

Cause No. D-1-GN-23-008361

TEXAS DEPARTMENT OF INSURANCE,	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
BRIGHT HEALTHCARE INSURANCE	§	
COMPANY OF TEXAS,	§	
Defendant	§	<u>455th</u> JUDICIAL DISTRICT

AGREED ORDER APPOINTING LIQUIDATOR, PERMANENT INJUNCTION, AND NOTICE OF AUTOMATIC STAY

On this day, the Court heard the *Plaintiff's Original Petition, Application for Order Appointing Liquidator, and Request for Permanent Injunction* (Application) filed by the Texas Department of Insurance through the Office of the Attorney General of Texas.

The Application requests an order placing Bright Healthcare Insurance Company of Texas (Defendant) into liquidation pursuant to Texas Insurance Code Chapter 443,¹ the Insurer Receivership Act, and appointing the Commissioner of the Texas Department of Insurance (Commissioner) as Liquidator of Defendant (Liquidator). The Application also requests a Permanent Injunction pursuant to Section 443.008(a) enjoining Defendant and its agents from conducting Defendant's business and enjoining other parties from taking any actions against Defendant or its property in violation of the Insurer Receivership Act.

The Texas Department of Insurance (Plaintiff) appeared by and through the Office of the Attorney General. Defendant appeared by and through its counsel of record. Having considered the Plaintiff's verified petition, the evidence presented and the arguments of counsel, the Court finds that the Application should be GRANTED, and enters this Order.

¹ All statutory references are to the Texas Insurance Code unless otherwise indicated.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

I. FINDINGS OF FACT

1.1 Defendant is a "covered person" as defined in Section 443.003.

1.2 Defendant is impaired as defined in Section 443.004(a)(12). Defendant does not have admitted assets at least equal to all its liabilities together with the minimum surplus required to be maintained under Chapter 841.

1.3 Defendant is insolvent as defined in Section 443.004(a)(13). Defendant does not have admitted assets at least equal to all its liabilities.

1.4 Defendant has fully cooperated with Plaintiff and consented to the entry of an order of liquidation under Section 443.057(20) and a permanent injunction under Section 443.008(a).

II. CONCLUSIONS OF LAW

2.1 This Court has jurisdiction over the parties and the subject matter of this action under Section 443.005(c).

2.2 Grounds have been established to place Defendant into liquidation under Section 443.057. These grounds include, but are not limited to, finding that Defendant:

1. is impaired as defined in Section 443.004(a)(12);
2. is insolvent as defined in Section 443.004(a)(13); and
3. has consented to the entry of an order of liquidation under Section 443.057(20) and a permanent injunction under Section 443.008(a).

2.3 In accordance with Section 443.058, Plaintiff is entitled to an order of liquidation, and the Commissioner must be appointed as Liquidator of Defendant pursuant to Section 443.151.

2.4 The Liquidator shall be vested by operation of law with title to all of Defendant's property as defined in Section 443.004(a)(20). Such property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds

held in shared, escrow or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Defendant, whether asserted or not, including but not limited to accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, and all licenses held by Defendant (collectively, Defendant's property). The Liquidator's title shall extend to Defendant's property regardless of the name in which such items are held, or where such items are located.

2.5 Pursuant to Section 443.151(a), the Liquidator shall be directed to take possession and control of Defendant's property, wherever located.

2.6 The Liquidator may act as it deems necessary or appropriate to perform the Liquidator's duties pursuant to Section 443.151(a). The Liquidator shall have all the powers of Defendant's directors, officers and managers, and the authority of such persons is suspended except as specifically permitted by the Liquidator or the Liquidator's designees.

2.7 Defendant and Defendant's present or former officers, managers, directors, trustees, owners, employees, agents, and any other persons with authority over or in charge of Defendant's affairs shall be required to cooperate with the Liquidator and the Liquidator's designees pursuant to Section 443.010.

2.8 Pursuant to Section 443.008(c), an automatic stay is in effect with respect to actions against Defendant or its property, effective on the commencement of this proceeding. Pursuant to Section 443.008(d), an automatic stay is in effect with respect to actions against insureds of Defendant, commencing on the entry of this Order. In addition to the stays under Section 443.008, a stay is in effect with respect to a proceeding in which the Defendant is a party or is obligated to defend a party in a court in this state, other than a proceeding directly related to the receivership

or that is brought by the Liquidator based on this Court's finding of fact and conclusion of law that the Defendant is impaired pursuant to Section 463.404 commencing on the entry of this Order.

