

STATE OF NORTH CAROLINA BY ~~SS~~ **IN THE GENERAL COURT OF JUSTICE**
WAKE COUNTY **SUPERIOR COURT DIVISION**
FILE NO. 23CV015775-910

MIKE CAUSEY,)
COMMISSIONER OF INSURANCE)
OF NORTH CAROLINA,)

Petitioner,)

TRANSITIONAL ORDER OF
REHABILITATION,
AN ORDER OF LIQUIDATION, ORDER
APPOINTING RECEIVER AND ORDER
GRANTING INJUNCTIVE RELIEF

v.)

FRIDAY HEALTH PLANS OF)
NORTH CAROLINA, INC.,)
A North Carolina Domiciled)
Insurance Company,)

Respondent.)

THIS CAUSE came to be heard and was heard on June 22, 2023, before the undersigned Judge presiding over the Superior Court of Wake County, North Carolina, upon the Verified Petition filed herein on behalf of the State of North Carolina by the Petitioner Mike Causey, Commissioner of Insurance of the State of North Carolina (“Petitioner”), seeking the entry of a Transitional Order of Rehabilitation and an Order of Liquidation against Friday Health Plans of North Carolina, Inc. (“Respondent”), appointment of a Receiver of Respondent and injunctive relief. Based upon the evidence presented, and the arguments and representations of counsel, the Court makes the following:

FINDINGS OF FACT

- I. The Petitioner is the Commissioner of Insurance of the State of North Carolina.

2. The Respondent is a health maintenance organization (“HMO”) as defined in Chapter 58 of the General Statutes of North Carolina, with its principal place of business located at 700 Main Street, Alamosa, Colorado.

3. The Respondent has been under the administrative supervision of the Department of Insurance since April 7, 2023.

4. The Respondent’s Amended First Quarter Statement and the Amended First Quarter RBC Report, as of March 31, 2023, shows that the liabilities of FHP-NC, calculated in accordance with statutory accounting principles, exceed its assets by \$2,725,562, and Respondent is therefore insolvent within the meaning of N.C. Gen. Stat. §§ 58-30-10(13) and 58-30-100(2).

5. The Respondent is in such condition that the further transaction of its business would be hazardous financially to its policyholders, creditors, or the public.

6. Respondent consents to being placed into rehabilitation for a period of at least sixty (60) days, the appointment of Petitioner as receiver, and the entry of an injunction. The Consent of Respondent’s Board of Directors is attached to the Petition.

7. Sufficient grounds for the appointment of Petitioner as Liquidator of Respondent have been shown under the provisions of N.C. Gen. Stat. Chapter 58, Article 30.

8. The Petitioner is entitled to appointment as liquidator of Respondent under the provisions of N.C. Gen. Stat. Chapter 58, Article 30.

9. Each state where Respondent is or was licensed to engage in the business of insurance has established a life and health insurance guaranty association (“Guaranty Association”) to provide protection to policyholders and beneficiaries of insurance products in the event an HMO, such as Respondent, is placed into liquidation with a finding of insolvency, subject to certain statutory limits, as provided for in the state legislation creating each such Guaranty

Association (referred to herein as “GA Enabling Act(s)”). See e.g. N.C. Stat. § 58-62-2 et seq., (establishing the North Carolina Life and Health Insurance Guaranty Association).

10. Upon entry of the requested Order of Liquidation with a finding of insolvency, the applicable Guaranty Associations shall provide continuing coverage related to Respondent’s policies pursuant to the provisions of each such Guaranty Association’s GA Enabling Act.

CONCLUSIONS OF LAW

I. The Petitioner is the Commissioner of Insurance of the State of North Carolina, and the Petitioner has initiated this action in his official capacity on behalf of the State of North Carolina pursuant to N.C. Gen. Stat. §§ 58-30-15, 58-30-20, 58-30-22, 58-30-25, 58-30-60, 58-30-71, 58-30-75, 58-30-80, 58-30-85, 58-67-105, 58-67-145 and Article 38 of Chapter I of the North Carolina General Statutes by filing a Verified Petition for a Transitional Order of Rehabilitation, an Order of Liquidation, an Order Appointing Receiver, and Injunctive Relief and summons with the Clerk of Superior Court of Wake County.

