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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

STATE OF OREGON, Acting by and through
Patrick Allen, Director of the Oregon
Department of Consumer and Business Services,

Plaintiff,

v.

OREGON'S HEALTH CO-OP, an Oregon
nonprofit corporation,

Defendant.

Case No. 16CV22052

MOTION TO LIQUIDATE INSURER
AND TO APPROVE PLAN OF
LIQUIDATION

MOTION

Pursuant to ORS 734.160(2) and ORS 734.180, Plaintiff Patrick Allen, in his capacity as
Director of the Oregon Department of Consumer and Business Services, the court-appointed
Receiver for Defendant Oregon's Health Co-Op ("OHC"), moves the Court for an order 1)
directing the Receiver to take possession of all OHC property and assets and liquidate OHC
according to the process set forth in ORS chapter 734; and 2) approving the Liquidation Plan
being submitted to the Court with this motion.

This Motion is supported by the points and authorities below, the accompanying
Affidavit of Patrick Allen, and the Court file and record.

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POINTS AND AUTHORITIES

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2 A. OHC previously operated as a domestic health care service contractor in Oregon.
3 The company has lost significant money each consecutive year beginning in 2012.¹ To protect
4 the interests of OHC’s insureds and others dealing with the company, DCBS, through Director
5 Allen, initiated delinquency proceedings under ORS chapter 734 to put OHC under court-
6 supervised receivership last year.

7
8 B. ORS chapter 734 provides for two types of delinquency proceedings for
9 addressing financially insecure insurers: 1) a rehabilitation; or 2) a liquidation. In a rehabilitation
10 proceeding, the relevant statute directs DCBS as receiver to take possession of the insurer’s
11 assets, conduct the insurer’s business and to take steps to remove the “causes and conditions
12 which made rehabilitation necessary.” ORS 734.160. In a liquidation proceeding, by contrast,
13 DCBS’s role is to liquidate all of an insured’s assets, provide notice to creditors with potential
14 claims against the insurer and to pay properly presented and valid claims to the extent of
15 available funds and in the order of statutory priority. ORS 734.180.

16
17 C. OHC, which was then represented by counsel, and DCBS stipulated to the
18 appointment of DCBS Director Allen as the Receiver. Now-retired Judge Penn signed a
19 Stipulated Order Appointing Receiver (the “Initial Order”) on July 11, 2016, and it was entered
20 in the Court docket on July 13, 2016. Based on the parties’ stipulation and evidence presented,
21 Judge Penn found that OHC was insolvent, as defined in ORS 734.017(7) for delinquency
22 proceedings.
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25 ¹ All factual representations in this motion are based on either the Court record, the Liquidation
26 Plan being submitted with this motion, or the accompanying Affidavit of DCBS Director Patrick
Allen.

1 D. The Initial Order authorized the Director to take steps to rehabilitate OHC and
2 appointed Jan Moenck of Risk and Regulatory Consulting LLC as the Special Deputy Receiver
3 to provide third-party consulting and receivership assistance services. *See* ORS 734.230
4 (providing for appointment of one or more special deputy receivers). Consistent with the parties'
5 stipulation and statutory authority, paragraph 5 of the Initial Order authorizes the Receiver to
6 seek liquidation of the insurer's assets if he later determines that rehabilitation is not feasible. *See*
7 ORS 734.160(2) ("If at any time the director deems that further efforts to rehabilitate the insurer
8 would be useless, the director may apply to the court for an order of liquidation.")
9

10 E. Director Allen, in consultation with Risk & Regulatory Consulting, LLC, has
11 taken several steps in an effort to rehabilitate OHC since his appointment as receiver in July
12 2016. A detailed description of the Receiver's and Special Deputy Receiver's actions is set forth
13 in the Liquidation Plan attached to the Affidavit of Patrick Allen, which accompanies this
14 motion.² In light of OHC's current financial situation and operational state, the Receiver has
15 determined that further rehabilitation efforts would be useless and that liquidation is the only
16 practicable course.
17

18 F. As detailed in the Liquidation Plan, OHC's total liabilities exceeded its assets by
19 more than \$5.8 million as of the end of November 2016. The company posted an operating loss
20 of \$19.4 million in 2015 and, through November 2016, had a year-to-date loss of more than
21 \$26.3 million.
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25 ² At the last status conference, the Court required a written status report on the receivership by
26 March 15, 2017. The Receiver intends for the Liquidation Plan to serve as his written status
report, as it provides detailed information about proceedings to date, the receivership's debts and
liabilities as well as future plans.

