

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

KEN ROSS, ACTING COMMISSIONER,
OFFICE OF FINANCIAL AND
INSURANCE SERVICES

Petitioner,

File No. 07-1211-CR

Hon. Joyce Draganchuk

v.

NATIONAL FOOT CARE PROGRAM, INC.,

Respondent.

MIKE BRYANTON
CLERK OF THE 30TH
JUDICIAL CIRCUIT COURT
INGHAM COUNTY CLERK

2007 DEC 14 P 4: 11

FILED

**ORDER TO LIQUIDATE NATIONAL FOOT CARE PROGRAM, INC.
AND DECLARING THAT THE COMPANY IS INSOLVENT**

At a session of the Court held in the Circuit Courtrooms
for the County of Ingham, State of Michigan
on the 14TH day of DEC, 2007

PRESENT: HON. JOYCE DRAGANCHUK
CIRCUIT JUDGE

The Court has reviewed and considered the Petition for Conversion to a Liquidating Receivership and Declaration of Insolvency of National Foot Care Program, Inc. (the Liquidation Petition) filed by the Commissioner of the Office of Financial and Insurance Services.

The Court finds that:

(A) National Foot Care Program, Inc. (NFCP) is insolvent as defined by MCL

500.8103(i)(ii). NFCP is unable to pay its obligations when they come due.

Moreover, NFCP's admitted assets do not exceed its liabilities plus the greater of (a) any capital and surplus required by law for its organization or (b) the total par or stated value of its authorized and issued capital stock.

(B) NFCP is in such a condition that further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors or the public.

(C) NFCP is in such condition that it could not presently meet the requirement for incorporation and authorization.

(D) Further attempts to rehabilitate NFCP would substantially increase the risk of loss to creditors, subscribers, or the public or would be futile. NFCP has an insufficient membership base, due primarily to poor claims history and distributions to affiliates, to meet its current overhead expenses, pay medical claims as they become due, and generate sufficient profitability to satisfy past due obligations.

ACCORDINGLY, THE COURT HEREBY DECLARES AND ORDERS THAT:

1. The Commissioner's Petition for Liquidating Receivership and Declaration of Insolvency of National Foot Care Program, Inc. (NFCP) is GRANTED and NFCP is placed into liquidation pursuant to Chapter 81 of the Insurance Code, MCL 500.8101-500.8159.

2. Pursuant to MCL 500.8118(1), Ken Ross, acting Commissioner of the Michigan Office of Financial and Insurance Services (OFIS)—and his successors—is appointed liquidator of NFCP. The Commissioner shall be referred to hereinafter as the Liquidator.


3. The Liquidator shall have all of the powers set forth in Chapter 81 of the Insurance Code together with such additional powers as this Court shall grant from time to time upon petition of the Liquidator.

4. As authorized by MCL 500.8121(1)(a), the Liquidator appoints James Gerber and Janice Sylvertooth as special deputy liquidators of NFCP. The Special Deputy Liquidators shall have all the powers of the Liquidator granted under Chapter 81 of the Insurance Code and shall serve at the pleasure of the Liquidator. Mr. Gerber shall be compensated as a salaried employee

of OFIS and if the Liquidator so elects, he may allocate to NFCP the pro rata portion of Mr. Gerber's salary, at a rate of \$55.52 an hour, attributable to the performance of his duties as special deputy liquidator, which compensation shall be pursuant to MCL 500.8121(d). Any costs and expenses incurred in connection with Mr. Gerber's appointment as special deputy liquidator shall be paid pursuant to MCL 500.8121(d). Ms. Sylvertooth shall be compensated at the rate of \$55 per hour, pursuant to the terms of her Retainer Agreement. Ms. Sylvertooth's compensation and expenses that she incurs in connection with her appointment as special deputy liquidator shall be paid pursuant to MCL 500.8121(d) consistent with the terms of her Retainer Agreement.

5. The Liquidator is directed to take immediate possession of NFCP's assets and to administer them under the Court's general supervision. MCL 500.8118(1). The Liquidator is vested by law with title to all of NFCP's assets, including but not limited to the NFCP's property, bank accounts, contracts, rights of action, and all books and records, wherever located, as of the date that this Liquidation Order is entered. The filing or recording of this Liquidation Order with the clerk of the circuit court and the register of deeds the county in which NFCP'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 duly filed or recorded which the register of deeds would have imparted.

