

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

DAVID S. MEYER, Interim :
 Superintendent of Insurance :
 OHIO DEPARTMENT OF INSURANCE :
 2100 Stella Court :
 Columbus, Ohio 43215 :

Plaintiff,

vs.

DAYMED HEALTH MAINTENANCE :
 PLAN, INC. :
 12800 Shaker Boulevard :
 Cleveland, Ohio 44120 :

Defendant.

99CV403 01866

CASE NO.

JUDGE

FILED
 COMMON PLEAS COURT
 FRANKLIN CO. OHIO
 99 MAR -4 AM 11:40
 CLERK OF COURTS-CV

AGREED ORDER OF LIQUIDATION AND APPOINTMENT OF LIQUIDATOR

This matter came before the Court on the Complaint of David S. Meyer, Interim Superintendent of Insurance of the State of Ohio (Plaintiff), pursuant to R.C. 3903.17 for an order of Liquidation and Appointment of Liquidator with respect to Defendant DayMed Health Maintenance Plan, Inc. (Defendant DayMed). Plaintiff appeared by and through the Ohio Attorney General, Betty D. Montgomery.

Having heard and considered the allegations set forth in Plaintiff's complaint, and considering Defendant DayMed's waiver of any right to participate or otherwise object and Defendant DayMed's Consent to Liquidation under R.C. Sections

3903.01 to 3903.59, the Court finds that the law and facts are as set forth in the complaint and that there exists a present and urgent necessity for the immediate entry of this Order. This Court further finds that:

1) Defendant DayMed, is an Ohio corporation incorporated in 1984, is an "insurer" and "health insuring corporation" as defined in R.C. 3903.01(L) and 1751.01(N) respectively, and is, therefore, subject to regulation by Plaintiff pursuant to Ohio Revised Code Titles 39 and 17 and specifically is subject to proceedings authorized by R.C. 3903.01 to 3903.59 pursuant to R.C. 1751.42.

2) Defendant DayMed is in such condition that its further transaction of business would be financially hazardous to its policyholders, enrollees, creditors or the public as set forth in R.C. 3903.12(A) and R.C. 3903.17(C).

3) The current financial position of Defendant DayMed renders it insolvent as set forth in R.C. 3903.17(B).

4) Pursuant to the terms of R.C. 1751.28, Defendant DayMed, as a health insuring corporation authorized to provide both basic and supplemental health care services, is required to maintain a minimum net worth of \$1,700,000.00.

5) On January 6, 1999, Defendant DayMed filed its September 30, 1998 quarterly financial statement which stated a total net worth of negative \$2,817,564.00.

6) At a meeting on March 1, 1999, the Board of Directors of Defendant DayMed voted to not contest the complaint for the liquidation of Defendant DayMed under R.C. section 3903.01 to 3903.59.

7) Defendant DayMed, its 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 DayMed under any charter, permit, license, registration, certificate of authority, agreement, power or privilege of Defendant DayMed, and that all officers, directors, employees, representatives, banks, savings and loan associations, corporations, depositors, employers' welfare trusts, unions, brokers, agents, reinsurers, and other legal entities should be enjoined and restrained from removing or disposing of any of the assets, books, records or property of Defendant DayMed, or of any claim or debt owed to, by or for said Defendant DayMed, without the express written authorization of the Plaintiff in his capacity as statutory Liquidator.

8) Without the appointment of a liquidator, Defendant DayMed is not in a condition to continue its insurance business and may cause harm to the interests of its policyholders, enrollees, creditors or the public in general, and that unless restrained, Defendant DayMed will be forced to operate in a condition contrary to the best interests of Defendant DayMed's policyholders, enrollees, creditors or the general public.

It is hereby ORDERED, ADJUDGED and DECLARED as follows:

- 1) Sufficient cause exists for the liquidation of Defendant DayMed:
 - a) Defendant DayMed is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, enrollees, creditors and/or the public as set forth in R.C. 3903.17(C).
 - b) The current financial position of Defendant DayMed renders it insolvent as set forth in R.C. 3903.17(B).
 - c) Liquidation is also authorized by R.C. 3903.17(A) and 3903.12(L) in that the Board of Directors has waived any objections or defenses and has consented to the liquidation of DayMed under R.C. Sections 3903.01 to 3903.59.
- 2) Plaintiff David S. Meyer, Interim Superintendent of Insurance, State of Ohio, on his own behalf and on behalf of his successors in office, is appointed as Liquidator of Defendant DayMed for the purpose of the liquidation of Defendant DayMed pursuant to the provisions of R.C. Chapter 3903 (the "Liquidator").
- 3) The Liquidator of Defendant DayMed is hereby authorized to appoint a Chief Deputy Liquidator and/or Deputy Liquidators. The Liquidator, any Deputy Liquidator and any employee who serves under the Liquidator is provided the indemnification specified in R.C. 3903.07.
- 4) The Liquidator shall proceed forthwith to take and secure possession of all assets and property of Defendant DayMed, of every kind and character whatsoever and wherever located, whether in the possession of Defendant DayMed

or its officers, directors, employees, consultants, attorneys, agents, parents, subsidiaries, affiliated corporations or those acting in concert with any of these persons, including, but not limited to, all property, offices maintained by Defendant DayMed, contracts, deposits, securities, rights of action, accounts, documents, papers, evidence of debt, bonds, debentures, mortgages, furniture, fixtures, office supplies, safe deposit boxes, legal/litigation files, and all books and records of Defendant, wherever located, and administer them under the general supervision of the court.

5) The Liquidator is vested by operation of law with all title to assets of Defendant DayMed, including, but not limited to, all property, deposits, stocks, securities, contracts, rights of action, accounts, documents, papers, evidences of debt, bonds, debentures, mortgages, furniture, fixtures, office supplies, legal/litigation files, books, records and all other assets of Defendant DayMed, wherever located, with the authority to deal with same in his own name as Liquidator.

6) The Liquidator is directed to collect and liquidate the assets of Defendant DayMed, including but not limited to, funds held by Defendant DayMed's agents, subagents, producing agents, brokers, reinsurers, reinsurance immediaries, reinsurance pools, solicitors, service representatives, or others under agency contracts or otherwise, which are due and unpaid to Defendant DayMed, including premium, unearned commissions, agents' balances and agents' reserve funds, reinsurance recoveries and "funds held" by reinsurers.

7) The Liquidator is vested with the right, title and interest in all funds recoverable under any treaties, contracts and agreements of reinsurance heretofore entered into by Defendant DayMed, as the ceding insurer, and all reinsurers, reinsurance pools, brokers, or other persons involved with Defendant DayMed are permanently restrained and enjoined from making, attempting to make, or encouraging others to make, any settlements with any claimant, policyholder, enrollee or any other person, without the prior written permission or consent of the Liquidator.

8) The Liquidator is authorized to take such action as he considers necessary or appropriate to liquidate Defendant DayMed, including but not limited to the following;

(a) Appoint one or more special deputies to act for him under Sections 3902.01 to 3903.59 of the Revised Code, and to determine the deputies reasonable compensation, and vest in such special deputies all the powers of the Liquidator. Such deputies shall serve at the pleasure of the Liquidator;

(b) Employ employees and agents, actuaries, accounts, appraisers, consultants and such other personnel as he may consider necessary to assist in the liquidation;

(c) Fix the reasonable compensation of employees and agents, actuaries, accountants, appraisers and consultants subject to approval of the court;

(d) Pay reasonable compensation to persons appointed and employed from the funds or assets of Defendant DayMed, as well as all other administrative

expenses of taking possession of, conserving, collecting, conducting, liquidating, disposing of or otherwise dealing with, the business and property of Defendant DayMed. In the event that the property of Defendant DayMed does not contain sufficient cash or liquid assets to defray the administrative costs incurred, the Superintendent of Insurance may advance the administrative costs so incurred out of any appropriation for the maintenance of the Department of Insurance. Any amounts so advanced for administrative expenses shall be repaid to the Superintendent for the use of the Department of Insurance out of the first available money of Defendant DayMed;

(e) Adopt such administrative operating procedures, from time to time, as are necessary to aid in the efficient, economic and effective administration of the liquidation of Defendant DayMed, subject to the approval of such procedures by the Court.

(f) Hold hearings, subpoena witnesses to compel their appearance, administer oaths, examine any person under oath and compel any person to subscribe to their testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records or other documents which he considers relevant to the inquiry.

(g) Collect all debts and moneys due and claims belonging to Defendant DayMed, wherever located, which in the judgment of the Liquidator are economically feasible to collect. For this purpose, the Liquidator may do any of the following:

(i) Institute timely actions in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

(ii) Do such other acts as are necessary or expedient to collect, conserve or protect Defendant DayMed's assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as the Liquidator considers best;

(iii) Pursue any creditors' remedies available to enforce such creditors' claims,

(h) Conduct public or private sales of the property of Defendant DayMed.

(i) Use assets of the estate of Defendant DayMed to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under R.C. 3903.42;

(j) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of Defendant DayMed at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator may execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

(k) Borrow money on the security of Defendant DayMed's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;

(l) Enter into such contracts as are necessary to carry out this Order to Liquidate, and to affirm or disavow any contract to which Defendant DayMed is a party;

(m) Continue to prosecute and to commence in the name of Defendant DayMed or in his own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims he considers unprofitable to pursue further;

(n) Prosecute any action which may exist on behalf of the policyholders, creditors, members, or shareholders of Defendant DayMed against any officer of Defendant DayMed or any other person;

(o) Remove any or all records and property of Defendant DayMed to the offices of the Liquidator or to such other place as may be convenient to the purposes of efficient and orderly administration of the liquidation;

(p) Deposit in one or more banks in this state such sums as are required for meeting current administration expenses;

(q) Invest all sums not currently needed, unless the Court orders otherwise;

(r) File any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of Defendant DayMed is located;

(s) Assert all defenses available to Defendant DayMed as against third persons, including, but not limited to, statutes of limitations, statute of frauds and

the defense of usury. A waiver of any defense by Defendant DayMed after a complaint in liquidation has been filed does not bind the Liquidator.

(t) Exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder, including any power to avoid any transfer or lien that may be given by the general law and that is not included under R.C. 3903.26 to R.C. 3903.28;

(u) Enter into agreements with any receiver, conservator, rehabilitator, liquidator, or superintendent of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states;

(v) Exercise all powers now held or hereafter conferred upon receivers, conservators, rehabilitators, or liquidators by the laws of this state not inconsistent with the provisions of R.C. 3903.01 to 3903.59;

(w) Take title and possession of all DayMed's securities deposited by Defendant DayMed within the Ohio Department of Insurance and other state Directors of Insurance or other public officials;

(x) The enumeration of the above described powers and authority of the Liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not herein specifically enumerated, or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

9) All officers, directors, trustees, employees, brokers, agents, reinsurers of Defendant DayMed, attorneys representing DayMed and/or its policyholders or

any other person, firm, association, partnership, corporation or other entity with authority over or in charge of any aspect of Defendant DayMed's affairs, including but not limited to, insurers, brokers, agents, trusts, banks, savings and loan associations, financial or lending institutions, stock or mutual associations, reinsurers and any parent, holding company, subsidiary or affiliated corporation or any other representative acting in concert with Defendant DayMed, shall cooperate with the Liquidator in the performance of his duties. The directive "to cooperate" shall include, but not be limited to, a duty to do both of the following as required by law:

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

(b) Make available to and deliver to the Liquidator any books, accounts, documents, agreements, records, legal/litigation files, information or property of, or pertaining to, Defendant DayMed in his possession, custody or control.

10) No policyholder, officer, director, employee, consultant, attorney, parent, subsidiary or affiliated corporation, partner, agent, reinsurer, representative of Defendant DayMed or any other person acting in concert with Defendant DayMed, shall obstruct or interfere with the Liquidator in the conduct as his duties as Liquidator, and these persons are hereby restrained, except under the express authorization of the Liquidator or by the further order of this Court, from doing, operating and conducting the business of insurance of Defendant DayMed under any charter, permit, license, agreement, power or privilege, belonging to or

heretofore issued by or to said Defendant DayMed, and from in any manner conducting, doing or engaging in the business of insurance on behalf of Defendant DayMed.

11) All persons, as generally described in the immediately preceding paragraph, are hereby enjoined and restrained from dealing with or permitting to be done any action which might waste or dispose of the property or assets of Defendant DayMed; from disposing of, using, transferring, selling, assigning, canceling, hypothecating or concealing in any manner or in any way, any books, records, legal/litigation files, equipment, money, accounts receivable, stocks, bonds, assets, notes, funds or any other property or other assets of Defendant DayMed, whether real, personal or mixed, or of any kind or nature, wherever situated, including any claims or causes of action that Defendant DayMed might have against any firm, person, association or corporation, belonging to, owned by, or in the possession of, or claimed by Defendant DayMed; 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 DayMed, or any other account held individually, jointly, or severally, for Defendant DayMed whether such account, debt, deposit, share account, trust account, or any other assets owned or held for such Defendant in the name of or for the benefit of Defendant DayMed or under any other name.

12) All officers, directors, employees, agents, servants, attorneys, reinsurers, or representatives of Defendant DayMed and those acting in concert

with Defendant DayMed, shall, by sworn written statement, upon the request of the Liquidator, inform the Liquidator of the nature, description and location of all assets or other property of Defendant DayMed not located on the premises of Defendant DayMed including, but not limited to, all bank accounts, safe deposit box, safes, stock certificates, bonds, certificates of deposit, cash, security, legal/litigation files 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 the assets, books, property, records, legal/litigation files or reports of Defendant DayMed except under the expressed authorization of the Liquidator or by the further order of this Court.

