

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,

vs.

N.A.P.T., NAPT
National Association of Physical Therapists,
National Association of Professionals &
Technicians, National Association of
Professional Technical, National Association
of Professional Truckers, National
Association of Professional Traders,
National Association of Chiropractic
Professionals, National Association of
Dental Professionals [Dental Division],
National Tourism & Hospitality Association
[Division], National Veterinarian
Association, National Real Estate
Association [Division],
Collectively referred to as "N.A.P.T."

CASE NO.: 01-0993

Physician's Choice Limited a/k/a
Physician's Choice LTD.

Respondents.

**AMENDED 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 a consent order of liquidation of N.A.P.T. and Physician's Choice Limited, a/k/a Physician's Choice Ltd. (hereinafter collectively A N.A.P.T.). This Court having reviewed the pleadings of

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LEON COUNTY, FLORIDA

record, having heard presentation of counsel, and otherwise being fully informed in the premises,
FINDS:

1. This Court has jurisdiction of this matter pursuant to Section 631.021(3), Florida Statutes, which 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. Section 631.011(12), Florida Statutes, states that "insurer" includes persons purporting to be insurers or organizing, or holding themselves out as organizing, in this state for the purposes of becoming insurers. Chapter 631, Florida Statutes, further provides that venue of a delinquency proceeding against a domestic insurer shall be in the Circuit Court of Leon County.

2. Section 631.061, Florida Statutes, authorizes the Department to apply to this Court for an order directing it to liquidate an insurer upon the existence of any of the grounds specified in Sections 631.061 or 631.051, Florida Statutes.

3. Section 631.061, Florida Statutes, and Section 631.051(11), Florida Statutes, authorize the Department to apply to this Court for an order directing it to liquidate an insurer upon the ground that the insurer has consented to such an order through a majority of its directors, stockholders, members, or subscribers.

4. N.A.P.T. has consented to the appointment of the Department as Receiver for purposes of liquidation.

5. It is in the best interests of N.A.P.T. and its members, creditors, and the public generally that the relief requested in this petition be granted.

IT IS THEREFORE ORDERED and ADJUDGED as follows:

A. The Joint Stipulation and Consent to Liquidation entered into between the State of Florida ex rel. the Department of Insurance of the State of Florida and David Weinstein, acting on behalf of the N.A.P.T. entities is incorporated herein as if fully set forth.

B. The Department of Insurance of the State of Florida is hereby appointed Receiver of N.A.P.T. for purposes of liquidation and the 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 N.A.P.T. pursuant to Sections 631.111 and 631.141, Florida Statutes, including but not limited to: business offices maintained by N.A.P.T., 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 N.A.P.T., wherever situated, whether in the possession of N.A.P.T. or its officers, directors, trustees, employees, consultants, attorneys, agents or affiliates. The scope of this authority shall not be construed to include any materials to which David Weinstein can lawfully assert a privilege individually, or construed in a manner which could abrogate same.

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

3) 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 N.A.P.T. 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 N.A.P.T., the Receiver, or a member is a party defendant, commenced either prior to or subsequent to the order, without authorization of this Court; except, however, in actions where N.A.P.T. is a nominal party, as in certain foreclosure actions, and the action does not affect a claim against or adversely affect the assets of N.A.P.T., 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 that are economically feasible to collect which are due and owing to N.A.P.T.

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

9) Take possession of all of N.A.P.T.'s securities and certificates of deposit on deposit with the Treasurer of Florida, if any, and convert to cash as much as may be necessary, in its judgment, to pay the expenses of administration of this receivership.

10) 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.

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

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

13) Give notice of this proceeding to N.A.P.T.=s agents pursuant to Section 631.341, Florida Statutes, and to its members, if any.

IT IS FURTHER ORDERED AND ADJUDGED that:

C. All officers, directors, trustees, administrators, agents and employees and all other persons representing N.A.P.T. or currently employed or utilized by N.A.P.T. in connection with the conduct of its business be discharged forthwith.

D. Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor, or affiliate of N.A.P.T. and any other person who possesses or possessed any executive authority over, or who exercises or exercised any control over, any segment of N.A.P.T.=s affairs or the affairs of its affiliates be required to fully cooperate with the Receiver, pursuant to Section 631.391, Florida Statutes, notwithstanding the provisions of the above paragraph, as qualified by any privileges which may be lawfully asserted by David Weinstein or any other person individually.

E. Title to all property, real or personal, all contracts, rights of action and all books and records of N.A.P.T., wherever located, be vested in the Receiver pursuant to Sections 631.111 and 631.141, Florida Statutes.

F. All attorneys employed by N.A.P.T. as of the date of the Order, within 10 days notice of the Order, be required to report to the Receiver on the name, company claim number and status of each file they are handling on behalf of N.A.P.T. Said report shall also include an accounting of any funds received from or on behalf of N.A.P.T. All attorneys employed by N.A.P.T. shall be discharged as of the date of the Order unless the Receiver retains their services. All attorneys employed by N.A.P.T. shall be 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 N.A.P.T., pursuant to In Re the Receivership of Syndicate Two, Inc., 538 So.2d 945 (Fla. 1st 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 N.A.P.T., 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.

G. All agents, brokers or other persons having sold contracts and/or collected funds on behalf of N.A.P.T. shall be required to account for and pay all funds and commissions unearned due to cancellation of contracts by the Order or in the normal course of business owed to N.A.P.T. 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 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 funds remitted by members owed to N.A.P.T. for refund of unearned funds or for any purpose other than payment to the Receiver.

H. Any premium finance company that has entered into a contract to finance funds for a contract that has been issued by N.A.P.T. shall be required to pay any funds owed to N.A.P.T. directly to the Receiver.

I. Reinsurance premiums due to or payable by N.A.P.T. shall be remitted to, or disbursed by, the Receiver. Any and all unearned premiums remitted to reinsurers, excess loss coverage carriers, or their intermediaries or agents by N.A.P.T. shall be immediately remitted to the Receiver. The Receiver shall handle reinsurance or excess loss coverage losses recoverable or payable by N.A.P.T. All correspondence concerning reinsurance or excess loss coverage shall be between the Receiver and the reinsuring company, excess loss coverage carrier, or their intermediaries or agents.

J. Upon request by the Receiver, any company providing telephonic services to N.A.P.T. shall be required to provide a reference of calls from the number presently assigned to N.A.P.T. 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, or other financial institution which has on deposit, in its possession, custody or control any funds, accounts and any other assets of N.A.P.T., 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.

L. Any entity furnishing telephone, water, electric, sewage, garbage or trash removal services to N.A.P.T. 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.

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 N.A.P.T. shall be required 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 shall be based upon the monthly rate provided for in contracts or leases with N.A.P.T. 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 shall be directed to provide any information requested by the Receiver regarding N.A.P.T. and to handle future deliveries of N.A.P.T.=s mail as directed by the Receiver.

O. All claims shall be filed with the Receiver on or before 11:59 p.m. on Monday, February 4, 2002, or be forever barred, and all such claims shall be filed on proof of claim forms prepared by the Receiver.

P. All health benefit packages, bonds or similar contracts of coverage issued by N.A.P.T. were canceled on April 30, 2001. This cancellation did not affect such excess loss coverages as the Receiver shall deem to be in the best interests of all claimants.

Q. All executory contracts to which N.A.P.T. was a party are canceled and stand canceled unless specifically adopted by the Receiver within thirty (30) days of the date of the Order. 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.

R. All affiliated companies and associations shall be directed to make their books and records available at a reasonable time, place, and manner consistent with Paragraph V below, to the Receiver, including 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 N.A.P.T. The Receiver would have title to all contract files and other records of, and relating to, N.A.P.T., 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, upon reasonable notice to the entities and persons in possession of same, in such a manner as will mitigate against disruption of any unrelated activities of the entities, 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.

