

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

STATE OF FLORIDA, ex rel., THE  
DEPARTMENT OF INSURANCE OF  
THE STATE OF FLORIDA,

Relator,

CASE NO.: 00-0004

v.

FLA BAR NO.: 0221791 (DKT)  
0986471 (VDJ)

CADUCEUS SELF INSURANCE FUND,  
INC.,

Respondent.

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**CONSENT ORDER APPOINTING  
THE FLORIDA DEPARTMENT OF INSURANCE  
AS RECEIVER FOR PURPOSES OF LIQUIDATION,  
INJUNCTION, AND NOTICE OF AUTOMATIC STAY**

THIS CAUSE was considered on the Petition of the Florida Department of Insurance for entry of a consent order of liquidation of Caduceus Self Insurance Fund, Inc. (hereinafter "CADUCEUS" or "Respondent"). The Court having reviewed the pleadings of record, having heard presentation of counsel, and otherwise being fully informed in the premises, finds:

1. This Court has jurisdiction pursuant to section 631.021, Florida Statutes, and venue is proper pursuant to subsection (2) of section 631.021, Florida Statutes.
2. CADUCEUS is a Florida corporation authorized to transact a medical malpractice insurance business in the State of Florida. Respondent's principal place of business is 5100 N.W. 33<sup>rd</sup> Avenue, Suite 255, Fort Lauderdale, Broward County, Florida.
3. Section 631.021(3), Florida Statutes, provides that a delinquency proceeding pursuant to Chapter 631, Florida Statutes, constitutes the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer.

4. Section 631.061, Florida Statutes, authorizes the Department to apply to this Court for an order directing it to liquidate a domestic insurer upon the existence of any of the grounds specified therein or in Section 631.51, Florida Statutes.

5. Section 631.051(11), Florida Statutes, authorizes the Department to apply to this Court for an order directing it to liquidate a domestic insurer upon the ground that the insurer has consented to such an order through a majority of its directors, stockholders, members, or subscribers.

6. Respondent has consented to the appointment of the Department as Receiver for purposes of liquidation and admits that Respondent is insolvent as defined under Chapter 631, Florida Statutes. The Board Resolution and Consent of Respondent is attached as Exhibit "A" to the Department's petition. In its consent, Respondent admitted that it is insolvent.

7. It is in the best interests of Respondent and its creditors and insureds that the relief requested in this petition be granted.

**IT IS THEREFORE ORDERED and ADJUDGED** as follows:

A. The Department of Insurance of the State of Florida is hereby appointed Receiver of Respondent for purposes of liquidation.

B. Receiver is hereby authorized and directed to:

1) Take immediate possession of all the property, assets, and estate, and all other property of every kind whatsoever and wherever located belonging to Respondent pursuant to Sections 631.101 and 631.141, Florida Statutes, including but not limited to: offices maintained by the Respondent, rights of action, books, papers, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of

Respondent, wherever situate, whether in the possession of Respondent or its officers, directors, trustees, employees, consultants, attorneys, agents or affiliates.

2) Liquidate the assets of Respondent including but not limited to funds held by Respondent's agents, subagents, producing agents, brokers, solicitors, service representatives or others under agency contracts or otherwise which are due and unpaid to Respondent, including premiums, unearned commissions, agents' balances, agents' reserve funds, subrogation and/or salvage recoveries.

3) Appoint one or more special agents and employ and authorize the compensation of legal counsel, actuaries, accountants, clerks, consultants, and such assistants as it deems necessary, purchase or lease personal or real property as it deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, as approved by the Court, to be paid out of the funds or assets of the Respondent in the possession of the Receiver or coming into its possession.

4) Reimburse such employees, from the funds of this receivership, for their actual necessary and reasonable expenses incurred while traveling on the business of this receivership.

5) Not defend or accept service of process on legal actions wherein the Respondent, the Receiver, or the insured is a party defendant, commenced either prior to or subsequent to this Order, without authorization of this Court; except, however, in actions where Respondent is a nominal party, as in certain foreclosure actions, and the action does not affect a claim against or adversely affect the assets of Respondent, the Receiver may file appropriate pleadings in its discretion.

6) Commence and maintain all legal actions necessary, wherever necessary, for the proper administration of this receivership proceeding.

7) Collect all debts which are economically feasible to collect which are due and owing to the Respondent, including but not limited to funds or premiums held by agents of Respondent under agency contracts or otherwise.

8) Deposit funds and maintain bank accounts in accordance with Section 631.221, Florida Statutes.

