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STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT

STATE OF WYOMING ex rel., the Honorable)
Tom Glause, Wyoming Insurance Commissioner)
)
Petitioner,)
)
v.)
)
WINHEALTH PARTNERS,)
)
Respondent.)

Docket No. _____

184-929
FILED

OCT 21 2015

DIANE SANCHEZ
CLERK OF THE DISTRICT COURT

**MOTION AND MEMORANDUM IN SUPPORT OF PETITION TO APPOINT
THE INSURANCE COMMISSIONER AS RECEIVER**

The State of Wyoming, on behalf of Insurance Commissioner Tom Glause, submits this motion and memorandum in support of its petition to appoint Commissioner Glause receiver of Winhealth Partners.

I. Introduction and Summary of Facts

This motion constitutes the Commissioner's application to place a financially impaired health maintenance organization into receivership under Wyoming's Uniform

Insurers Liquidation Act. Winhealth is a domestic Wyoming company with its principal place of business in Cheyenne, WY. It operates as a health maintenance organization under Wyo. Stat. Ann. § 26-34-101 through -134. Winhealth provides access to healthcare for thousands of Wyoming residents who count on its financial soundness to ensure their continued access to healthcare.

Winhealth has suffered a progressive financial deterioration for at least the past two to three years. (*See* Aff. of Joe Holloway.) The Commissioner appointed two special examiners from Regulatory Services Group, Mr. Joseph B. Holloway and Mr. Scott Pearce, to evaluate Winhealth's financial health. After reviewing Winhealth's books, the special examiners determined that Winhealth's financial status had deteriorated to the point that its ongoing transaction of business is hazardous to its enrollees and any potential enrollees. (*Id.* at 2-3, ¶ 11.)

The special examiners pointed specifically to Winhealth's lack of surplus to support their conclusions. (*Id.* at 2, ¶ 5.) For example, on December 31, 2013, Winhealth's approximate surplus was \$8,600,000. (*Id.*) By June 30, 2015, Winhealth's surplus had fallen to \$3,306,676, a number which is \$3,193,324 less than the minimum statutory surplus of \$6,500,000 Winhealth needed on the same date. (*Id.*) Winhealth's calculation that results in a surplus of \$3,306,676 includes an asset payable by the federal government under the Affordable Care Act that will no longer be paid in full. (*Id.* ¶ 8.) The asset is the Affordable Care Act's risk corridor payment program; critically, on October 1, 2015, the Center for Medicare and Medicaid announced that it would only pay 12.6% of Winhealth's expected payment. (*Id.*)

When the special examiners reduced the value of the risk corridor asset, Winhealth's surplus fell into the negative. (*Id.* ¶ 9.) The result is that Winhealth, as of August 31, 2015, had a surplus of negative \$742,216; in other words, Winhealth has no surplus. (*Id.*) Winhealth, under its current financial condition, will run out of money to operate in November if it continues at the current pace. (*Id.*) Winhealth, cognizant of its condition and in an effort to protect its enrollees, passed a board resolution consenting to receivership and waiving its right to a hearing to show cause under the Act. (*See* Winhealth Bd. Resolution.) As a result, the Commissioner petitioned this Court for an immediate order of receivership thereby allowing him to attempt to conserve and rehabilitate Winhealth. (Pet.'s Pet. at 4, ¶ 22.)

II. Legal Standard

Wyoming has adopted the Uniform Insurers Liquidation Act. Wyo. Stat. Ann. § 26-28-119(a). “The over-all purpose of the Uniform Act . . . is not only to preserve available assets for the benefit of creditors, but to protect the interest of persons who purchased insurance policies from a company which has become [impaired].” *Matter of Transit Cas. Ins.*, 588 N.E.2d 38, 42–43 (N.Y. 1992). It is the Wyoming Legislature's intent that the Act be “interpreted and construed as to carry out its general purpose to make uniform the law of those states that enact it.” Wyo. Stat. Ann. § 26-28-119(b). To that end, although Wyoming has little precedent under the Act, its interpretation in other states aids this Court in its application. *See id.*

The Act permits a court to appoint the Commissioner as receiver of an insurance company if it “is impaired or . . . is in unsound or such other condition . . . as to render its

further transaction of insurance hazardous or injurious to its policyholders.” Wyo. Stat. Ann. § 26-28-105(a), (a)(i). The Act grants the Court broad authority to issue injunctions or orders, including any “injunctions or orders deemed necessary to prevent interference with the: (i) Commissioner or the proceedings; [or] (ii) Waste of the insurer’s assets.” Wyo. Stat. Ann. § 26-28-104.