2.9 Pursuant to Section 443.008(a), it is necessary for this Court to issue a permanent injunction pursuant to Section 443.008(a) to carry out the provisions of Chapter 443 and prevent injury, loss and damage to the general public and Defendant's creditors. A necessity exists to enjoin Defendant and Defendant's agents from conducting Defendant's business, except as specifically permitted by the Liquidator or the Liquidator's designees; to enjoin financial institutions or depositories from taking any actions in connection with Defendant's property, except as directed by the Liquidator or Liquidator's designees; and to enjoin all claimants or creditors from asserting claims or causes of action against Defendant, except as permitted by the Insurer Receivership Act.

2.10 Pursuant to Section 443.151(a), this proceeding is exempt from any dormancy requirements.

2.11 Section 443.001(b) provides that the Insurer Receivership Act may not be interpreted to limit the powers granted to the Commissioner under other provisions of law. Accordingly, this Order shall not be construed as a limitation of the Commissioner's powers granted under such provisions.

III. APPOINTMENT OF LIQUIDATOR

The Commissioner is appointed as Liquidator of Defendant, and granted the following powers:

3.1 The Liquidator has all powers and authority granted by the Insurer Receivership Act, specifically, without limitation, Section 443.151 *et seq.* and any and all other powers and authority under applicable statutes and the common law of this State.

3.2 Pursuant to Section 443.151(a), title to all of Defendant's property, including but not limited to all the assets and rights described in this Order, is vested in the Liquidator. The

Liquidator is authorized to take control and possession of Defendant's property, wherever located, and remove all such property from Defendant's premises.

3.3 Pursuant to Section 443.154(w), the Liquidator is vested with all of Defendant's rights, including:

- (a) the authority to direct, manage, and supervise Defendant's directors, officers, managers, employees, or agents, and compensate them as the Liquidator deems necessary from Defendant's funds, or to suspend or discharge such persons at the Liquidator's discretion;
- (b) the authority to exercise the Defendant's rights as the customer of a financial institution, such as withdrawing Defendant's property from any banks, financial institutions and other depositories, agencies of any state or the federal government, and any other entities, or continuing the operation of any accounts of Defendant, at the Liquidator's discretion; and
- (c) all legal remedies available to Defendant, such as the authorization to file, prosecute, defend, or settle any action as the Liquidator deems necessary, including any action to enforce the provisions of this Order.

3.4 Pursuant to Section 443.154(k), the Liquidator may enter into contracts as necessary to perform the Liquidator's duties and may assume or reject any executory contract or unexpired lease to which Defendant is a party at the Liquidator's discretion pursuant to Section 443.013. The Liquidator is authorized to:

- (a) change the locks on any property owned, leased, or occupied by Defendant;
- (b) exclude any person from any property owned, leased, or occupied by Defendant, at the Liquidator's discretion; and
- (c) receive, collect, control, open and review all mail addressed to or intended for Defendant, or arriving at Defendant's address.

3.5 Section 443.154(a) authorizes the Liquidator to appoint a Special Deputy and employ or contract with legal counsel and other personnel as the Liquidator deems necessary. Pursuant to Section 443.015(b), the Liquidator is authorized to set the compensation of any such Special Deputy or other persons as the Liquidator deems necessary and pay for such services from Defendant's funds. The Liquidator's designees and any Special Deputy appointed under Section 443.154(a) have all the rights and powers of the Liquidator, subject to any limitations imposed by the Liquidator.

3.6 Pursuant to Section 443.008(m), the Commissioner is not required to file a bond in connection with this proceeding, in the Liquidator's capacity as Liquidator or otherwise.

3.7 In accordance with Section 443.151(a), any successor to the Commissioner shall be appointed as the Liquidator of Defendant. In the event a successor is appointed to be the Commissioner, the successor shall become the Liquidator upon the Commissioner's appointment, and the former Commissioner shall be discharged as Liquidator as a matter of law.

3.8 The enumeration of the Liquidator's powers and authority in this Order shall not be construed as a limitation on the Liquidator to take any action authorized by the Insurer Receivership Act or other applicable law that is not specified in this Order.