2. This matter is now subject to the provisions of the Article 30 of Chapter 58 of the North Carolina General Statutes.

3. Grounds for the entry of a Transitional Order of Rehabilitation and an Order of Liquidation and Injunctive Relief have been demonstrated by the Petitioner.

4. The Petitioner is entitled to appointment as Rehabilitator and Liquidator under the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

TRANSITIONAL REHABILITATION ORDER

I. Mike Causey, Commissioner of Insurance of the State of North Carolina, is HEREBY APPOINTED as Rehabilitator of the Respondent, Friday Health Plans of North

Carolina, Inc., pursuant to the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes until August 31, 2023, or such later date as the Court approves upon written request of the Rehabilitator.

2. Pursuant to Article 30 of Chapter 58 of the North Carolina General Statutes, title to all assets of the Respondent is hereby vested in the Rehabilitator; and the filing or recording of this Order with the Clerk of the Superior Court and the Register of Deeds of the County in which the Respondent's principal office or place of business is located; or, in the case of real estate, with the Register of Deeds of the county where the real property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds, would have imparted.

3. The Rehabilitator is hereby authorized, empowered and directed to take into his possession and control all property, stocks, bonds, securities, bank accounts, savings accounts, monies, accounts receivable, books, papers, records, data bases, printouts and computations, whether stored by microfilm, electronic, optical, magnetic or other means, whether stored in tapes, disks, or other media, and all other assets of any and all kinds and nature whatsoever belonging to the Respondent, wherever located, and to conduct Respondent's business and administer Respondent's assets and affairs under the general supervision of this Court.

4. The Rehabilitator is hereby vested with all other powers, authority, and duties provided by Article 30 of Chapter 58 of the North Carolina General Statutes.

5. Pursuant to N.C. Gen. Stat. § 58-30-85, the Rehabilitator is hereby authorized to appoint a Special Deputy Rehabilitator to act for the Rehabilitator in connection with this delinquency proceeding against the Respondent and that said Special Deputy Rehabilitator is authorized to employ at the prevailing customary rates such counsel, clerks or assistants as the

Rehabilitator or said Special Deputy Rehabilitator shall deem to be necessary, or to utilize State employees for said purposes if he has determined that the use of State employees to conduct certain aspects of the rehabilitation is the most cost effective method of administering this delinquency proceeding and that this action benefits the estate and its creditors; and the said Rehabilitator or Special Deputy Rehabilitator are further authorized to obtain such bonds, errors and omissions type insurance, or excess liability insurance in addition to any such insurance that may be already provided for employees of the North Carolina Department of Insurance, as a reasonably prudent person charged with the Rehabilitator's duties would deem to be appropriate; and that all expenses of taking possession of Respondent and of conducting the delinquency proceedings against Respondent, shall be paid out of the funds of the Respondent pursuant to N.C. Gen. Stat. § 58-30-85.

6. The Rehabilitator is authorized, empowered and directed to incur such expenses for communication and traveling expenses for himself, his agents or attorneys as may be necessary in the proper administration of his duties as Rehabilitator and also to incur such other expenses as the Rehabilitator may deem advisable or necessary in order to properly conduct and perform his duties as Rehabilitator.

7. The Rehabilitator is authorized to notify state or federal regulators of this action.

APPOINTMENT OF RECEIVER

8. Mike Causey, Commissioner of Insurance of the State of North Carolina, is HEREBY APPOINTED as Receiver of the Respondent, pursuant to the provisions of Article 38 of Chapter I of the North Carolina General Statutes. Said Receiver is hereby vested with such other powers, authority, and duties as are provided by Article 38 of Chapter I of the North Carolina General Statutes.

ORDER OF LIQUIDATION

9. Mike Causey, Commissioner of Insurance of the State of North Carolina, is HEREBY APPOINTED as Rehabilitator of the Respondent, Friday Health Plans of North Carolina, Inc., pursuant to the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes until August 31, 2023, or such later date as the Court approves upon written request of the Rehabilitator.

10. The grounds asserted by Petitioner included that Respondent is insolvent within the meaning of N.C. Gen. Stat. §§ 58-30-10(I3) and 58-30-100(2) and in such a condition that the further transaction of business would be hazardous, financially, or otherwise, to its policy holders, its creditors or the public.