III. Analysis

The Act gives this Court authority to (A) appoint the Commissioner as receiver of Winhealth and (B) issue orders and injunctions to facilitate the Commissioner’s goal of rehabilitating Winhealth while protecting its enrollees and creditors. Wyo. Stat. Ann. §§ 26-28-104, -105.

A. Receivership

This Court should grant the Commissioner’s motion to place Winhealth into immediate receivership because Winhealth has waived its statutory right to a show cause hearing and has consented to receivership, and because Winhealth’s financial status is impaired.

The Act and several supplemental statutes govern the conservation, rehabilitation, or liquidation of insurers in Wyoming, Wyo. Stat. Ann. §§ 26-28-101 through -131, and it applies to companies operating as health maintenance organizations. Wyo. Stat. Ann. § 26-34-122(a). The Act is intended to make the process of rehabilitation uniform across the states that adopt the Act, provide an orderly process for rehabilitation, and protect creditors and policyholders. *See* Wyo. Stat. Ann. § 26-28-119(b); *Am. Star Ins. Co. v. Grice*, 865 P.2d 507, 510 (Wash. 1994). The Act prevents local creditors from seizing the

assets of an insurer while rehabilitation proceedings are administered, thereby ensuring that all creditors, regardless of their geographical location, are treated equally. *See* Wyo. Stat. Ann. § 26-28-118; *Ace Grain Co. v. Rhode Island Ins. Co.*, 107 F. Supp. 80, 82–83 (S.D.N.Y. 1952), *aff'd*, 199 F.2d 758, 758 (2d Cir. 1952).

The Act is specific about the commencement and course of proceedings. *See, e.g.*, Wyo. Stat. Ann. §§ 26-28-103, -105(a). The Commissioner initiates the proceeding by petition to the district court in the county where the insurer is located. Wyo. Stat. Ann. § 26-28-102(a)-(b), -103. A hearing to show cause is held to determine if receivership is appropriate, Wyo. Stat. Ann. § 26-28-105(a), although it can be waived by the insurer. *See Fewell v. Pickens*, 39 S.W.3d 447, 380 (Ark. 2001). Both consent by the insurer and financial unsoundness are justifiable reasons for a court to appoint the Commissioner as receiver. Wyo. Stat. Ann. § 26-28-105(a)(i), (v). Once appointed receiver, the Commissioner steps into the shoes of the insurer and is “vested by operation of law with the title to all of the insurer’s assets and property, contracts and right of action and all of its books and records.” Wyo. Stat. Ann. § 26-28-112(b). Creditors are prevented from reaching the insurer’s assets while rehabilitation proceeds. Wyo. Stat. Ann. § 26-28-118.

Here, immediate receivership is appropriate because Winhealth has consented to receivership, waived its statutory right to a show cause hearing, and is financially impaired. Winhealth’s Board of Directors passed a resolution that it would not oppose receivership and “specifically consents to and authorizes an Order of Receivership, waives [Winhealth’s] opportunity to appear and show cause, and consents to the appointment of the Insurance Commissioner as Receiver.” Additionally, Winhealth’s financial health has

been in a state of decline for, at a minimum, the past two to three years. Winhealth's surplus as of June 30, 2015, was required to be at least \$6,500,000; instead, Winhealth's own calculation of its surplus on that date was \$3,306,676. Critically, Winhealth's surplus fell into the negative once the federal government announced it would only pay 12.6% of the federal asset. The result is that there is no guarantee that a new policy written today will be paid by Winhealth next month absent the Act's safeguards. Indeed, Winhealth will run out of money to operate in November if it continues at the current pace.

