

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

CIVIL ACTION NO.: 2012-CA-001400

In Re: The Receivership of  
AVAHEALTH, INC. d/b/a KEY INSURANCE PLAN,

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

**THIS CAUSE** was considered on the Petition of the State of Florida, Department of Financial Services (hereinafter the "Department") for entry of an Order of liquidation of **AvaHealth, Inc.** (hereinafter the "Respondent" or "Company"). The Court, having reviewed the pleadings of record, and otherwise being fully informed in the premises finds that:

1. This Court has jurisdiction pursuant to section 631.021(1), Florida Statutes, and venue is proper pursuant to Section 631.021(2), Florida Statutes.

2. Respondent is a corporation authorized since March 22, 2005 pursuant to the Florida Insurance Code to transact business in the State of Florida as a life and health insurer. Respondent's principal place of business is located at 5440 Mariner Street, Suite 110 Tampa, FL 33609.

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. Sections 631.031 and 631.061(1), Florida Statutes, authorize the

Department to apply to this Court for an Order directing it to liquidate a domestic insurer upon the existence of any grounds specified in Section 631.051, Florida Statutes, or if an insurer is or is about to become insolvent. Further, Section 631.025(2), Florida Statutes, authorizes the Department to initiate delinquency proceedings against any insurer if the statutory grounds are present as to that insurer.

5. On June 27, 2012 this Court entered an Order Appointing the Florida Department of Financial Services as Receiver for Respondent for Purposes of Rehabilitation. The Order had an effective date of July 2, 2012.

6. Respondent is insolvent within the meaning of 631.061(1), Florida Statutes.

7. Respondent must be liquidated to protect the remaining assets of Respondent for the benefit of its policyholders, creditors, and the public.

8. Respondent does not object to the granting of the Petition of the State of Florida, Department of Financial Services for entry of an Order of liquidation of AvaHealth, Inc.

9. Pursuant to Section 631.061, Florida Statutes, this Court finds that it is in the best interests of Respondent, its creditors and its members that the relief requested in the Department's Petition be granted.

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

10. The Department of Financial Services of the State of Florida shall be and is hereby appointed Receiver of Respondent for purposes of Liquidation, effective upon the signing of this order.

11. The Receiver shall be authorized and directed to:

A. 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 631.111 and 631.141, Florida Statutes, including but not limited to: offices maintained by 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, wherever situate and however titled, whether in the possession of Respondent or its officers, directors, shareholders, trustees, employees, consultants, attorneys, agents or affiliates and all real property of Respondent, wherever situate, whether in the possession of Respondent or its officers, directors, shareholders, trustees, employees, consultants, attorneys, agents or affiliates or other persons.

B. 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, and subrogation recoveries.

C. 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.

D. 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.

E. Not defend or accept service of process on legal actions wherein Respondent, the Receiver, or the insured is a party defendant, commenced either prior to or subsequent to the 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.

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

G. Collect all debts which are economically feasible to collect which are due and owing to Respondent.

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

I. Take possession of all of Respondent's securities and certificates of deposit on deposit with the Chief Financial Officer of Florida or any similar official of any other state, if any, and convert to cash as much as may be necessary, in its judgment, to pay the expenses of administration of this receivership.

J. 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 and to publish notice by similar methods in all states where Respondents may have issued insurance policies.

K. Negotiate and settle subrogation claims and Final Judgments without further order of this Court.

L. Sell any salvage recovered property without further order of this Court.

M. Coordinate the operation of the Receivership with Florida Life and Health Insurance Guaranty Association ("FLAHIGA") pursuant to Part III, Chapter 631, Florida Statutes. The Receiver shall provide FLAHIGA with access to the company records as necessary. The Receiver may in its discretion, contract with the appropriate guaranty association to provide services as are necessary to carry out the purposes of Chapter 631.

N. Give notice of this proceeding to Respondent's agents pursuant to Section 631.341, Florida Statutes, and to its insureds.

O. For purposes of this Order, the term "affiliate" shall be defined in accordance with Section 631.011(1), Florida Statutes and includes but is not limited to CUSP, LLC, Key Insurance Plans, Inc., Avalon Healthcare Holdings, Inc., and Meditech, Inc.

P. The Receiver is granted all of the powers of the Respondent's directors, officers, and managers, whose authority is hereby suspended, except as such powers are re-delegated in writing by the Receiver. The Receiver has full power to direct and manage the affairs of Respondent, to hire and discharge employees, and to deal with the property and business of the Respondent.