6. Not later than 120 days after entry of this liquidation order, the Liquidator shall prepare in duplicate a list of NFCP's assets, which list shall be amended or supplemented from time to time as the Liquidator deems appropriate. MCL 500.8125. With respect to the asset list and any amendments and supplements to it, the Liquidator shall file one copy with the clerk of this Court

and shall provide one copy to Dr. Oster 

and shall retain one copy for his files. Thereafter, the Liquidator shall account to this Court no less than annually, pursuant to MCL 500.8115(5).

7. All contracts or certificates of coverage to subscribers issued by NFCP in effect at the time of entry of this liquidation order are terminated as of the earliest of the following dates:

- a. Thirty (30) days after the date this liquidation order is entered;
- b. The date the coverage expires pursuant to the contract's terms;
- c. The date the subscriber replaces the coverage with equivalent coverage with a another entity or otherwise terminates the coverage; or
- d. The date that the Liquidator effects a transfer of the coverage contract's obligation pursuant to MCL 500.8121(1)(h).

8. Except as provided in MCL 500.8119, MCL 500.8137, and this liquidation order, the rights and liabilities of NFCP, its creditors, subscribers, shareholders, members, and all other persons interested in NFCP's estate shall become fixed as of the date this liquidation order is entered. MCL 500.8118(2).

9. Pursuant to MCL 500.8106(1) and (2), all officers, managers, directors, trustees, owners, employees, agents, parents, subsidiaries, and affiliates of NFCP, or any other persons or entities having authority or in charge of any segment of NFCP's affairs, including but not limited to Dr. Claude Oster, J. Laevin Weiner, The Pain Institute, Inc., VHP, Inc., Providers Access Saving Systems, Inc., MedAdvantage LLC, National Adult Care, Inc., Polyclinic Associates, and National Foot Care Network, Inc. shall fully cooperate with the Liquidator and Special Deputy Liquidators. As used in this paragraph, "person" shall include a person who exercises control directly or indirectly over the activities of NFCP through a holding company or other affiliate. Among other things, full cooperation requires:

- (a) Prompt replies to any inquiry by the Liquidator, including a written reply when requested.

- (b) Providing the Liquidator with immediate, full and complete possession, control, access to, and use of all books, accounts, documents, and other records, information or property of or pertaining to NFCP in his, her, or its possession, custody, or control.
- (c) Providing the Liquidator with full and complete access and control of all assets, documents, data, computer systems, security systems, buildings, leaseholds, and property of or pertaining to NFCP.
- (d) Providing the Liquidator with full and complete access to all legal opinions, memoranda, letters, documents, information, correspondence, legal advice, and any other attorney-client privileged and/or attorney work product materials relating to NFCP or the operation of NFCP and its business, provided to or from in-house or outside counsel by or to NFCP, its officers, managers, directors, trustees, owners, employees, agents, consultants, accountants, parents, subsidiaries, or affiliates.
- (e) Not obstructing or interfering with the Liquidator or Special Deputy Liquidator(s) in the conduct of this liquidation proceeding.

10. As provided by MCL 500.8106(4), any person or entity that fails to cooperate with the Liquidator or Special Deputy Liquidators, obstructs or interferes with the Liquidator or Special Deputy Liquidators in the conduct of this liquidation proceeding or any investigation incidental thereto, or violates any order of the Commissioner validly entered under Chapter 81 of the Insurance Code, may:

- a. Be sentenced to pay a fine not exceeding \$10,000.00, imprisoned for a term of not more than one year, or both.
- b. After a hearing, be subject to the imposition by the Commissioner of a civil penalty not to exceed \$10,000.00, or the revocation or suspension of any insurance licenses issued by the Commissioner, or both.

11. Pursuant to MCL 500.8105(1)(b),(c),(d),(e) and (k), during the pendency of this liquidation proceeding and unless the Court, after notice, orders otherwise: (a) NFCP, (b) its owner, Dr. Claude Oster, and (c) its affiliates, The Pain Institute, VHP, Inc., Provider Access Saving Systems, Inc., MedAdvantage LLC, National Adult Care, Inc., Polyclinic Associates, and National Foot Care Network, Inc. are *enjoined* from:

- a. Transferring any property, including but limited to any data, books, records, information, accounts, moneys, real property, personal property, or other assets, belonging or owed to NFCP;

- b. Interfering with the Liquidator, Special Deputy Liquidators, or this liquidation proceeding;
- c. Wasting any assets belonging or owed to NFCP
- d. Dissipating or transferring any bank accounts belonging to or containing funds owed to NFCP; and
- e. Taking any other action that may lessen the value of NFCP's assets or prejudice the rights of policyholders, creditors, shareholders, or the administration of this liquidation proceeding.

