

MAY 15 1987

FILED
COURT OF COMMON PLEAS
MAY 13 1987

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

GEORGE FABE
Superintendent of Insurance
State of Ohio
2100 Stella Court
Columbus, Ohio 43215,

Plaintiff,

v.

WELLCARE HEALTH PLAN, INC.
6874 Strimbu Street
Brookfield, Ohio 44403,

Defendant.

CASE NO. 87CV-04-2227

JUDGE WILLIAMS

JOURNAL ENTRY AND ORDER
APPOINTING REHABILITATOR

This cause came before this Court, without a hearing by agreement of the parties, on the Amended Complaint of George Fabe, Superintendent of Insurance of the State of Ohio, pursuant to R.C. 3903.12(A). Plaintiff appeared by and through the Ohio Attorney General, Anthony J. Celebrezze, Jr.

After having heard and considered the facts set forth in Plaintiff's Amended Complaint, this Court finds that the law and facts are as Plaintiff has alleged in his Complaint and that there exists a present and urgent necessity for the immediate entry of this Order. This Court further finds that:

1. Defendant Wellcare Health Plan, Inc. (hereinafter referred to as "Wellcare") is in such condition that its further transaction of business would be financially hazardous.

to its policyholders, enrollees, solicitors, creditors, or the public, as described in R.C. 3903.12(A).

2. Defendant Wellcare, its members, officers, directors, agents, employees, partners, representatives and those acting in concert with it should be enjoined and restrained from conducting, operating or engaging in the business of insurance or any other business of Defendant under any charter, permit, license, registration, certificate of authority, power or privilege of Defendant, and that any banks, savings and loan association, corporation, depositors, employers' welfare trusts, unions, agents or other legal entities should be enjoined and restrained from removing or disposing of any of the assets, books, records or property of Defendant, or of any debt or claim owed to, by or for said Defendant, without the express written authorization of the Rehabilitator.

3. Without the appointment of a Rehabilitator, Defendant is not in a condition to continue the health maintenance organization business and may cause harm to the interests of its policyholders, subscribers, enrollees, creditors or the public in general, and that unless restrained, Defendant will be forced to operate in a condition contrary to the best interests of Defendant creditors, policyholders, enrollees, subscribers and the general public.

4. Without the appointment of a Rehabilitator, the assets of Defendant may become dissipated, causing irreparable and immediate injury of the policyholders, subscribers, enrollees, creditors, and the general public.

5. Defendant, on May 11, 1987, consented to the appointment of a Rehabilitator and waived both service of process and the holding of a formal hearing to show cause in connection with said appointment.

It is hereby ORDERED, ADJUDGED and DECLARED as follows:

1. Sufficient cause exists for the rehabilitation of Defendant.

2. George Fabe, Superintendent of Insurance for the State of Ohio, and his successors in office, be and hereby is appointed Rehabilitator of Wellcare Health Plan, Inc. for the purpose of rehabilitation of Defendant pursuant to the provisions of R.C. Chapter 3903.

3. Chief Examiner Stafford Maguire be and hereby is appointed Chief Deputy Rehabilitator and Examiner James M. Young be and hereby is appointed Deputy Rehabilitator for purposes of rehabilitation of Defendant pursuant to the provisions of R.C. Chapter 3903.

4. The Rehabilitator shall forthwith take and secure possession of all assets and property of Defendant, including, but not limited to, all property, contracts, deposits,

securities, rights of action, accounts, safe deposit boxes and books and records of Defendant, wherever located, and administer them under the general supervision of this Court.

5. The Rehabilitator is vested by operation of law with the title to all property, deposits, securities, contracts, rights of action, books, records and other assets of Defendant as of the date of the entry and of this Order directing Rehabilitation, and is authorized to deal with same in his own name Rehabilitator.

6. As soon as practical after the Entry of this Order, the Rehabilitator shall prepare an inventory of all property of Defendant and shall submit an accounting to this Court at such intervals as ordered by this Court.

7. The Rehabilitator is authorized to take such action as he considers necessary or appropriate to reform and revitalize Defendant, including, but not limited to, the following:

(a) The Rehabilitator shall have all the powers of the Directors, officers, and managers of Defendant, whose authorities are hereby suspended, except those powers as are specifically redelegated by the Rehabilitator.

(b) The Rehabilitator shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of Defendant.

(c) The Rehabilitator shall collect all claims, accounts receivable, agents' balances, reinsurance proceeds and other amounts owing to Defendant, and shall bring such actions as are necessary, in his discretion, to collect the same and shall settle and compromise any of such claims, or other amounts owing to Defendant whenever he shall deem it advisable to do so, upon such terms and conditions as appear to him to be justifiable. The Rehabilitator shall also have the power to compromise any obligation of Defendant where it appears appropriate or necessary.

