Berkowitz Pollack Brant Advisors +CPAs

PHYSICIANS UNITED PLAN, INC. RECEIVERSHIP
INSOLVENCY REPORT

February 18, 2022

Florida Department of Financial Services
Division of Rehabilitation and Liquidation
325 John Knox Road, Suite 101
The Atrium
Tallahassee, Florida 32303

Receivership Information/Reference:

Name of Receivership	Physicians United Plan Inc.
Date of Rehabilitation	June 9, 2014
Date of Liquidation	July 1, 2014
Guaranty Association	None

Scope:

1) Berkowitz Pollack and Brant Advisors and Accountants (hereinafter “PROVIDER”) will prepare an insolvency summary report ("Insolvency Report"), pursuant to the requirements of 631.398(3), Florida Statutes, relating to the history and causes of insolvency, including a statement of the business practices of Physicians United Plan Inc. (hereinafter “PUP”) , which led to its insolvency.

2) For the Receivership of PUP, PROVIDER will review PUP’s records in the RECEIVER's possession for information relating to the cause(s) of PUP's insolvency and prepare and submit an approved, written summary report on those causes.

The authority under which the insolvency report is written is Section 631.398, Florida Statutes that states as follows:

The 2021 Florida Statutes

Title XXXVII	Chapter 631
INSURANCE	INSURER INSOLVENCY; GUARANTY OF PAYMENT

631.398 Prevention of insolvencies.--To aid in the detection and prevention of insurer insolvencies or impairments:

(1) Any member insurer; agent, employee, or member of the board of directors; or representative of any insurance guaranty association may make reports and recommendations to the department or office upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations are confidential and exempt from the provisions of s. 119.07(1) until the termination of a delinquency proceeding.

(2) The office shall:

(a) Report to the board of directors of the appropriate insurance guaranty association when it has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that such insurer may be an impaired or insolvent insurer.

(b) Seek the advice and recommendations of the board of directors of the appropriate insurance guaranty association concerning any matter affecting the duties and responsibilities of the office in relation to the financial condition of member companies and companies seeking admission to transact insurance business in this state.

(3) The department shall, no later than the conclusion of any domestic insurer insolvency proceeding, prepare a summary report containing such information as is in its possession relating to the history and causes of such insolvency, including a statement of the business practices of such insurer which led to such insolvency.

History.--ss. 28, 39, ch. 83-38; ss. 187, 188, ch. 91-108; s. 4, ch. 91-429; ss. 2, 6, ch. 93-118; s. 385, ch. 96-406; s. 1351, ch. 2003-261.

The PROVIDER obtained and reviewed the books and records of PUP in the possession of the RECEIVER as follows:

The PROVIDER was contracted to provide expert testimony in litigation for the RECEIVER on March 8, 2017. Shortly thereafter:

- The RECEIVER'S Counsel produced a hard-drive to the PROVIDER containing PUP's records and computer files.
- The PROVIDER was given secure on-line access to PUP's general ledger computer system in the possession of the RECEIVER.
- The RECEIVER's staff and Counsel produced PUP's records to the PROVIDER by email and occasionally by courier on an ongoing basis.

All of PUP's books and records received by the PROVIDER, as detailed above, were thoroughly reviewed.

Business: Historical information related to the company is as follows:

1. **Date and Location of Incorporation:** Originally incorporated in the State of Florida on February 22, 2005 to provide healthcare delivery services under a managed care arrangement as directed by state and federal laws, regulations and guidelines.

2. **Date Company began doing business in Florida:** During 2005, the Company applied for and was issued a Certificate of Authority by the Florida Office of Insurance Regulation to operate as a health maintenance organization in the State of Florida commencing July 29, 2005. The company began collecting premiums and rendering services on January 1, 2006.

3. **Lines of business:** The Company offered health insurance plans to residents of the State of Florida, who were eligible for Medicare parts A and B, benefits under "Medicare Advantage", pursuant to a contract signed with the United States Centers for Medicare and Medicaid Services (CMS), to operate as a Medicare Advantage Organization pursuant to Title 18, Sections 1851-1859 of Social Security Act and federal regulations at 42 CFR 422.501.[1]

[1] Per note 1 of the audit report of PUP for the years 2011 and 2010 issued by McGladrey & Pullen LLP on March 28, 2012.