9) Take possession of all Respondent's securities and certificates of deposit on deposit with the Treasurer of Florida, if any, and convert to cash or reinvest as much as may be necessary, in its judgment, to pay the expenses of administration of this receivership or otherwise best benefit the estate.

10) Calculate any necessary assessments pursuant to Section 624.474, Florida Statutes, and utilize the assessment collection procedure set forth in Sections 631.311, 631.321, and 631.331, Florida Statutes, or such other procedure as may be subsequently ordered by this Court.

11) Publish notice specifying the time and place fixed for the filing of claims with the Receiver once each week for three consecutive weeks in the Florida Administrative Weekly published by the Secretary of State, and at least once in the Florida Bar News.

12) Negotiate and settle subrogation and/or salvage claims and Final Judgments up to and including the sum of Twenty Thousand Dollars (\$20,000.00) without further order of this Court.

13) Sell any salvage recovered having value of not more than Twenty Thousand Dollars (\$20,000.00) without further order of this Court.

14) Give notice of this proceeding to Respondent's agents pursuant to Section 631.341, Florida Statutes (1995), and to its insureds, if any.

15) Apply to this Court for further instructions in the discharge of its duties as may be necessary.

**IT IS FURTHER ORDERED AND ADJUDGED that:**

C. Title to all property, real or personal, all contracts, rights of action and all books and records of Respondent, wherever located, shall be vested in the Receiver pursuant to Sections 631.101 and 631.141, Florida Statutes.

D. All officers, directors, trustees, agents and employees and all other persons representing Respondent or currently employed by Respondent in connection with the conduct of its business are discharged forthwith.

E. Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor, or affiliate of Respondent and any other person who possesses or possessed any executive authority over, or who exercises or exercised any control over, any segment of Respondent's affairs or the affairs of its affiliates shall fully cooperate with the Receiver, pursuant to Section 631.391, Florida Statutes, notwithstanding the preceding paragraph.

F. All attorneys employed by Respondent as of the date of this Order, within 10 days notice of the Order, shall report to the Receiver on the name, company claim number and status of each file they are handling on behalf of the Respondent. Said report should also include an accounting of any funds received from or on behalf of the Respondent. All attorneys employed by Respondent are hereby advised that pursuant to Section 631.011(17), Florida Statutes, a claim based on mere possession does not create a secured claim and all attorneys

employed by Respondent, pursuant to In Re the Receivership of Syndicate Two, Inc., 538 So.2d 945 (Fla. 1<sup>st</sup> DCA 1989), who are in possession of litigation files or other material, documents or records belonging to or relating to work performed by the attorney on behalf of Respondent shall deliver such litigation files, material, documents or records intact and without purging to the Receiver, on request, notwithstanding any claim of a retaining lien which, if otherwise valid, shall not be extinguished by the delivery of these documents.

G. All agents, brokers or other persons having sold policies of insurance and/or collected premiums on behalf of the Respondent are hereby required to account for and pay all premiums and commissions owed to the Respondent directly to the Receiver within 30 days of demand by the Receiver or appear before this Court to show cause, if any they may have, as to why they should not be required to account to the Receiver or be held in contempt of Court for violation of the provisions of the Order. No agent, broker, premium finance company or other person shall use premium monies owed to the Respondent for any purpose other than payment to the Receiver.

H. Any premium finance company, which has entered into a contract to finance a premium for a policy that has been issued by the Respondent, shall pay any premium owed to the Respondent directly to the Receiver.

I. Reinsurance premiums due to or payable by the Respondent shall be remitted to, or disbursed by, the Receiver. Reinsurance losses recoverable or payable by the Respondent shall be handled by the Receiver. All correspondence concerning reinsurance should be between the Receiver and the reinsuring company or intermediary.

J. Upon request by the Receiver, any company providing telephonic services to the Respondent shall provide a reference of calls from the number presently assigned to the

Respondent to any such number designated by the Receiver or perform any other services or changes necessary to the conduct of the receivership.

K. Any bank, savings and loan association, financial institution or other person, including but not limited to the following:

Northern Trust Bank of Florida

Account Nos.: 14170012784; 1410005938;  
14610506

1100 E. Las Olas Blvd.  
Ft. Lauderdale, FL 33301

and any other bank, savings and loan association or other financial institution which has on deposit, in its possession, custody or control any funds, accounts and any other assets of the Respondent, shall immediately transfer title, custody and control of all such funds, accounts and other assets to the Receiver. The Receiver is authorized to change the name of such accounts and other assets, withdraw them from such bank, savings and loan association or other financial institution, or take any lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association or other financial institution shall be permitted to exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court.