IV. PERMANENT INJUNCTION

The Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect:

TO: Defendant and its agents, including but not limited to:
Defendant's current and former officers, directors, underwriters, managers and employees, including but not limited to, Jeff Craig and Jay Matushak; owners and affiliates, including but not limited to, Bright Health Group, Inc.; Bright Health Management, Inc.; Bright Health Services, Inc.; Bright Health Company of Arizona; Bright Health Insurance Company of Colorado; Bright Health Insurance Company of New York; Bright Health Insurance Company of Tennessee; Bright Health Insurance Company of Ohio, Inc.; Bright Health Insurance Company of Illinois; Bright Health Insurance Company of Florida; Bright Health Company of Georgia; Bright Health Company of North Carolina; Bright Health Company of South Carolina; Bright Health Company of California, Inc.; Universal Care Inc.

d/b/a Brand New Day; Central Health Plan of California, Inc.; True Health New Mexico, Bright HealthCare Company of Florida, Inc.; NeueHealth Partners Texas RBE, LLC; Bright HealthCare Company of Florida; NeueHealth Networks of Texas, Inc., NeueHealth Partners LLC, local recording agents, managing general agents, agents, third party administrators, representatives, associates, servants, adjusters, attorneys, including but not limited to, Mitchell, Williams, Selig, Gates & Woodyard, PLLC, Maynard Nexsen PC, accountants and those acting in concert with them;

Financial institutions, including but not limited to:

Any and all banks, savings and loan associations; trust companies; credit unions; or any other financial or depository institutions in the possession of any of Defendant's property, including but not limited to, U.S. Bank Interstate (including, but not limited to accounts ending in 1272, 1264, and 0659); and

All other parties, including but not limited to:

Creditors, claimants, insurers, intermediaries, attorneys and all other persons, associations, corporations, or any other legal entities asserting claims or causes of action of any kind against Defendant, or in possession of any of Defendant's property, and the United States Postmaster.

Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions:

4.1 Doing, operating, or conducting Defendant's business under any charter, certificate of authority, license, permit, power, or privilege belonging to or issued to Defendant, or exercising any direction, control, or influence over Defendant's business, except through the authority of the Liquidator or the Liquidator's designees;

4.2 Transacting any business of Defendant in any manner except through the authority of the Liquidator or the Liquidator's designees;

4.3 Wasting, disposing of, converting, dissipating, or concealing, in any manner, any of Defendant's property;

4.4 Using, releasing, transferring, selling, assigning, canceling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, asserting ownership of, concealing, in any manner, or removing from this Court's jurisdiction or from Defendant's place of business, any of Defendant's property, or any other items purchased by Defendant, or any items into which such

property has been transferred, deposited or placed, or any other items owned by Defendant, wherever located, except through the authority of the Liquidator or the Liquidator's designees;

4.5 Releasing, transferring, selling, assigning, or asserting ownership of, in any manner, any claims, accounts receivable, or causes of action belonging to Defendant, whether asserted or not, except through the authority of the Liquidator or the Liquidator's designees;

4.6 Doing anything to prevent the Liquidator or the Liquidator's designees from gaining access to, acquiring, examining, or investigating any of Defendant's property or any other property, books, documents, records, or other materials concerning Defendant's business, under whatever name they may be found;

4.7 Obstructing or interfering in any way with the conduct of this proceeding or any incidental investigation as prohibited by Section 443.010(b);

4.8 Interfering with these proceedings or with the lawful acts of the Liquidator or the Liquidator's designees in any way;

4.9 Intervening in this proceeding for the purpose of obtaining a payment from the receivership estate of Defendant as prohibited by Section 443.005(i);

4.10 Making any claim, charge or offset, or commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against Defendant, Defendant's property, or any part thereof, or against the Liquidator, except as permitted by the Insurer Receivership Act.

EACH OF YOU ARE FURTHER SPECIFICALLY ORDERED to make available and disclose to the Liquidator or the Liquidator's designees the nature, amount, and location of Defendant's property, and promptly surrender all such property to the Liquidator or the Liquidator's designees.

DEFENDANT AND DEFENDANT'S PRESENT OR FORMER OFFICERS,

MANAGERS, DIRECTORS, TRUSTEES, OWNERS, EMPLOYEES, AGENTS, AND ANY OTHER PERSONS WITH AUTHORITY OVER OR IN CHARGE OF DEFENDANT'S AFFAIRS ARE FURTHER ORDERED to cooperate with the Liquidator, or the Liquidator's designees as required by Section 443.010(a).

