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Human Resources Development Institute, Inc.
222 South Jefferson Street * Chicago, Illinois 60661
Tel. (312) 441-9009 FAX: (312) 441-9019 http://www.hrdi.org

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The Symbol of Quality

March 31, 2009

Judge Ricardo H. Hinojosa
Acting Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Washington, D.C. 20002-8002

Dear Judge Hinojosa:

On behalf of Human Resources Development Institute, Inc. (HRDI), and the citizens we serve, I am writing to share my concerns regarding current sentencing policies and practices related to the illegal distribution of Schedule III-V controlled substances.

HRDI draws on nearly four decades of substance abuse treatment to inform its policy research and recommendations. Our 2009 National Prescription Drug Abuse Prevention Strategy, distributed to the Drug Enforcement Administration (DEA) and the U.S. Congress, highlights the contribution of "rogue" online pharmacies to prescription medication diversion and abuse.

The number of people abusing prescription medications has more than doubled over the past decade, accompanied by an increase in overdoses and admissions to treatment facilities associated with abuse of these drugs. So-called "rogue" online pharmacies, more accurately described as online drug traffickers, are an important source of the unlawful diversion that fuels prescription drug abuse. According to DEA testimony, 34 known or suspected rogue Internet pharmacies dispensed enough dosage units of hydrocodone (a Schedule III substance) in 2006 to supply over 410,000 actual patients with a one-month supply at the maximum amount recommended per prescription.

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 increased the maximum penalties possible for illegal distribution of such controlled substances; however, it remains the responsibility of the United States Sentencing Commission to establish whether sentencing guidelines for the federal courts should be increased to match this new law.

There is an urgent need for such an increase, as current sentencing guidelines – established before the passage of the Ryan Haight Act – set extremely low

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penalties for the illicit sale of controlled substances. The sentencing structure as it stands not only fails to serve as an effective deterrent for online drug traffickers, but may actually provide an incentive for them to sell as much product as possible, given that the maximum sentences do not increase with the number of dosage units distributed.

For example, under the current sentencing guidelines, the penalty cap for Schedule III controlled substances cannot exceed 33-41 months, no matter how many dosage units a trafficker (with no criminal history) is convicted of distributing. These penalties are out of all proportion to the public health threat posed by online prescription drug traffickers, especially when compared with the significant jail sentences faced by their street-corner drug dealer counterparts.

The passage of the Ryan Haight Act was an important step in ensuring that online pharmacies operate within the law and the boundaries of standard medical practice. Unless the Sentencing Commission updates the sentencing guidelines for federal courts to reflect the increased maximum penalties established by the Act, however, unscrupulous online traffickers will not be deterred from continuing to distribute large quantities of increasingly abused substances.

I would be more than happy to discuss this subject further, and share with you my own experience and knowledge of the issues involved.

Very truly yours,

Andrea G. Barthwell

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CEO