(d) The Rehabilitator may make transfers and sales of any assets or property of Defendant, enter into contracts, incur and discharge obligations and make expenditures from the income and receipts of the business of Defendant for labor, insurance, equipment, inventory and supplies required, and to do any and every other act necessary to enable him to perform the duties imposed upon him by this Order.

(e) The Rehabilitator shall take all steps necessary to place all bank accounts, stock certificates, securities, certificates of deposit and other financial instruments of Defendant into his own name, and shall use any accounts of Defendant as an operating fund for the business of the rehabilitation of Defendant, and shall keep a true and correct account of any and all receipts or expenditures which he shall make as Rehabilitator in the course of the operation of said business.

(f) The Rehabilitator may, in his discretion, withhold or discontinue the payment of any pending claims against or involving Defendant until such time as the Rehabilitator has sufficient time to evaluate the claims and the overall financial condition of the Defendant.

8. If it appears to the Rehabilitator that there has been criminal or tortuous conduct, or breach of any contractual or fiduciary obligation detrimental to Defendant by any officer, manager, agent, director, trustee, broker, employee of Defendant or other person, he may pursue all appropriate legal remedies on behalf of Defendant.

9. If the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of Defendant is appropriate, he shall prepare a plan to effect such changes. Upon application of the Rehabilitator for approval of the plan, and after such notice and hearings as this Court may prescribe, the Court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of this Court, fair and equitable to all parties concerned. If the plan is approved, the Rehabilitator shall carry out the plan.

10. The Rehabilitator shall have the power and authority under Sections 3903.26, 3903.27 and 3903.28 of the Revised Code to avoid fraudulent or preferential transfers. The

Rehabilitator shall review all transactions, agreements, contracts, transfers of property or other actions agreed upon, entered into, made or incurred by Defendant within one year immediately prior to the filing of the Complaint for Rehabilitation. The Rehabilitator is hereby authorized to withhold or suspend any payments on any such transaction, agreement, contract, transfer of property or any other obligation of Defendant that may be due or owing for a period of ninety days or until such time as is necessary for the Rehabilitator to properly review such debt or claim. No legal action shall be taken or filed by a creditor or other person for any such amounts due against Defendant on any such transaction, agreement, contract, transfer or property or other action incurred or made within one year of the filing of the Complaint for Rehabilitation, and no delivery of or furnishing of services required thereby shall be suspended, discontinued or terminated by such creditors or other persons during the ninety day period of time that the rehabilitator is reviewing such debt or claim, without further order of this Court.

11. The Rehabilitator is hereby granted and given all powers and authority under any and all statutes and under the common laws of this state authorizing the appointment of Insurance Rehabilitators, and particularly, is granted and given all powers and authority contained in R.C. Chapter 3903, including, without limitation, those enumerated herein.

12. All officers, directors, trustees, employees or agents of Defendant, or any other person, firm, association, partnership, corporation or other person, firm, association, partnership, corporation or other entity in charge of any aspect of Defendant's affairs, including, but not limited to, banks, savings and loan associations, financial or lending institutions, brokers, stock or mutual associations, or any parent, holding company, subsidiary or affiliated corporation or any other representative acting in concert with Defendant of the insurer, shall cooperate with the Rehabilitator in the performance of his duties. The definition of "to cooperate" shall include, but not be limited to, a duty to do both of the following:

(a) Reply promptly in writing to any inquiry from the Rehabilitator requesting such a reply; and

(b) Make available to the Rehabilitator any books, accounts, documents, records, information or property of, or pertaining to, Defendant in his possession, custody or control.

13. No member, officer, director, employee, partner, agent, representative of Defendant, shall obstruct or interfere with the Rehabilitator in the conduct of his duties as Rehabilitator, and these persons are hereby restrained, except under the express authorization of the Rehabilitator or by the further order of this Court, from doing, operating and conducting the business of insurance of Defendant under any

charter, permit, license, power or privilege, belonging to or heretofore issued by or to said Defendant, and from in any manner conducting, doing or engaging in the business of insurance; from disposing of, using, transferring, selling, assigning, cancelling, hypothecating or concealing in any manner or in any way, any books, records, equipment, money, accounts receivable, stocks (including the stock of Defendant) bonds, assets, notes, funds or any other property or other assets of Defendant, whether real, personal or mixed or of any kind or nature, wherever situated, including any claims or cause of action that Defendant might have against any person, firm association or corporation, belonging to, owned by, in the possession of, or claimed by Defendant; and disposing of any account, debt, deposit, share account, trust account, or any other asset owned, owed to, or held for the benefit of Defendant, or any account held individually, jointly, or severally for Defendant, whether such account, debt, deposit, share account, trust account, or any other asset is owned or held for such Defendant in the name of or for the benefit of Defendant or under any other name.