4. **Certificates of Authority:** The Company was granted a Certificate of Authority by the Florida Office of Insurance Regulation ("OIR") to operate as a health maintenance organization in the State of Florida commencing July 29, 2005.[2]

5. **Geographic Areas:** The Company's geographic area of insurance coverage was Florida.

6. **Operating Results:** According to the 2013 Annual Statement and Audit Report, the March 31, 2014 quarterly financial statement and the April 30, 2014 monthly financial statement of the company:
   a) Net Premium Income was $374,978,411 for the year ended 12/31/2013, $122,233,260 for the quarter ended 3/31/14 and $163,012,436 for the four months ended 4/30/2014.
   b) Net Underwriting Gains were $4,799,542 for the year ended 12/31/2013 $743,685 for the quarter ended 3/31/2014, and $1,441,703 for the four months ended 4/30/2014.
   c) Net Income was $4,877,556 for the year ended 12/31/2013 $786,700 for the quarter ended 3/31/2014, and $1,489,060 for the four months ended 4/30/2014.

7. **Ownership:**
   a) The Company's audited financial statements for the years ended December 31, 2013 and 2012 disclosed that IDJB Investments LLC. owned a controlling interest of the Company's capital stock.
   b) The December 31, 2013 Annual Statement for the Company listed the following officers and directors:
      - Imtiaz Haseed Sataur, President, Chief Executive Officer and Director
      - Kevin Patrick Enterlein Executive Vice President, Chief Operating Officer, Treasurer and Director
      - Darilu Debi Executive Vice President, Chief Administrative Officer and Secretary
      - Sandeep Bajaj M.D. Member of the Board of Directors
      - Rohini Bajaj M.D. Member of the Board of Directors
      - Dennis Sebastian Agliano M.D. Member of the Board of Directors
      - Michael Joseph Barimo D.O. Member of the Board of Directors
      - Rudolph Guy Moise M.D. Member of the Board of Directors

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[2] *ibid.*

8. <u>Affiliates</u>

- IDJB Investments, LLC ("IDJB") - parent company of PUP.[3]
- Florida Cardiology P.A. - shareholder of PUP and provider of medical services.[4]
- Healthcare Services of Florida, LLC- shareholder of PUP and provider of medical services.[5]

Management: People involved with the ownership and management of the Company were as follows:

Name: Imtiaz Haseed Sataur
Job Title: President and Chief Executive Officer
Member of the Board of Directors
Dates employed August 2008 – June 2014

Name: Kevin Patrick Enterlein
Job Title: Executive Vice President, Chief Operating Officer and Treasurer
Member of the Board of Directors
Dates employed 7/9/2012 – 6/11/2014

Name: Darilu Debi
Job Title: Executive Vice President, Chief Administrative Officer and Secretary
Dates employed 9/16/2008 – 6/12/2014

Background/Events of Impact:

PUP was a health maintenance organization ("HMO") that obtained its Florida license on July 29, 2005 and began operations in January 2006. Headquartered in Orlando, Florida, the Medicare only HMO provided health care coverage to approximately 39,000 Medicare beneficiaries in 17 counties. Medicare premiums and contracts are administered through a federal agency, the Centers for Medicare and Medicaid Services ("CMS").

As an HMO PUP was subject to insurance laws, statutes, regulations and guidance established by the Florida Office of Insurance Regulation ("OIR"). PUP was required to file quarterly and annual statutory financial statements with the OIR in accordance with reporting formats established by the National Association of Insurance Commissioners ("NAIC") and in compliance with Statements of Statutory Accounting Principles ("SSAP") that are summarized in the NAIC's

[3] Per note 9 of the audit report of PUP for the years 2013 and 2012 issued by McGladrey LLP on April 1, 2014.
[4] Per note 12 of the audit report of PUP for the years 2013 and 2012 issued by McGladrey LLP on April 1, 2014.
[5] *ibid*

Accounting Practices and Procedures Manual. In connection with Florida Statute 641.26,[6] PUP was also required to file annual audited statutory financial statements that were prepared in conformity with accounting practices and procedures prescribed by the OIR and in compliance with SSAP[7].