13) All banks, savings and loan associations, trust companies, agents, attorneys or any other persons, firms, corporations, associations, reinsurers, depositories, employers, unions, brokerage houses, welfare trusts, or other legal entities, are hereby enjoined and restrained as follows:

(a) From disposing of, using, releasing, transferring, withdrawing, allowing to be withdrawn or concealed in any manner or in any way the property or assets of the Defendant DayMed, of any kind or nature whatsoever, wherever situated, or from disposing of any account, debt, deposit, share account, trust account, or any other asset owned, owed to or held for the benefit of, Defendant DayMed or any account, debt, share account, trust account, or other assets owned or held individually, jointly or severally, for Defendant DayMed, whether such account, debt, deposit, share account, trust account, or any other asset owned or held for

such Defendant, in the name of or for the benefit of said Defendant or under any other name, except under the express written authorization of the Liquidator or by the further order of this Court.

(b) From doing anything, directly or indirectly, to prevent the Liquidator from acquiring all books, documents, legal/litigation files or records which are the property or assets of Defendant DayMed, and/or have been ordered to be tendered to the Liquidator by the provisions of this order or other order of this Court, under whatever name such books, documents, legal litigation files or records may be filed or found or wheresoever such books, documents, legal/litigation files or records may be found or situated; and from doing anything, directly or indirectly, to prevent the Liquidator from gaining access to, acquiring, examining or investigating all other books, documents, legal/litigation files or records pertaining to or concerning Defendant DayMed or its affairs, under whatever name such books, documents, legal/litigation files or records may be filed or found or wheresoever such books, documents, legal/litigation files or records may be found or situated.

(c) from interfering in anyway with the lawful acts of the Liquidator 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, legal/litigation files, records or reports of Defendant DayMed.

14) The Liquidator shall take all steps necessary to place all bank accounts, stock certificates, securities, certificates of deposit and other financial instruments of Defendant DayMed into his own name as Liquidator, and shall use

any accounts of Defendant DayMed, and shall keep a true and correct account of any and all receipts and expenditures which he shall make as Liquidator in the course of liquidation of defendant DayMed.

15) All agents, brokers, premium finance companies, or any other persons responsible to Defendant DayMed for the payment of premium and unearned commission, as shown on the records of Defendant DayMed, or as might otherwise be discovered, shall pay to the Liquidator any unpaid earned premiums or unearned commissions due Defendant DayMed at the time of the entry of this Order.

16) All agents and brokers of Defendant DayMed are enjoined and restrained from returning to policyholders/insureds or premium finance companies, any money in their possession collected for premiums, and all premium finance companies which have entered into contracts to finance a premium or a policy which has been issued by Defendant DayMed are enjoined from returning to policyholders/insureds any such premiums or money in their possession, and such agents, brokers and premium finance companies shall turn over all such funds in their possession to the Liquidator.

17) Defendant DayMed and its respective officers, directors, agents and employees, attorneys and all other persons are enjoined and restrained from bringing or further prosecuting any action or claim for relief, counterclaim, set off, cross claim, third party complaint, or otherwise, at law or in equity or other proceeding against Defendant DayMed or the Liquidator, or in any way interfering with the Liquidator's conduct of the business of Defendant DayMed or from

obtaining preferences, judgments, attachments, or other like liens or the making of any levy against Defendant DayMed or its property and assets while in possession and control of the Liquidator, or from in any way interfering with the Liquidator in his gaining possession or control of his right, title and interest to the property, books, records and all other assets of Defendant DayMed.

18) No civil action shall be commenced against Defendant DayMed or the Liquidator, whether in this state or elsewhere, nor shall any such existing action be maintained or further prosecuted after the entry of this Order.