L. Any entity furnishing telephone, water, electric, sewage, garbage or trash removal services to the Respondent shall maintain such service and transfer any such accounts to the Receiver as of the date of this Order, unless instructed to the contrary by the Receiver.

M. Any data processing service which has custody or control of any data processing information and records including but not limited to source documents, data processing cards, input tapes, all types of storage information, master tapes or any other recorded information relating to the Respondent shall transfer custody and control of such records to the Receiver. The Receiver is authorized to compensate any such entity for the actual use of

Receiver. The Receiver is authorized to compensate any such entity for the actual use of hardware and software which the Receiver finds to be necessary to this proceeding. Compensation should be based upon the monthly rate provided for in contracts or leases with Respondent which were in effect when this proceeding was instituted, or based upon such contract as may be negotiated by the Receiver, for the actual time such equipment and software is used by the Receiver.

N. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Respondent and to handle future deliveries of Respondent's mail as directed by the Receiver.

O. All claims shall be filed with the Receiver on or before September 3, 2000 or be forever barred, and all such claims shall be filed on proof of claim forms prepared by the Receiver.

P. Section 631.182, Florida Statutes requires the Receiver to report to this Court and provide its recommendation on claims. The report and recommendation shall contain the payee(s) or claimant(s) for each claim as it has been filed with the Receiver by submission of a properly executed Proof of claim form. The Receiver will make payment to the payee(s) or claimant(s) named on the report. Any and all assignments of claims are private contracts between the payee(s) or claimant(s) and a third party and the Receiver bears no administrative responsibility to recognize or reflect the assignment(s) on the report and recommendation. The Receiver shall not be responsible for and will not recognize or accept any assignment of a claim by the payee(s) or claimant(s) of record to any third party.

Q. Pursuant to the provisions of Section 631.252, Florida Statutes (1995), other than policies covered by Part III of Chapter 631, Florida Statutes (1995) all insurance policies,



shall continue in force until 30 days from the date of the entry of this Order of Liquidation and shall be determined canceled as of 11:59 pm, February 2, 2000; except that those policies or contracts of coverage with normal expiration dates prior thereto and policies terminated by insureds or lawfully canceled by the insurer before such date, shall stand canceled as of such earlier date.

R. Except for contracts of insurance, all executory contracts to which the Respondent was a party are hereby canceled and will stand canceled unless specifically adopted in writing by the Receiver within 30 days of the date of this Order. The rights of the parties to any such contracts are fixed as of the date of this Order and any cancellation under this provision shall not be treated as an anticipatory breach of such contracts.

S. All affiliated companies, associations and administrators, including but not limited to The Doctor's Company, shall make their books and records available to the Receiver, to include all records located in any premises occupied by said affiliate, association or administrator, whether corporate records or not, and to provide copies of any records requested by the Receiver whether or not such records are related to Respondent. The Receiver has title to all policy files and other records of, and relating to Respondent, whether such documents are kept in offices occupied by an affiliate company or any other person, corporation, or association. The Receiver is authorized to take possession of any such records, files, and documents, and to remove them to any location in the Receiver's discretion. Any disputed records should not be withheld from the Receiver's review, but should be safeguarded and presented to this Court for review prior to copying by the Receiver.

T. The Receiver will have complete access to all computer records of the Respondent and its affiliates at all times including but not limited to Respondent's computer records.

U. Any person, firm, corporation or other entity having notice of the Order that fails to abide by its terms shall appear before this Court to show good cause, if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order.

V. The Florida Department of Insurance is hereby authorized to cancel and render null and void any certificate of authority issued by the Department of Insurance and required by the Florida Insurance Code in order for Respondent to do business in the State of Florida.