Q. Apply to this Court for further instructions in the discharge of its duties as the Receiver deems necessary.

**IT IS FURTHER ORDERED AND DIRECTED:**

12. 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 be required to fully cooperate with the Receiver, pursuant to Section 631.391, Florida Statutes, notwithstanding the provisions of the above paragraph. Any person who fails to cooperate with the Receiver, interferes with the Receiver, or fails to follow the instructions of the Receiver, may, at the Receiver's discretion, be excluded from Respondent's business premises.

13. Title to all property, real or personal, all contracts, rights of action and all books and records of Respondent, wherever located, is vested in the Receiver pursuant to Sections 631.111 and 631.141, Florida Statutes. The Receiver can destroy records that are, in the Receiver's sole discretion, obsolete. Prior to the actual destruction of these records, the Division of Rehabilitation and Liquidation will obtain a "Disposal Authorization Certificate" from the Division of Archives, History and Records Management of the Florida Department of State. The Receiver will also inform the attorneys of the Respondent before destroying obsolete records.

14. All officers, directors, trustees, administrators, agents and employees and all other persons representing Respondent or currently employed or utilized by Respondent in connection with the Conduct of its business are discharged forthwith; provided, however, the Receiver may retain such persons in the Receiver's discretion.

15. All attorneys employed by Respondent as of the date of the Order, within

10 days notice of the Order, are required to 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 shall also include an accounting of any funds received from or on behalf of the Respondent. All attorneys employed by Respondent shall be discharged as of the date of the Order unless their services are retained by the Receiver. All attorneys employed by Respondent shall be advised that pursuant to Section 631.011(21), 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 be required to 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.

16. All agents, brokers or other persons having sold policies of insurance and/or collected premiums on behalf of the Respondent shall be required to account for and pay all premiums and commissions unearned due to cancellation of policies by the Order or in the normal course of business owed to the Respondent directly to 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 shall 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 refund of unearned premium or for any purpose other than payment

to the Receiver.

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

18. Upon request by the Receiver, any company providing telephonic services to Respondent shall be required to provide a reference of calls from the number presently assigned to Respondent to any such number designated by the Receiver or perform any other services or changes necessary to the conduct of the receivership.

19. Any 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 Respondent, shall be required to immediately transfer title, custody and control of all such funds, accounts and other assets to the Receiver. The Receiver shall be 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.

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



21. 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 Respondent is directed to transfer custody and control of such records to the Receiver. The Receiver shall be 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 was 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.

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

23. All claims shall be filed with the Receiver on or before 11:59:59 p.m. on the date of six months following the entry of this Order, or be forever barred, and all such claims shall be filed on proof of claim forms prepared by the Receiver.

24. In order to assure the validity of claim assignments, to assure that the processing of assignments does not create an undue burden on estate resources, and to assure that assignment decisions are made using the best information available, the Receiver shall not recognize or accept any assignment of claim by the claimant of record unless the following criteria are met:

- A. A distribution petition has not been filed with this Court;

B. The Receiver has been provided with a properly executed and notarized assignment of claim agreement entered into between the parties; and

C. The Receiver has been provided with a properly executed and notarized Receiver's Assignment of Claim Change Form and required supporting documentation.

D. The Receiver's Assignment of Claim Change Form shall contain an acknowledgement by the claimant, or someone authorized to act on behalf of the claimant, that:

1. The claimant is aware that financial information regarding claims distributions and payments published on the Receiver's website or otherwise available can assist the claimant in making an independent and informed decision regarding the sale of the claim;

2. The claimant understands that the purchase price being offered in exchange for the assignment may differ from the amount ultimately distributed in the receivership proceeding with respect to the claim;

3. It is the claimant's intent to sell their claim and have the Receiver's records be permanently changed to reflect the new owner; and

4. The claimant understands that that they will no longer have any title, interest, or rights to the claim including future mailings and distributions if they occur.

25. All executory contracts (excluding contracts with medical providers) to which the Respondent was a party shall be cancelled and stand cancelled unless

specifically adopted by the Receiver or FLAHIGA within ninety (90) days of the date of this Order or from the date of the Receiver's actual knowledge of the existence of such contract, whichever is later. "Actual Knowledge" means the Receiver has in its possession a written contract to which the Respondent is a party, and the Receiver has notified the vendor in writing acknowledging the existence of the contract.

Further, the Receiver shall have the authority to do the following:

1) Pay for services provided by any of Respondent's vendors, in the ninety (90) day period prior to assuming or rejecting the contract, which are necessary to administer the Receivership estate;

2) Once the Receiver determines Respondent's vendor is necessary in the continued administration of the Receivership estate for a period to exceed the ninety (90) days from the date of this order, or from the date of Receiver's actual knowledge of such contract, whichever is later, the Receiver may make minimal modifications to the terms of the contract, including, but not limited to, the expiration date of the agreement, the scope of the services to be provide, and/or the compensation to be paid to Respondent's vendor pursuant to the contract. "Minimal Modifications" shall mean any minimum alteration made to the contract in order to adapt to the new circumstances of the Receivership estate. In no event will any minimal modification be construed as the receiver entering into a new contract with Respondent's vendor.