19) The Liquidator is authorized to, upon or after this order for Liquidation, within two years or such time in addition to two years as applicable law may permit, to commence an action or proceeding on behalf of the estate of Defendant DayMed upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the complaint in upon which this Order is entered. Furthermore, where, by any agreement, a period of limitation is fixed for commencing a suit or proceeding upon any claim, or for filing any claim, proof of claim, proof of loss, demand, notice or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, and where in any such case the period has not expired at the entry of an order for liquidation, for the benefit of Defendant DayMed, take any such action or do any such act, required of or permitted to Defendant DayMed within a period of 180 days subsequent to the entry of an order for liquidation, or within such further

period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

20) All persons, including policyholders, obligees, principals, creditors, stockholders of Defendant DayMed and all persons asserting claims against such policyholders, are hereby enjoined and restrained from instituting or pursuing any action or proceeding in any court or before any administrative agency, including boards and commissions administering worker's compensation or occupational diseases or similar laws of the State of Ohio or any other state, or of the United States, which seeks in any way, directly or indirectly, to contest or interfere with the Liquidator's exclusive right, title, and interest to funds recoverable under treaties and agreements of reinsurance heretofore entered into by Defendant DayMed as the seating insurer.

21) All insurance policies, and other similar obligations or contracts of Defendant DayMed now in force, shall stand canceled as of the 30th day after an entry of liquidation, or as may otherwise be provided by R.C. 3903.19.

22) The Liquidator is hereby authorized to cancel all executory contracts, except the contracts of insurance and other similar obligations and contracts which are cancelable as provided in the immediately preceding paragraph, and all liability thereunder shall cease and be fixed as of the date of an entry of liquidation upon this complaint, except as provided in R.C. 3903.19 and 3903.37, and such impending cancellations shall not be treated as anticipatory or other breach of contracts.

23) The Liquidator shall have the power and authority under R.C. 3903.26, 3903.27 and 3903.28 to avoid fraudulent or preferential transfers.

24) The Liquidator, or any successor in office, is hereby authorized to sell, assign, and transfer the corporate charter of Defendant DayMed, any and all insurance licenses or certificates of authority held by Defendant DayMed or Defendant DayMed itself as a going concern, in such a method and manner as may be approved by this Court.

25) All attorneys/law firms who are either providing or have provided representation or other legal services to Defendant DayMed, are hereby ordered to tender over possession and control to the Liquidator within five working days, or such other period as may be approved by the Liquidator, from the receipt of a notice of any order which may arise from this complaint, all legal/litigation files and all other pleadings, memoranda, discovery, motions, notes, photographs, videotapes, physical evidence, property, documents, records, reports and files which are in their possession or control and which are related to the providing of representation or other legal services to Defendant DayMed.

26) All third persons dealing with interest in real property or other property of Defendant DayMed are charged with notice of this order as provided in R.C. 3903.18(A).

27) The Liquidator is directed to give or cause to be given notice of this Liquidation Order as required by R.C. 3903.22.

28) Upon the issuance of this Order, the rights and liabilities of Defendant DayMed and of its policyholders, creditors and all other parties interested in the estate of Defendant DayMed shall become fixed as of the date of this Order, except as provided in R.C. 3903.37.

29) The Liquidator is hereby authorized to do all other things permitted by law to effectuate the liquidation of Defendant DayMed.

30) This court requests that full faith and credit be given to this order in all actions or proceedings pending or hereinafter commenced outside of the state of Ohio involving Defendant DayMed.

31) This court shall retain jurisdiction in this matter for the purpose of granting such other and further relief as the nature of this matter or the interests of the policyholders, creditors, stockholders or the public may require.

IT IS SO ENTERED THIS 14th day of March, 1999.

THE STATE OF OHIO
Franklin County, ss

I, VIRGINIA L. BARNEY, Clerk
OF THE COURT OF COMMON
PLEAS, WITHIN AND FOR
SAID COUNTY.

HEREBY CERTIFY THAT THE ABOVE AND FORE-
GOING IS A TRUE AND CORRECT COPY OF THE
ORIGINAL AS TAKEN AND COPIED FROM THE
RECORDS OF SAID COURT.

WITNESS MY HAND AND SEAL OF SAID COUNTY
ON THIS 14th DAY OF MARCH, 1999.

VIRGINIA L. BARNEY, Clerk

By [Signature] Deputy

APPROVED:

SPECIAL COUNSEL, WITH ATTORNEY GENERAL'S OFFICE
BETTY MONTGOMERY

[Signature] JUDGE

COUNSEL FOR DEFENDANT DAYMED

[Signature]
William J. Brown (0012819)
R. Kevin Kerns (0012781)
Christopher J. Weber (0059270)
KEGLER, BROWN, HILL & RITTER
65 E. State Street, Suite 1800
Columbus, OH 43215
(614) 462-5400

[Signature]
Daniel J. Hughes (0031554)
Richard S. Cooper (0008508)
MCDONALD, HOPKINS, BURKE
& HABER CO., L.P.A.
2100 Bank One Center
600 Superior Ave., E.
Cleveland, OH 44114-2653
(216) 348-5411