IT IS FURTHER ORDERED that the United States Postmaster and any other delivery services shall deliver to the Liquidator any items addressed to or intended for Defendant.

V. STAY OF PROCEEDINGS

5.1 An automatic stay is in effect with respect to actions against Defendant or its property as provided in Section 443.008(c). In accordance with Section 443.008(f), such stay of actions against Defendant is in effect for the duration of this proceeding, and the stay of actions against Defendant's property is in effect for as long as the property belongs to the receivership estate.

5.2 An automatic stay is in effect with respect to actions against a party insured by Defendant as provided in Section 443.008(d). Such stay shall continue for 90 days after the date of this Order, or such further time as ordered by this Court.

5.3 A stay is in effect with respect to a proceeding in which the Defendant is a party or is obligated to defend a party in a court in this state, other than a proceeding directly related to the receivership or that is brought by the Liquidator based on this Court's finding of fact and conclusion of law that the Defendant is impaired as provided by Section 463.404.

VI. CONTINUATION OF COVERAGE

6.1 All reinsurance contracts by which Defendant has assumed insurance obligations of another insurer are canceled upon entry of this order pursuant to Section 443.152(a).

6.2 Unless further extended by the Liquidator with the approval of this Court pursuant to Section 443.152(b), all policies, insurance contracts, surety bonds or surety undertakings issued by Defendant in effect at the time of issuance this order shall continue in force only until the earlier

of:

- (a) the date of expiration of the policy coverage;
- (b) the date the insured has replaced the insurance coverage or otherwise terminated the policy;
- (c) the date of any transfer of a policy obligation by the Liquidator pursuant to Section 443.154(h); or
- (d) the date proposed by the Liquidator to cancel coverage.

VII. OTHER ORDERS

7.1 This Order shall issue and become effective immediately and shall continue in full force and effect until the entry of an order by this Court terminating liquidation under Section 443.352.

7.2 Pursuant to Section 443.055, this Order constitutes a final judgment, provided that this Court shall retain jurisdiction to issue further orders pursuant to the Insurer Receivership Act.

7.3 The Texas Department of Insurance and the Attorney General of Texas shall have a claim for reasonable attorneys' fees and court costs, provided that the amount and payment of such claim are subject to the provisions of Chapter 443.

7.4 In accordance with Section 443.001(b), this Order does not limit the rights of the Commissioner or the Texas Department of Insurance to take any administrative action or issue any administrative order.

7.5 Notice of Plaintiffs Petition and this Order shall be provided under Section 443.052(b) by first class mail or electronic communication.

7.6 Pursuant to Section 443.007(e), the Liquidator may provide notice of any application in the time periods prescribed in Rule 21a of the Texas Rules of Civil Procedure if it determines that an expedited hearing is necessary. In accordance with Section 443.007(d), the Liquidator may provide notice of any application by first class mail, electronic mail, or facsimile

transmission, at the Liquidator's discretion.

7.7 Anyone over the age of 18 who is not a party to nor interested in the outcome of this suit may serve all citations, writs, and notices in this cause.

7.8 All of the foregoing is subject to further orders of this Court.

SIGNED at Austin, Travis County, Texas, on this the 29th day of Nov, 2023,
at 9:15 o'clock A.m.

F. Scott McCown
DISTRICT JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE:

Dated November 28, 2023.

Respectfully submitted.

KEN PAXTON
Attorney General

KIMBERLY GDULA
Division Chief, General Litigation
Division

BRENT WEBSTER
First Assistant Attorney General

/s/ Zachary L. Rhines
ZACHARY L. RHINES
Assistant Attorney General
State Bar No. 24116957
Tel: (512) 463-9911
Zachary.Rhines@oag.texas.gov

GRANT DORFMAN
Deputy First Assistant Attorney
General

General Litigation Division
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548
Fax: (512) 320-0667

JAMES LLOYD
Deputy Attorney General for
Civil Litigation

**Counsel for Texas Department of
Insurance**



/s/

STANTON STRICKLAND

State Bar No. 00786392

Mitchell, Williams, Selig, Gates, & Woodyard, P.L.L.

500 W. 5th Street, Suite 1150

Austin, Texas 78701

(512) 480-5100 – Telephone

(512) 322-0301 – Fax

COUNSEL FOR DEFENDANT
BRIGHT HEALTHCARE INSURANCE
COMPANY OF TEXAS

§