**Any vendor, including but not limited to, any and all employees / contractors of insurer, claiming the existence of a contractual relationship with the insurer shall provide notice to the Receiver of such relationship. This notice**

shall include any and all documents and information regarding the terms and conditions of the contract, including a copy of the written contract between the vendor and the insurer, if any, what services or goods were provided pursuant to the contract, any current, future and/or past due amounts owing under the contract, and any supporting documentation for third party services or goods provided. Failure to provide the required information may result in vendors' contractual rights not being recognized by the Receiver. The rights of the parties to any such contracts are fixed as of the date of the Order and any cancellation under this provision shall not be treated as an anticipatory breach of such contracts.

26. All affiliated companies and associations, including but not limited to CUSP, LLC, Key Insurance Plans, Inc., Avalon Healthcare Holdings, Inc., and Meditech, Inc. shall make their books and records available to the Receiver, to include all records located in any premises occupied by said affiliate, 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 shall have 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 shall be 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 shall not be withheld from the Receiver's review, but shall be safeguarded and presented to this Court for review prior to copying by the Receiver.

27. The Receiver shall have complete access to and administrative control of all information technology resources of the Respondent and its affiliates at all times

including, but not limited to, Respondent's computer hardware, software and peripherals. Each affiliate shall be given reasonable access to such records for the purpose of carrying out its business operations.

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

29. Pursuant to Section 631.717, Florida Statutes, FLAHIGA will assume the current AvaHealth policies. FLAHIGA will comply with Florida law and provide AvaHealth policyholders with at least 180 days notice prior to cancelling the policies or any policy riders.

30. 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, are enjoined and restrained from the further transaction of the insurance business of the Respondent; 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 Receivers should 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 Sections 119.07(1)(a), and 624.501, Florida Statutes.

31. All subsidiaries, affiliates, parent corporations, ultimate parent corporations, and any other business entity affiliated with Respondent shall fully cooperate with the Receiver in the effort to liquidate Respondent.

32. All subsidiaries, affiliates, parent corporations, ultimate parent corporations, and any other business entity affiliated with Respondent having any interest in the building located at 5440 Mariner Street, Suite 112, Tampa, FL 33609 or any other facility in which Respondent may operate, shall make available, at that location and at no charge to the Receiver or to Respondent, office space, and related facilities (telephone service, copiers, computer equipment and software, office supplies, parking, etc.) to the extent deemed necessary by the Receiver in its sole discretion.

33. All subsidiaries, affiliates, parent corporations, ultimate parent

corporations, and any other business entity affiliated with Respondent having any interest in the computer equipment and software currently used by or for Respondent shall make such computer equipment and software available to the Receiver at no charge to the Receiver or Respondent to the extent deemed necessary by the Receiver in its sole discretion.

### **CONTINUATION OF INVESTIGATION**

34. The Receiver shall 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 its affiliate shall be required to make all books, documents, accounts, records, and affairs, which either belong to or pertain to Respondent, available for full, free and unhindered inspection and examination by the Receiver during normal business hours (8:00 a.m. to 5:00 p.m.) Monday through Friday, from the date of the Order. Respondent and the above specified entities shall be required to cooperate with the Receiver to the fullest extent required by Section 631.391, Florida Statutes. Such cooperation shall 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.

35. 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 be required to 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 shall be required to 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.

36. All Sheriffs and all law enforcement officials of this state shall cooperate with and assist the Receiver in the implementation of this Order.

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

37. 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 this order, and which prohibits:

A. The commencement or continuation of judicial, administrative or other action or proceeding against the insurer or against its assets or any part thereof;

B. The enforcement of judgment against the insurer or an affiliate, provided that such affiliate is owned by or constitutes an asset of Respondent, obtained either before or after the commencement of the delinquency proceeding;

C. Any act to obtain possession of property of the insurer;



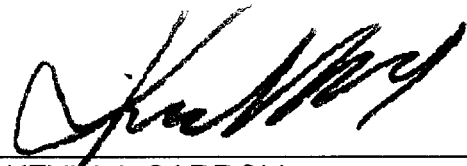
D. Any act to create, perfect or enforce a lien against property of the insurer, except a secured claim as defined in Section 631.011(21), Florida Statutes;

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

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

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

**DONE and ORDERED** in Chambers at the Leon County Courthouse in Tallahassee, Florida this 31 day of August 2012.



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KEVIN J. CARROLL  
CIRCUIT JUDGE