14. All officers, directors, employees, agents, servants, representatives of Defendant and those acting in concert with Defendant, shall, by sworn written statement, inform the Rehabilitator of the nature, description and location of all assets or other property of Defendant not located on the

premises of Defendant, including, but not limited to, all bank accounts, safe deposit boxes, safes, stock certificates, bonds, certificates of deposit, cash, security or any other property, real, personal or mixed, and these persons are specifically ordered and enjoined from disposing of, using or concealing in any manner or in any way of the assets, books, property, records or reports of Defendant, except under the express authorization of the Rehabilitator or by the further order of this Court.

15. All banks savings and loan association, trust companies or any other persons, firms, corporations, associations, depositories, employers, unions, welfare trusts, or other legal entities, are hereby restrained as follows:

(a) From disposing of, using, releasing, transferring, withdrawing, allowing to be withdrawn or concealing in any manner or in any way any of the property or assets of Defendant, of any kind or nature whatsoever, wherever situated, or from disposing of any account, or any other asset owned, owed or held for the benefit of Defendant, or any account, debt, share account, trust account, or other assets owned or held individually, jointly, or severally, for Defendant, whether such account, debt, deposit, share account, trust account, or any other asset owned or held for such Defendant, or under any other name, except under the express written authorization of the Rehabilitator or by the further order of this Court.

(b) From doing anything, directly or indirectly, to prevent the Rehabilitator from gaining access to, acquiring, examining or investigating any books, documents or records pertaining to or concerning Defendant or its affairs, under whatever name such books, documents or records may be filed or found or wheresoever such books, documents or records may be found or situated.

(c) From interfering in any way with the lawful acts of the Rehabilitator who has been appointed herein or from disposing of, converting, dissipating, or concealing in any manner or in any way any of the assets, books, property, records, or reports of Defendant.

16. Any action or proceeding pending in any Court in which Defendant is a party or is obligated to defend a party, is hereby stayed for a period of ninety days and such additional time as is necessary for the Rehabilitator to obtain proper representation and prepare for further proceedings. The Rehabilitator shall take such action respecting such pending litigation as he considers necessary in the interests of justice and for the protection of creditors, policyholders and the public. The Rehabilitator shall immediately consider all litigation pending outside this state and shall petition the Courts having jurisdiction over such litigation for stays wherever necessary to protect the estate of Defendant.

17. Any action by or against Defendant that might have been commenced when the Complaint for Rehabilitation was filed may be continued for at least sixty days after this Order of Rehabilitation is entered.

18. All third persons dealing with interests in real property or other property of Defendant are charged with notice of this Order as provided in R.C. 3903.13(A).

19. The Rehabilitator may appoint one or more special deputies, who shall have the powers and responsibilities of the Rehabilitator granted under this Order, and may employ such clerks and assistants or security personnel as he considers necessary, such persons serving at the pleasure of the Rehabilitator.

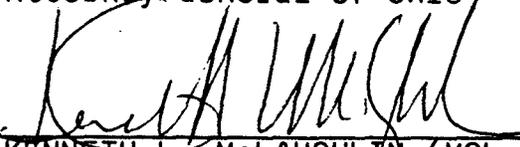
20. The compensation of the Chief Deputy Rehabilitator, the Deputy Rehabilitators and any other special deputies, clerks, and assistants and all expenses of taking and securing possession of the property and affairs of Defendant and of conducting the rehabilitation of Defendant shall be fixed by the Rehabilitator, with the approval of this Court and shall be paid out of the funds or assets of Defendant. In the event that the property of Defendant does not contain sufficient cash or liquid assets to defray the costs incurred, the Superintendent of Insurance may advance the costs so incurred out of any appropriation for the maintenance of the Department of Insurance. Any amounts so advanced for expenses of

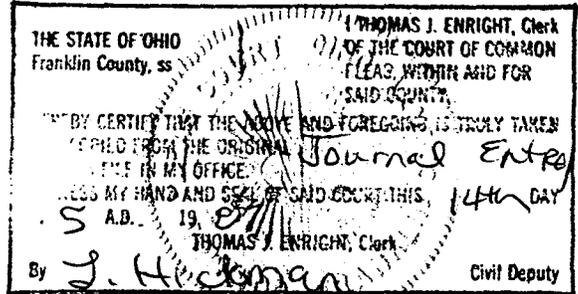
administration shall be repaid to the Superintendent for the use of the Department out of the first available money of Defendant.

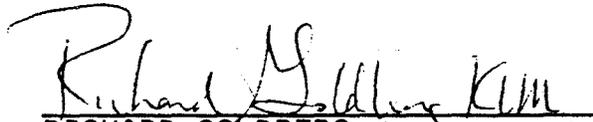
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JUDGE

APPROVED:

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