Therefore, this Court should grant the Commissioner's motion for Winhealth to be placed into receivership immediately to protect Winhealth's enrollees and creditors.

B. Orders and Injunctions

The Act gives this Court authority to enter injunctions and orders to prevent interference with the Commissioner, this proceeding, or waste of Winhealth assets, and thus this Court should grant the Commissioner's requests for injunctions and orders.

The Act gives courts broad discretion to grant orders and injunctions to protect the individuals insured by an insurer and conserve the insurer's assets. Wyo. Stat. Ann. § 26-28-104. The Act permits a court, without notice, to enjoin individuals from conducting business on the impaired insurer's behalf, enjoin individuals from wasting or disposing of the impaired insurer's property, and enjoin individuals and creditors from attaching or enforcing liens against an insurer's assets. Wyo. Stat. Ann. §§ 26-28-104, -118; *see also Integrity Ins. Co. v. Martin*, 769 P.2d 69, 70 (Nev. 1989) ("The [Uniform Insurers Liquidation Act] authorizes the court in which a delinquency proceeding was instituted to enjoin all claims against the insurer . . .").

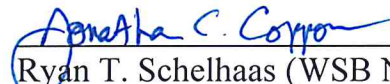
Here, the Commissioner seeks to conserve Winhealth's assets in an effort to rehabilitate the health maintenance organization and ensure that claims are paid. The Act is intended to assist the Commissioner in this effort by preventing creditors from taking an insurer apart piecemeal while rehabilitation proceeds. To that end, this Court has broad authority to grant the Commissioner's requested injunctions.

Therefore, this Court should grant the Commissioner's requested injunctions and relief in an effort to rehabilitate Winhealth.

IV. Conclusion

For the reasons stated above, the State of Wyoming, on behalf of Commissioner Tom Glause, respectfully requests that the Court grant its motion for receivership, order the requested injunctions and relief as stated in the petition, and provide any other relief the Court deems necessary.

DATED this 21st day of October, 2015.


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ATTORNEYS FOR STATE OF
WYOMING, EX REL., THE
HONORABLE TOM GLAUSE,
WYOMING INSURANCE
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of October, 2015, the foregoing was served by hand delivery to:

Matt J. Micheli
Holland & Hart
2515 Warren Ave., Suite 450
Cheyenne, WY 82001-3162
Counsel for Winhealth Partners


Office of the Attorney General

STATE OF WYOMING)
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AFFIDAVIT OF JOSEPH B. HOLLOWAY, JR.

Joseph B. Holloway, Jr., being first duly sworn, deposes and states of his own knowledge that:

1. I am a Certified Financial Examiner as designated by the Society of Financial Examiners and have over 26 years' experience in working with impaired/unsound insurance companies.

2. I am a 1985 graduate of North Carolina State University where I earned a Bachelor of Science degree in Accounting. I worked for 20 years for the North Carolina Department of Insurance in the examination and regulatory action divisions. I am currently employed by INS Consultants, Inc. and have been retained by Regulatory Services Group to work with state regulators on troubled insurers over the past 11 years as a consultant.

3. In September of 2015, Regulatory Services Group was retained to review the financial condition of Winhealth Partners by the Wyoming Insurance Department. I am providing this affidavit to summarize the findings of Regulatory Services Group's special examination.

4. Winhealth is a Wyoming domiciled health maintenance organization that received its certificate of authority to provide for health insurance coverage in 1996. Winhealth has experienced rapid growth in their earned premiums due to the Affordable

Care Act. The insurance premiums received by Winhealth have increased from \$29 million in 2013 to \$69 million in 2014 and is projected to receive \$93 million in insurance premiums in 2015.

5. Winhealth has suffered recurring losses due to their participation in the Affordable Care Act business including a \$2.4 million loss in 2014 and a \$2.5 million loss in the first six months of 2015. As a result of the recurring losses, Winhealth's reported surplus position has decreased from \$8.6 million on December 31, 2013 to \$3,306,676 on June 30, 2015.

6. The minimum required surplus per Wyo. Stat. Ann. § 26-34-114(b)(iv)(A) is \$6.5 million. Winhealth's surplus was below the required minimum (or impaired) by \$3.2 million on June 30, 2015.

7. Winhealth filed a balance sheet dated August 31, 2015 with the Wyoming Department of Insurance on October 1, 2015. The balance sheet showed a surplus after adjustment for not admitted assets of \$3.1 million.

8. On October 2, 2015, Winhealth was informed by the Center for Medicaid and Medicare Services (CMS) that a payment for the Center's Risk Corridor Program equal to 12.6% of the total receivable balance of \$4.6 million would be paid later this year. CMS indicated that there were not any additional funds available to pay the remaining Risk Corridor balance. The remaining receivable balance from CMS or \$3.9 million should be not admitted from the surplus of Winhealth because the recovery of the amount is uncertain and the balance will not be paid within 90 days of its due date and is ultimately unavailable to pay claims at this time.

9. The surplus per special examination after the adjustment for not-admitting the \$3.9 million balance due from CMS is a negative (\$742,000).

10. Winhealth's internal cash flow projections show that it will run out of cash in November of 2015.

11. The impaired surplus position and cash flow projections of Winhealth demonstrate that it is operating in an impaired and hazardous financial condition and its

continued operation would be hazardous to the enrollees or the people of the state under
Wyo. Stat. Ann. §§ 26-28-105(a)(i) and 26-34-122(a).

FURTHER AFFIANT SAYETH NOT

DATE this 20th day of October, 2015

Joseph B Holloway Jr.
Joseph B. Holloway, Jr., CFE

STATE OF WYOMING)

) ss.

COUNTY OF LARAMIE)

Subscribed and sworn to before me by Joseph B. Holloway, Jr. this 20th day of
October, 2015.

Witness my hand and official seal.

SEAL

Breanne M Ramirez
Notary Public



My Commission expires: 1/7/2017

RESOLUTION OF THE BOARD OF DIRECTORS OF
WINHEALTH PARTNERS

The Board of Directors of WINHealth Partners, a Wyoming non-profit corporation, pursuant to Section 6.3 and 6.5 of the bylaws, do hereby adopt the following resolution:

WHEREAS, the Board believes it is in the best interests of WINHealth Partners to continue to pursue strategic alternatives, including discussions with persons interested in acquiring some or all of WINHealth Partners' assets and liabilities to identify a suitable buyer, acceptable to the Board, and Commissioner of the Wyoming Department of Insurance and that these efforts should continue until October 20, 2015; and

WHEREAS, the Board by resolution, passed by a majority of the Board, may take action to approve and cooperate with the Wyoming Insurance Commissioner in his Application/Motion for an Order of Receivership to conserve assets during the rehabilitation of WINHealth; and

WHEREAS, the Board believes it is in the best interest of WINHealth to cooperate with the Commissioner in his Application/Motion for an Order of Receivership and conservation of assets during the rehabilitation of WINHealth;

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby consents to, authorizes, and agrees not to oppose the Commissioner's Application/Motion for an Order of Receivership and other actions as may be necessary and appropriate to conserve assets during the rehabilitation of WINHealth; and

BE IT FURTHER RESOLVED, that the Board agrees it is in the best interest of WINHealth, and specifically consents to and authorizes an Order of Receivership, waives its opportunity to appear and show cause, and consents to the appointment of the Insurance Commissioner as Receiver; and

BE IT FURTHER RESOLVED, that the Board agrees that the statutory requirements for suspension of its Certificate of Authority contained in W.S. § 26-34-121(c) have been met, that the Board authorizes and approves a voluntary suspension of the company's Certificate of Authority and, agrees to the cessation of selling or marketing of any new business for 2016 as well as during the remainder of 2015; and

BE IT FURTHER RESOLVED, that all acts and things done by any officer of the Board, as any of them deemed necessary or appropriate in connection with the foregoing resolutions hereby are, in all respects ratified, confirmed, approved and adopted as acts by and on behalf of WINHealth.

HEREBY ADOPTED by the BOARD as of this 15th day of October, 2015:

BOARD OF DIRECTORS:

By: 
Carol Fischer, M.D. (Chairperson)