S. The Receiver shall have complete access to all computer records of N.A.P.T., and, with regard to this matter, its affiliates.

T. Any person, firm, corporation or other entity having notice of the Order that fails to abide by its terms shall be 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.

U. 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, N.A.P.T. and its officers, directors, stockholders, members, subscribers, agents and employees, shall be enjoined and restrained from any transactions involving the payment of health care costs by N.A.P.T.; 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 N.A.P.T.; from in any means interfering with the Receiver or these proceedings; from the transfer of property and assets of N.A.P.T. without the consent of the Receiver; from the removal, concealment, or other disposition of N.A.P.T.'s property, books, records, and accounts; from the commencement or prosecution of any actions against the N.A.P.T. 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 N.A.P.T. 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 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 shall be authorized to impose a charge for copies of such claim files pursuant to the provisions of Section 119.07(1)(a), Florida Statutes. However, to the extent permitted by law, such claims files shall otherwise be exempt from the provisions of Section 119.07, Florida Statutes.

CONTINUATION OF INVESTIGATION

V. The Receiver shall be authorized to conduct an investigation as authorized by Section 631.391, Florida Statutes, of N.A.P.T. and, with regard to the affairs of N.A.P.T., its affiliates, as defined above, to uncover and make fully available to the Court the true state of N.A.P.T.=s financial affairs. In furtherance of this investigation, N.A.P.T. and its parent corporations, its subsidiaries, and affiliates shall be required to make all books, documents, accounts, records, and affairs, which either belong to or pertain to N.A.P.T., 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, consistent with Paragraph R above, from the date of the Order. The N.A.P.T. 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 N.A.P.T.=s officers, directors, managers, trustees, agents, adjusters, employees, or independent contractors of N.A.P.T., its affiliates and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of N.A.P.T. in both their official, representative and individual capacities and the production of all documents that are calculated to disclose the true state of N.A.P.T.=s affairs.

W. Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor, or affiliate of N.A.P.T. 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 N.A.P.T. 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 N.A.P.T. and any funds contained therein and any and all documents in its possession relating to N.A.P.T. for the Receiver's inspection and copying. Giving notice of the automatic stay provisions of Section 631.041(1), Florida Statutes.

X. Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor, or affiliate of N.A.P.T. 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 N.A.P.T. or its affiliates shall be entitled to invoke any Constitutional privilege which is legally permissible, and the invocation of such privilege shall not be deemed to violate the requirement that such person fully cooperate with the Receiver as set forth in Section 631.391, Florida Statutes.

NOTICE OF AUTOMATIC STAY

Y. Notice is given of the continuation of the automatic stay pursuant to Section 631.041(1), Florida Statutes, which prohibits:

1) The commencement or continuation of judicial, administrative or other action or proceeding against N.A.P.T., or against its assets or any part thereof;

- 2) The enforcement of a judgment against N.A.P.T. or an affiliate obtained either before or after the commencement of the delinquency proceeding;
- 3) Any act to obtain possession of property N.A.P.T.;
- 4) Any act to create, perfect or enforce a lien against property of N.A.P.T., except a secured claim as defined in Section 631.011(17), Florida Statutes;
- 5) Any action to collect, assess or recover a claim against N.A.P.T., except claims as provided for under Chapter 631;
- 6) The set-off or offset of any debt owing to N.A.P.T. except offsets as provided in Section 631.281, Florida Statutes.

Z. 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, Tallahassee, Leon County, Florida this 10th day of Aug., 2001.


L. RALPH SMITH, Circuit Judge

Copies To:

- A. Kenneth Levine, Esquire
- C. Timothy Gray, Litigation Counsel

A Certified Copy
Filed
BY Anga Walters
D.C.
Clerk of Circuit Court
Leon County, Florida