11. Respondent is subject to the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes.

12. Respondent's directors have not appeared pursuant to N.C. Gen. Stat. §58-30-95 or opposed the Verified Petition and no other appearance or opposition has been filed with the Court.

13. Sufficient grounds for the appointment of Petitioner as Liquidator of Respondent have been shown under the provisions of Article 30 of Chapter 58 of the General Statutes.

14. The Petitioner is entitled to appointment as Liquidator of Respondent under the provisions of N. C. Gen. Stat. Chapter 58, Article 30.

APPOINTMENT OF LIQUIDATOR

15. Mike Causey, Commissioner of Insurance of the State of North Carolina, including his successors in office is HEREBY APPOINTED as Liquidator of Respondent, Friday Health Plans of North Carolina, Inc., pursuant to the provisions of Article 30 of Chapter 58 of the North

Carolina General Statutes as Liquidator is vested with all duties, powers, authorities and obligations as are provided by Article 30 of Chapter 58 of the North Carolina General Statutes.

TITLE OF ASSETS AND RECORDED NOTICE OF TITLE

16. The Liquidator is vested with the title to all of the property, contracts, rights of action, books, records and assets of Respondent and that the filing or recording of this Order with the Clerk of Superior Court and the Register of Deeds of the county in which Respondent's principal office or place of business is located; or, in the case of real estate, with the Register of Deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title filed or recorded with that Register of Deeds, would have imparted.

17. The Liquidator is authorized, empowered and directed to take into his possession and control all property, causes of action, stocks, bonds, securities, bank accounts, savings accounts, monies, accounts receivable, books, papers, records, data bases, printouts and computations, whether stored by microfilm, electronic, optical, magnetic or other means, whether stored in tapes, disks, or other media, and all other assets of any and all kinds and nature whatsoever belonging to the Respondent, wherever located, and to conduct Respondent's business and administer Respondent's assets and affairs under the general supervision of this Court.

18. The Liquidator is vested with all power, authority, and duties as are provided by Article 30 of Chapter 58 of the North Carolina General Statutes and with the powers and duties of a receiver under all other applicable laws of the State of North Carolina.

19. Pursuant to N.C. Gen. Stat. §58-30-120, the Liquidator is authorized to appoint one or more Special Deputy Liquidators to act for the Liquidator in connection with the delinquency proceedings against Respondent and that said Special Deputy Liquidator(s) are authorized to employ and discharge at the prevailing customary rates such counsel, clerks or assistances as the

Liquidator or said Special Deputy Liquidator(s) shall deem to be necessary, or to utilize State employees for said purposes if he has determined that the use of State employees to conduct certain aspects of the liquidation is the most cost effective method of administering the delinquency proceeding and that this action benefits the estate and its creditors; and said Liquidator or Special Deputy Liquidator(s) are authorized to obtain such bonds, errors and omissions type insurance, or excess liability insurance in addition to any such insurance that may be already provided for employees of the North Carolina Department of Insurance, as a reasonably prudent persons charged with the duties would deem to be appropriate, and that all expenses of taking possession of and administering and conserving Respondent, its assets and property, and of conducting the delinquency proceedings against Respondent and otherwise dealing with its business and property, whether incurred by or at the direction of the Rehabilitator of the remaining Respondents or any Special Deputy Rehabilitator or the remaining Respondents or by the Liquidator and any Special Deputy Liquidator(s), shall be paid out of the funds or assets of Respondent pursuant to N.C..Gen. Stat. §§ 58-30-85(a)(4) and 58-30-120(a)(4) and considered class-one claims und N.C. Gen. Stat. § 58-30-220(I), and all in accordance with Article 30 of Chapter 58 of the North Carolina General Statutes.

20. The Liquidator is authorized, empowered and directed to incur such expenses for communication and traveling expenses for himself, his agents or attorneys as may be necessary in the proper administration of his duties as Liquidator and also to incur such other expenses as the Liquidator may deem advisable or necessary in order to properly conduct and perform his duties as Liquidator and that any compensation and expenses paid by the Liquidator be reported to the Court and approved on an interim basis subject to the jurisdiction of the Court to approve the amounts of final compensation and expenses.

21. The Petitioner, as Liquidator, is authorized to notify state or federal regulators of this action and to take any action relating to the licenses or certificates of Respondent as may be required to carry out the Liquidation.