12. Pursuant to MCL 500.8105(1), any person or entity with possession, custody, or control of assets, documents, data, accounts, moneys, books, records, information, or property of or pertaining to NFCP, including but not limited to the individual and entities named in paragraph 11, shall immediately:

- a. Provide the Liquidator or Special Deputy Liquidators with notice that such assets, documents, data, accounts, moneys, books, records, information, or property are in his, her or its possession, custody or control, together with a description of the assets, documents, data, accounts, moneys, books, records, information, or property in his, her, or its possession, custody or control;
- b. Tender possession, custody, and control of such assets, documents, data, accounts, moneys, books, records, information, or property to the Liquidator or Special Deputy Liquidators; and
- c. Take all necessary steps to safeguard, preserve, and retain such assets, documents, data, accounts, moneys, books, records, information, or property.

13. Pursuant to MCL 500.8157, during the pendency of this liquidation proceeding, an action or proceeding in the nature of an attachment, garnishment or levy of execution shall not be commenced or maintained in this state against NFCP or its assets. Furthermore, pursuant to MCL 500.8105(l)(k) and effective immediately, all persons and entities are expressly *enjoined* from filing an action or proceeding in the nature of an attachment, garnishment, or levy of execution in this State against NFCP or its assets.

14. Pursuant to MCL 500.8124(1), upon entry of this liquidation order, an action at law or equity shall not be brought against NFCP, the Liquidator, or Special Deputy Liquidators, whether in this state or elsewhere, and any such existing action shall not be maintained or further

presented after entry of this liquidation order. Furthermore, pursuant to MCL 500.8105(l)(k) and effective immediately, all persons and entities are expressly *enjoined* from filing an action at law or equity or maintaining or further presenting any such existing action against NFCP, the Liquidator, or Special Deputy Liquidators, whether in this state or elsewhere.

15. Pursuant to MCL 500.8105(1)(g) and (k) all non-contracted and contracted medical care providers are *enjoined* from pursuing collection against, obtaining judgments against, and/or balance billing of NFCP's subscribers, enrollees or members for medical goods provided or medical services rendered prior to the date this liquidation order is entered. All non-contracted and contracted medical care providers that provided such goods and rendered such services prior to the date of this liquidation order shall seek payment solely from NFCP as an NFCP creditor as defined by MCL 500.8103(b). The foregoing prohibition does not apply to fees for medical goods or services not covered by NFCP's coverage contracts.

16. Any person who violates an injunction contained in this liquidation order shall be liable to the Liquidator or subscriber, member, or enrollee for the reasonable costs and attorney fees incurred in enforcing the injunction or any court orders related thereto and any reasonably foreseeable damages.

17. Pursuant to MCL 500.8136(4), any judgment or order against NFCP or an NFCP subscriber or member entered after the date the petition for liquidation was filed, and any judgment or order against NFCP or an NFCP subscriber or member entered at any time by default or by collusion, need not be considered evidence of liability or of quantum of damages. Similarly, any judgment or order against NFCP or an NFCP subscriber or member entered within four (4) months before the filing of the petition for liquidation need not be considered as evidence of liability or of the quantum of damages.

18. Pursuant to MCL 500.8118(4), and the Court having found that proper notice and hearing have been provided, the Court declares that NFCP is insolvent.

19. All claims by creditors, as defined by MCL 500.8103(b), against the assets of NFCP must be made by filing claims in this Liquidation proceeding. All creditor claims against NFCP are within the jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court. The deadline for filing of claims shall be six (6) months after the date that this liquidation order is entered, unless the Liquidator specifies a different claims-filing deadline in the notice provided pursuant to MCL 500.8122(2). Notwithstanding the claims-filing deadline provided in this order or the liquidator's notice, for any claim to be approved, it must be filed not later than any applicable deadline imposed by contract between the creditor and NFCP; the claims-filing deadline provided in this order or the liquidator's notice does not extend any applicable contractual limitation or deadline upon the period of time within which claims must be filed.

20. All claims made under NFCP policies shall be adjudicated in accordance with the Certificate of Coverage filed with OFIS and any claims adjudication procedures, manuals, applicable provider contracts, and/or general guidelines issued by NFCP and communicated to its providers prior to the date of this liquidation order.

21. The Liquidator and Special Deputy Liquidator shall provide notice of this Liquidation Order in accordance with MCL 500.8122.

22. The Court reserves jurisdiction to amend this Liquidation Order and issue further orders as it deems, just, necessary and appropriate.



Honorable Joyce Draganchuk, Circuit Court Judge