be able to meet the qualifications to operate pain management clinics, they will not seek that designation for a number of reasons.

Counting injured workers covered by the BWC in the calculation of what constitutes a "pain management clinic" will necessarily require BWC Certified physicians to discharge current patients and refuse to accept new injured worker patients to remain under the arbitrary "majority of patients" threshold. This will inevitably result in a crisis for Ohio workers, Ohio employers and the BWC. It will cause injured workers to be off work much longer than they otherwise would have been and drive up the cost of BWC claims, employer premiums and the cost of doing business in this state.

I can personally attest to the challenges that thousands of pain patients face every day in trying to live productive lives. Over a year ago, I was involved in an accident that broke both of my legs and shattered my right heel. After having multiple surgeries and a year of rehabilitative therapy, both of my surgeons and my family physician agreed that I will likely suffer from pain every time I step down on my right foot for the rest of my life. I was referred to a pain management specialist in Columbus. At my first visit the physician wanted to prescribe me a stronger pain medicine than what I had been taking and scheduled me to have a diagnostic sympathetic nerve block at a surgical center. At the surgical center, the physician was unable to successfully position the needle to block the sympathetic nerve yet my bill was nearly \$2000. At my follow-up appointment, rather than attempting the sympathetic nerve block again, I was told that I needed to have a spinal cord stimulator implanted, which would cost several thousand dollars and may or may not alleviate my pain. While I do not fault them, it is my personal experience that many pain management specialists prefer to perform costly invasive procedures that generate revenue rather than simply writing prescriptions and monitoring how many pills each patient is taking.

After missing work on four occasions, undergoing a surgical procedure and incurring a couple thousand dollars in medical bills I still had no relief. I explained the situation to my family physician, he referred me to another pain management specialist to get a second opinion. I contacted the specialist's office on June 6 and am not able to get an appointment until July 12. I am able to wait this long, but I fear many patients with jobs more physically demanding than mine or conditions more severe than mine will not wait. The wait time in rural areas will likely be much longer. Pain is a significant motivator and injured workers with legitimate needs will flood emergency rooms, cross state lines for prescriptions, or engage in illegal activities to alleviate their pain.

By definition, injured workers have sustained painful injuries, most of which require short-term treatment for pain in conjunction with treating their actual injuries and underlying complicating conditions. Counting workers treating for industrial injuries in the "pain management clinic" definition calculation will result in a shortage of providers to treat these patients in Ohio. It will prolong the time it takes injured workers to get back to their jobs, increase absenteeism, increase the

cost of almost every industrial claim and increase the cost of doing business in Ohio. Excluding injured workers treating for industrial injuries from this calculation will continue to serve the intent of this rule and curb prescription drug abuse. The Ohio BWC program and its 2200 employees have created numerous safeguards to prevent prescription drug abuse and employers are closely monitoring their employees' claims.

We urge you to consider the ramifications of counting injured workers in the calculation of "majority of patients" defining a pain management clinic will have on Ohio, its workers and its employers.

Thank you for your attention and consideration.

Respectfully,

Eric A. Jones, J.D., M.B.A.