22. As of the effective date of this Order of Liquidation, the rights and liabilities of Respondent and of Respondent's creditors, policyholders, shareholders, members and all other persons interest in its estate shall become fixed except as otherwise provided in the North Carolina Insurance Law. Pursuant to N.C. Gen. Stat. § 58-30-110, Respondent policies of life or health insurance or annuities shall continue in force for such period and under such terms as provided for by any applicable GA Enabling Acts.

23. Respondent is hereby placed in liquidation.

24. This Court has sole and exclusive jurisdiction over this matter pursuant to N.C. Gen. Stat. § 58-30-15, is vested with the exclusive original jurisdiction of delinquency proceedings for Respondent, and is authorized to make all necessary and proper orders to carry out the purposes of Article 30 of Chapter 58 of the North Carolina General Statutes, including but not limited to determining all suits or motions related to Respondent assets, claims against Respondent, the enforcement of this Order or any litigation related to Respondent or the Liquidator and his deputies, agents, employees or representatives, all of which shall be determined solely and exclusively in this liquidation proceeding.

25. Venue for these delinquency proceedings is proper in this Court pursuant to N.C. Gen. Stat. §58-30-15.

APPOINTMENT OF RECEIVER

26. Mike Causey, Commissioner of Insurance of the State of North Carolina, and his successors in office, is HEREBY APPOINTED as Receiver of the Respondent, as provided by the North Carolina Insurance Law.

INJUNCTION AGAINST INTERFERENCE
WITH REHABILITATION AND LIQUIDATION

27. Injunctive relief pursuant to N.C. Gen. Stat. § 58-30-20 is HEREBY GRANTED prohibiting any person from interfering in any manner with the property or assets of Respondent or with said Rehabilitator/Liquidator in the performance of his duties, and further enjoining and restraining any person from instituting or prosecuting any suit or other action against the Rehabilitator/Liquidator or the Respondent's property except by the prior permission of this Court first had and obtained; a stay is hereby granted prohibiting all persons, firms and corporations with notice of this Court's Order from obtaining preferences, judgments, attachments, garnishments, or liens against Respondent or its assets, or the levying of execution or foreclosure against Respondent or its assets, until further order of the Court; Respondent, its trustees, officers, directors, agents, employees, or third party administrators, and all other persons are enjoined or restrained from the disposition, waste or impairment of any of Respondent's property, assets, or records; the transaction of further business of Respondent is enjoined unless supervised and approved by the Rehabilitator or his agents or deputies, until further order of the Court; all such persons are ordered to transfer to the Rehabilitator any and all property of Respondent wheresoever situated, and Respondent, its trustees, officers, agents, servants, employees, third party administrators, directors or attorneys are enjoined and restrained from doing or permitting to be done anything which may allow or suffer the obtainment of preferences, judgments, attachments or other liens, or the initiation of a levy against Respondent, without permission of this Court.

28. Any and all pending actions in which the Respondent is a defendant shall be stayed for 120 days pursuant to N.C. Gen. Stat. §58-30-90(a).

ACCOUNTING AND REPORTING

29. Until further order of this Court, Pursuant to N.C. Gen. Stat. § 58-30-80(b), the Rehabilitator shall make quarterly reports to the undersigned Judge of Wake County Superior Court; the Rehabilitator shall include in said report a statement of receipts and disbursements to date and a balance sheet; that this report shall be filed in duplicate; one copy shall be filed with the Clerk of Superior Court and one copy shall be submitted to the Judge presiding over the rehabilitation.

COMMISSIONER'S BOND

30. The official bond of the Petitioner, the Commissioner of Insurance of the State of North Carolina, shall be sufficient to serve for the faithful performance of his duties and obligations herein impose.


EFFECTIVE DATE OF ORDER OF LIQUIDATION

31. This Order shall be effective as of September 1, 2023, or such later date as the Court approves upon written request of the Petitioner.

32. The Court hereby directs that notice be given to creditors and others of the entry of this Order, as required by N.C. Gen. Stat. §58-30-125.

33. The Court retains jurisdiction of this matter for the determination of such further matters in connection with this liquidation that may properly come before the Court.

July 16, 2023



The Honorable A. Graham Shirley, II
Superior Court Judge Presiding

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