W. Pursuant to Sections 631.041(3) and (4), Florida Statutes, all persons, firms, corporations and associations within the jurisdiction of this Court, including, but not limited to, Respondent and its officers, directors, stockholders, members, subscribers, agents and employees, and The Doctor's Company, are hereby enjoined and restrained from doing, doing through omission, or permitting to be done any action which might waste or dispose of the books, records and assets of the Respondent; from in any means interfering with the Receiver or these proceedings; from the transfer of property and assets of Respondent without the consent of the Receiver; from the removal, concealment, or other disposition of Respondent's property, books, records, and accounts; from the commencement or prosecution of any actions against the Respondent or the Receiver together with its agents or employees, the service of process and subpoenas, or the obtaining of preferences, judgments, writs of attachment or garnishment or other liens; and from the making of any levy or execution against Respondent or any of its property or assets. Notwithstanding the provisions of this paragraph, the Receiver shall be permitted to accept and be subpoenaed for non-party production of claims files in its possession, including medical records which may be contained therein. In such cases, the requesting party

property or assets. Notwithstanding the provisions of this paragraph, the Receiver shall be permitted to accept and be subpoenaed for non-party production of claims files in its possession, including medical records which may be contained therein. In such cases, the requesting party must submit an affidavit to the Receiver stating that notice of the non-party production was appropriately issued and provided to the patient and that the patient was given the opportunity to object and either did not object to the non-party production, or objected and the Court overruled the objection, in which case a copy of the Court's ruling must be attached to the affidavit. The Receiver should be authorized to impose a charge for copies of such claim files pursuant to the provisions of Section 119.07(1)(a), Florida Statutes.

#### CONTINUATION OF INVESTIGATION

X. The Receiver should be authorized to conduct an investigation as authorized by Section 631.391, Florida Statutes, of Respondent and its affiliates, as defined above, to uncover and make fully available to the Court the true state of Respondent's financial affairs. In furtherance of this investigation, Respondent and any parent corporations, subsidiaries, and affiliates shall make all books, documents, accounts, records, and affairs, which either belong to or pertain to the Respondent, available for full, free and unhindered inspection and examination by the Receiver during normal business hours (9:00 a.m. to 5:00 p.m.) Monday through Friday, from the date of the Order. The Respondent and the above specified entities shall cooperate with the Receiver to the fullest extent required by Section 631.391, Florida Statutes. Such cooperation should include, but not be limited to, the taking of oral testimony under oath of Respondent's officers, directors, managers, trustees, agents, adjusters, employees, or independent contractors of Respondent, its affiliates and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of

Respondent in both their official, representative and individual capacities and the production of all documents that are calculated to disclose the true state of Respondent's affairs.

Y. Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor, or affiliate of Respondent and any other person who possesses or possessed any executive authority over, or who exercises or exercised any control over, any segment of the affairs of Respondent or its affiliates shall fully cooperate with the Receiver as required by Section 631.391, Florida Statutes, and as set out in the preceding paragraph. Upon receipt of a certified copy of the Order, any bank or financial institution, including but not limited to Northern Trust Bank of Florida, shall immediately disclose to the Receiver the existence of any accounts of Respondent and any funds contained therein and any and all documents in its possession relating to Respondent for the Receiver's inspection and copying, including but not limited to all records, statements, and information regarding the following accounts:

#### **NOTICE OF AUTOMATIC STAY**

Z. Notice is hereby given that, pursuant to Section 631.041(1), Florida Statutes, the filing of the Department's initial petition herein operates as an automatic stay applicable to all persons and entities, other than the Receiver, which shall be permanent and survive the entry of the order, and which prohibits:

- 1) The commencement or continuation of judicial, administrative or other action or proceeding against the insurer or against its assets or any part thereof;
- 2) The enforcement of a judgment against the insurer or an affiliate obtained either before or after the commencement of the delinquency proceeding;
- 3) Any act to obtain possession of property of the insurer;

4) Any act to create, perfect or enforce a lien against property of the insurer, except a secured claim as defined in Section 631.011(17), Florida Statutes,;

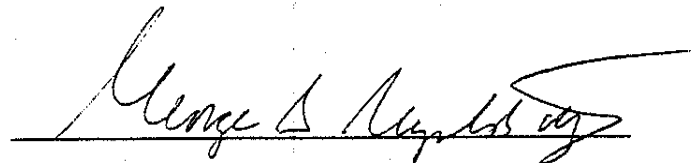
5) Any action to collect, assess or recover a claim against the insurer, except claims as provided for under Chapter 631;

6) The set-off or offset of any debt owing to the insurer except offsets as provided in Section 631.281, Florida Statutes.

AA. All Sheriffs and all law enforcement officials of this state are hereby directed to cooperate with and assist the Receiver in the implementation of the Order.

BB. This Court shall retain jurisdiction of this cause for the purpose of granting such other and further relief as from time to time shall be deemed appropriate.

**ORDERED** in Chambers at Tallahassee, Leon County, Florida this 3 day of January, 2000.



CIRCUIT COURT JUDGE

Copies furnished to: