

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

LINDA A. WATTERS, COMMISSIONER,
OFFICE OF FINANCIAL AND
INSURANCE SERVICES

Petitioner,

File No. 07-1211-CR

Hon. Joyce Draganchuk

v.

NATIONAL FOOT CARE PROGRAM, INC.,

Respondent.

Order

**Authorizing the Commissioner to Rehabilitate National Foot Care Program, Inc.,
Approving the Appointment Of Special Deputy Rehabilitators,
and Providing Injunctive Relief**

At a session of said Court
held in the Circuit Courtrooms
for the County of Ingham,
State of Michigan, on the
18th day of October, 2007

PRESENT: HONORABLE JOYCE DRAGANCHUK
Circuit Court Judge

Petitioner, Linda A. Watters, Commissioner of the Office of Financial and Insurance Services, has filed a petition for an order authorizing her to rehabilitate National Foot Care Program, Inc., approving the appointment of special deputy rehabilitators, and providing injunctive relief. The Court is fully informed of the circumstances and hereby finds:

A. National Foot Care Program, Inc. (NFCP) is a system of health care delivery and financing offered to individuals in exchange for a fixed payment and organized so that providers and the organization are in some part at risk for the cost of services in a manner similar to a health maintenance organization (HMO), though it does not meet the requirements of Chapter 35

of the Insurance Code applicable to HMOs. As such, under MCL 500.3573 NFCP is regulated in the same manner as HMOs except to the extent that the Commissioner of OFIS finds that the regulation is inappropriate.

B. Under Chapter 35 of the Insurance Code, HMOs are subject to: "All of the provisions of this act that apply to a domestic insurer authorized to issue an expense-incurred hospital, medical, or surgical policy or certificate, including, but not limited to, sections 223 and 7925 and chapters 34 and 36" unless "specifically excluded, or otherwise specifically provided for in this chapter." MCL 500.3503.

C. Under MCL 500.8102, domestic insurers who are or have been transacting insurance business in this state are subject to proceedings under Chapter 81 of the Insurance Code. NFCP is subject to proceedings under Chapter 81 of the Insurance Code since the OFIS Commissioner has not determined that regulation under Chapter 81 is inappropriate for such a system of health care delivery and financing.

D. MCL 500.8112 authorizes the Commissioner to petition the court for a rehabilitation based on any one or more of thirteen enumerated grounds. These grounds include:

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

* * * *

(i) Within the previous 4 years the insurer has willfully violated its charter or articles of incorporation, its bylaws, an insurance law of this state, or a valid order of the commissioner under section 8109.

* * * *

(m) Is found, after examination, to be in a condition so that it could not presently meet the requirements for incorporation and authorization.

E. Rehabilitation of NFCP is appropriate because this Court finds that NFCP is in such condition that further transaction of business would be hazardous financially to its members, creditors, or the public; within the previous four years NFCP has violated a valid order of the OFIS Commissioner under MCL 500.8109; and NFCP is in a condition that it could not

presently meet the requirements for incorporation and authorization. The Court finds in particular that NFCP is insolvent, has negative working capital, and has made transfers to affiliates in contravention of the Commissioner's November 15, 2005 order of supervision.

F. As defined by MCL 500.8103(b) and as used in this order, a "Creditor" is a person having a claim against NFCP, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

G. Under MCL 500.8105(1) the Court is authorized to enter an order it considers to be necessary and proper to prevent:

- Interference with the Rehabilitator or with the Rehabilitation proceedings;
- The institution or further prosecution of any actions or proceedings against NFCP, its assets, or its members;
- The obtaining of preferences, judgments, attachments, garnishments, or liens against NFCP, its assets, or its members;
- The levying of execution against NFCP, its assets, or its members;
- The withholding from the Rehabilitator of books, accounts, documents, or other records relating to NFCP's business;
- Any other threatened or contemplated action that might lessen the value of NFCP's assets or prejudice the rights of its members, creditors, or the administration of this rehabilitation proceeding.

H. 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.

I. MCL 500.8114(2), in conjunction with MCL 500.8121(1)(m), authorizes the Rehabilitator to, among other things: "[P]rosecute an action that may exist on behalf of creditors,



members, policyholders, or shareholders of the insurer against an officer of the insurer or another person."

THEREFORE, IT IS HEREBY ORDERED that:

1. Pursuant to MCL 500.8112 and MCL 500.8113, the Commissioner's Petition for Order of Rehabilitation is GRANTED, and the Commissioner is authorized to rehabilitate National Foot Care Program Inc. (NFCP) pursuant to MCL 500.8101 – 500.8159.
2. The Commissioner is appointed Rehabilitator of NFCP, and is further authorized to appoint one or more Special Deputy Rehabilitator(s) pursuant to MCL 500.8114(1). Hereafter, the Commissioner is referred to as the Rehabilitator.
3. The Rehabilitator shall take immediate possession of all the assets of NFCP and administer those assets under the Court's general supervision.
4. By operation of law, legal title to all assets, accounts, and moneys of NFCP is hereby vested in the Rehabilitator. The filing or recording of this Order with the Clerk of the Circuit Court or the Register of Deeds for the county in which the principal office or place of business of NFCP is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds would have imparted. MCL 500.8113.
5. Pursuant to MCL 500.8115(1), all actions or proceedings in which NFCP is a party, or is obligated to defend a party, that are pending as of the date this Order is entered are STAYED for ninety (90) days and such additional time as is necessary for the Rehabilitator to obtain proper representation and prepare for further proceedings.
6. The Rehabilitator shall have all of the following authority:
 - (a) all the powers set forth in MCL 500.8114 and 500.8115;
 - (b) all applicable powers set forth in Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159; and



(c) such additional powers as the Court shall grant from time to time upon petition of the Rehabilitator.

7. Upon entry of this Order, all powers of the current directors, officers, and managers of NFCP are suspended in their entirety, and the Rehabilitator shall have and exercise the full and complete power of such directors, officers, and managers. In her sole discretion, the Rehabilitator may redelegate, in writing, some or all of her authority to a former director, officer, or manager of NFCP. The Rehabilitator in her sole discretion may immediately cease payments to any or all directors, officers, and managers of NFCP, including, but not limited to, Dr. Claude Oster and Dr. Scott Oster.

8. Among her plenary powers provided by law, the Rehabilitator shall have full power and authority to direct and manage NFCP, to hire and discharge NFCP employees subject to any contract rights they may have, and to deal in totality with the property and business of NFCP.

9. Any director, manager, officer, employee or agent of NFCP and any other person shall, at the Rehabilitator's direction, vacate any building, office, or other premise of NFCP.

10. The Rehabilitator may take such action as she considers necessary or appropriate to reform or revitalize NFCP and is empowered to pursue all avenues of reorganization, consolidation, conversion, merger, or other transformation of NFCP to effectuate rehabilitation and maintain, to the greatest extent possible, a continuity of health care services.

11. If the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of NFCP is appropriate, she shall prepare a plan to effect those changes. The plan shall be submitted to the Court for approval.

12. Pursuant to MCL 500.8116(1), if the Rehabilitator believes that further attempts to rehabilitate NFCP would be futile or would substantially increase the risk of loss to creditors, policyholders, or the public, she may petition the Court for an order of liquidation.



13. The Rehabilitator shall not pay any Creditor claims for goods or services provided prior to the date of this Order, until further order of this Court.

14. The Rehabilitator shall pay Creditor claims for goods or services provided on or after the date of this Order as they become due in the ordinary course of business.

15. Pursuant to MCL 500.8113(3), entry of this Order shall not constitute an anticipatory breach of any contracts or relationships between NFCP and any other persons or entity. During the pendency of this rehabilitation, all persons or entities having contractual or other relationships with NFCP as of the date of this Order, including but not limited to all subscribers and medical providers, are hereby enjoined and restrained from terminating or attempting to terminate such relationships or contracts on the basis of the entry of this Order or NFCP's financial condition. MCL 500.8105(1)(k). Notwithstanding the foregoing, the Rehabilitator shall review the necessity of any contracts subject to this Paragraph 15 during the pendency of this rehabilitation and, upon determining that any such contract is unnecessary to NFCP's rehabilitation, shall petition the Court to withdraw the injunctive relief provided herein and/or for termination of the contract.

16. Pursuant to MCL 500.8106, all officers, managers, directors, trustees, owners, employees, agents, parents, subsidiaries, and affiliates of NFCP, or any other persons or entities having authority over or in charge of any segment of the affairs of NFCP, including but not limited to Dr. Claude Oster, 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 Rehabilitator and any Special Deputy Rehabilitator(s) that she appoints. MCL 500.8106. Among other things, full cooperation requires:

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

(b) Providing the Rehabilitator 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 as may be necessary to enable the Rehabilitator and Special Deputy Rehabilitator(s) to operate the business and to maintain the continuity of health care services being provided to all subscribers.

(c) Providing the Rehabilitator 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 Rehabilitator 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 Rehabilitator or Special Deputy Rehabilitator(s) in the conduct of a delinquency proceeding pursuant to MCL 500.8101 – 500.8159.

17. As provided by law, any failure to cooperate with the Rehabilitator or Special Deputy Rehabilitator(s), obstruction or interference with the Rehabilitator or Special Deputy Rehabilitator(s), or violation of any order of the Commissioner validly entered under Chapter 81 of the Insurance Code, may result in:



- (a) A sentence requiring the payment of a fine not exceeding \$10,000.00, or imprisonment for a term of not more than one year, or both; and
- (b) After a hearing, 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. MCL 500.8106(4).

18. 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 Dr. Claude Oster, 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 **immediately**:

- a. Provide the Rehabilitator 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, 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 Rehabilitator.
- c. Take all necessary steps to safeguard, preserve and retain the assets, documents, data, books, records, accounts, moneys, information or records.

19. In conjunction with Paragraph 18, and because NFCP's financial records reflect receivables owing from its parent, subsidiaries, and affiliates in the amount of \$291,883 or nearly 20% of NFCP's total assets, NFCP's owner, VHP, Inc., its officers and directors, and NFCP's, chairman/president, Claude Oster, and NFCP's treasurer/secretary James Chatfield, and all

affiliates of NFCP shall provide the following documents and information within their control to the Rehabilitator and/or Special Deputy Rehabilitator within thirty (30) days after entry of this Order:

- (a) Each company's balance sheets, income statements, and audited financial statements, and Claude Oster's federal, state and local income tax returns, for the years 2001 through 2006;
- (b) Each company's monthly cash disbursement reports and/or journals for the years 2005 through the present;
- (c) Any and all documents evidencing any lawsuits or judgments settled or paid by NFCP on behalf of others, including but not limited to the above-named companies, for the period 2001 through 2006;
- (d) The names, addresses, and titles of each company's officers and directors;
- (e) Copies of all officers' and directors' liability insurance policies and/or errors and omissions insurance policies issued to each company; and
- (f) All banks and bank account numbers used by Claude Oster and each company from January 1, 2005 to the present.

20. Pursuant to MCL 500.8105(1)(g) and (k), and MCL 500.3529(3), all non-contracted and contracted medical care providers are hereby enjoined and restrained from pursuing collection against, obtaining judgments against, and/or balance billing of NFCP's subscribers, enrollees or members for medical goods provided or services rendered prior to the date of this Order. All non-contracted and contracted medical care providers that provided such goods or rendered such services prior to the date of this Order shall seek payment solely from NFCP as a Creditor of NFCP, as defined in this Order and MCL 500.8103(b). The foregoing prohibition

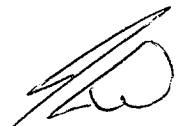


does not apply to any applicable co-payments, deductibles or fees for medical goods or services that are not covered by NFCP.

21. Pursuant to MCL 500.8105(1) and MCL 500.8114(2), and except as provided in ¶¶ 20, 23, 24, and 25 of this Order, all Creditors of NFCP are *enjoined from*:

- a. Institution or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against NFCP, its assets, its members, its enrollees, its subscribers, its officers, its directors, or its employees;
- b. Institution or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against the Rehabilitator, her agents, or the State of Michigan and its officers, agencies or departments for claims or causes of action arising out of or relating to NFCP or proceedings under MCL 500.8101 – 500.8159;
- c. Obtaining preferences, judgments, attachments, garnishments, or liens against NFCP, its assets, subscribers, members, enrollees, officers, directors, or employees;
- d. Levying of execution against NFCP, its assets, subscribers, members, enrollees, officers, directors, or employees; and
- e. Taking any other action that may lessen the value of NFCP's assets or prejudice the rights of NFCP's creditors as a whole, its subscribers, enrollees or members or the administration of this rehabilitation proceeding.

22. Any person who violates an injunction issued in this matter shall be liable to the Rehabilitator 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.



23. All creditor claims against NFCP are within the exclusive 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.

24. Any and all claims by Creditors against NFCP must be raised or asserted within the rehabilitation proceedings before this Court and are subject to this Court's orders regarding the submission and determination of claims.

25. The Rehabilitator shall develop a method for the submission, evaluation and resolution of all claims for goods and services provided prior to the date of this Order to NFCP and its subscribers, members or enrollees.

26. The Rehabilitator's appointment of James Gerber, the Director of Receiverships at OFIS, and Janice Sylvertooth as Special Deputy Rehabilitators is approved. The Commissioner further reserves the right to appoint other Special Deputy Rehabilitator(s) to replace and/or serve with Mr. Gerber and Janice Sylvertooth in the future as the need arises. James Gerber and Janice Sylvertooth shall have such authority and responsibilities as may be delegated to them by the Rehabilitator. Pursuant to MCL 500.8114(1), the compensation of Special Deputy Rehabilitators and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the Commissioner, with the approval of the Court, and shall be paid out of the funds or assets of the insurer.

27. The Rehabilitator shall make an accounting to the Court of NFCP's financial condition and progress towards rehabilitation within 60 days from the date of this order and each succeeding six-month period thereafter.

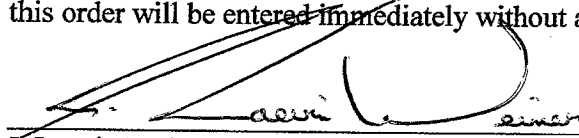


28. The Court reserves jurisdiction to amend this Order of Rehabilitation or issue such further orders as it deems just, necessary and appropriate.

JOYCE DRAGANCHUK

Circuit Court Judge

I have been authorized by my client,
National Foot Care Program, Inc., to consent to
entry of this order. I understand and consent that
counsel for the Office of Financial and Insurance Services
will present this order to the court on an
ex parte basis for consideration by the court.
I understand and agree that if the court agrees,
this order will be entered immediately without a hearing.



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