1 G. OHC no longer insures any individual or group. The receiver cancelled all
2 policies effective July 31, 2016, and OHC was decertified by federal regulators on August 1,
3 2016. (Risk & Regulatory LLC provided insureds with notice of cancellation and, with DCBS,
4 undertook substantial efforts to assist them with transitioning to new health insurers.)

5 H. OHC also no longer operates independently of the Receiver. It has no board or
6 separate management overseeing its affairs, and the receiver has taken charge of all company
7 operations pursuant to the authority granted in the Initial Order. The law firm representing OHC
8 at the time of the Initial Order has withdrawn by notice filed with the Court on October 18, 2016.
9

10 I. The Receiver requests an order converting this receivership into a liquidation
11 proceeding because OHC cannot be rehabilitated as a functioning insurer, given its financial and
12 operational states. Liquidation is authorized when, among other circumstances, an insurer is
13 insolvent. ORS 734.170(4). The Court has already determined in its Initial Order that OHC is
14 insolvent. The most recent financial information presented in the Liquidation Plan confirms that
15 OHC remains insolvent.
16

17 J. In addition, the Receiver requests that the Court approve the Plan of Liquidation,
18 which was developed in conjunction with Risk and Regulatory Consulting, LLC, a Connecticut-
19 based leading adviser to state insurance departments. The Plan is consistent with ORS chapter
20 734, including the statutory process for payment of claims against the insurer. In addition to
21 unpaid claims from medical providers, OHC also has debts to several other creditors. All claims
22 will be paid through the liquidation of remaining OHC assets. As set forth in Section V.1 of the
23 Liquidation Plan, the Receiver requests an order:
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1 1) Authorizing OHC to refund premiums to former members who provided notice of
2 cancellation of their OHC policy prior to the effective date of cancellation and who can
3 demonstrate that they obtained health insurance coverage with a different insurer;

4 2) Allowing the Receiver to offset the claims of providers or members against OHC by
5 the amount of any previous overpayments to the provider or member;

6 3) Approving all unpaid fees for the services of Risk & Regulatory Consulting LLC as
7 of the date the liquidation order is entered as reasonable expenses of the delinquency
8 proceedings;

9 4) Setting a deadline of September 30, 2017 for submission of claims against the
10 receivership;³

11 5) Authorizing the Receiver or Special Deputy Receiver to destroy all paper records
12 deemed by the Receiver to be obsolete and not necessary for the administration of the
13 receivership or winding up of OHC's affairs;

14 6) Requiring that any credit card processor or premium processor that has in its
15 possession or control premiums or other funds belonging to OHC provide a written report to the
16 Receiver within 15 days of the entry of the liquidation order with the following information:

17 a. The total amount of premiums or other funds withheld from the Receiver since
18 the date of the entry of the order of rehabilitation;

19 b. A listing of any premiums or other funds disbursed from the amounts
20 withheld including complete identification of the party receiving the disbursement, the date of
21 the disbursement and a justification for the disbursement;

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25 ³ The proposed deadline of Sept. 30, 2017 would provide more time for claim submission than
26 the four-month minimum claims period required by ORS 734.390.

1 c. A justification for the amount of premiums or other funds currently being
2 withheld from the Receiver;

3 d. Any fees assessed as a result of withholding the funds; and

4 e. The date by which all remaining premiums or other funds withheld will be
5 turned over to the Receiver.

6 7) Allowing the Receiver to prohibit any further changes to OHC's enrollment
7 records as of April 30, 2017;

8 8) Authorizing the Receiver to notify medical providers that they may not seek to
9 collect from OHC members any amounts owed by OHC to providers for services rendered by
10 that provider if the member has paid the premium owed.

11 9) Requiring Valence Health to comply with all requests for data related to OHC
12 made by either the Receiver or Special Deputy Receiver.

13 10) Authorizing the Receiver to recover from Portland Office Partners LLC c/o
14 Menlo Equities all funds belonging to OHC, including any security deposits.

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CONCLUSION

For the reasons stated above, the Receiver requests an order authorizing liquidation of OHC and approving the Liquidation Plan.

Dated: March 1, 2017.

ELLEN F. ROSENBLUM
Attorney General



Daniel J. Rice, OSB #084536
Assistant Attorney General
1162 Court Street NE
Salem, OR 97301
(503) 934-4400
daniel.rice@doj.state.or.us