HMO's are required to maintain at all times a minimum surplus requirement under Florida Statute 641.225 (1)[8]. As such, PUP was required to maintain a minimum surplus in an amount that was the greater of $1,500,000, 10% of total liabilities or 2% of total annualized premiums.

PUP failed to generate any profits during its early operating years of 2006, 2007, 2008 and 2009. According to PUP's financial statements profits for the years 2010, 2011, 2012 and 2013 were $92,489, $1,613,355, $3,906,692 and $4,877,556 respectively.

In order to meet statutory surplus requirements, PUP entered into agreements with its parent company, IDJB, to acquire additional capital surplus needed because of losses incurred in early years. As of 12/31/2008, PUP had obtained $7,750,000 of cash for surplus notes from IDJB. Additional cash contributions for surplus notes were obtained from IDJB of $8,250,000 in 2009, $1,550,000 in 2010 and $500,000 in 2011. In total $18,050,000 of contributions in the form of surplus notes was obtained from IDJB.

PUP's Risk Sharing Agreements

From PUP's inception through 2008, PUP was primarily paying medical claims on a fee for service and contractual fee payment arrangement. Commencing in 2009, PUP began using Management Service Organizations ("MSO") and their provider networks ("MSO Medical Providers") to provide medical services to PUP's members. Under the MSO arrangements, PUP executed agreements with each individual MSO, assigned its members to the various MSOs and the MSO Medical Providers provided healthcare services to their assigned members. The agreements executed between PUP and the MSOs were risk-sharing arrangements whereby each MSO was responsible for the healthcare costs of each of its assigned members.

In accordance with the MSO agreements, the MSO Medical Providers submitted medical claims to PUP for services they provided to their assigned members and PUP was obligated to pay the medical claims and report the financial results of the MSOs to the respective MSOs. PUP allocated premium revenues, medical claims expenses and other medical expenses to each MSO based upon fixed percentages for the premium revenues and the related costs for the assigned members. Receivable balances ("MSO Receivables") were generated and recorded on PUP's books when allocated medical claims expenses and other medical expenses exceeded the allocated premium revenues (meaning the MSOs were generating deficits). In accordance with

[6] Florida Statute 641.26 (1) (b) and (3) Annual and quarterly reports.
[7] Florida Statute 641.26 (1) (c), Audited Financial Statements.
[8] Florida Statute 641.225 (1), Surplus requirements.

the related MSO agreements, the respective MSO was obligated to pay PUP for operating deficits. PUP was responsible for billing the MSOs for the operating deficits and collecting the payments from the individual MSOs. Payable balances ("MSO Payables") were generated and recorded on PUP's books when the allocated premium revenues exceeded the allocated medical claims expenses and other medical expenses (meaning the MSOs were generating profits). Per the related MSO agreements, PUP was obligated to pay the individual MSOs for operating profits.

As PUP's membership increased each year between 2010 and 2014, the membership involved in the MSO's also increased. Most of PUP's MSOs were operating at deficits (medical claims and other expenses exceeded premium revenues) and resulted in significant receivable balances due from the MSOs between 2010 and 2013. The following summarizes the MSO Receivables that were reported in PUP's annual statutory financial statements as of December 31, 2010, 2011, 2012 and 2013:

2010	$3,336,911
2011	$3,012,860
2012	$8,665,072
2013	$31,920,394

In its 2009 examination of PUP, the OIR found that PUP had not complied with SSAP 84 in accounting for its risk sharing receivables and ordered an adjustment to reduce "Healthcare and other accounts receivable" and "Capital and Surplus" for approximately $500,000 of risk sharing receivables over 90 days past due.

According to PUP's president, Imtiaz Sataur, PUP purposely delayed billing and collecting MSO receivables in order to assist MSOs to overcome deficits caused by inadequate premiums for new members brought on at base premium levels who may have had chronic health issues that required higher premium amounts that would not be realized until I to 2 years later.[9]

This policy of delayed billing and collecting MSO receivables caused the aging of those receivables over 90 days to increase significantly. In accordance with SSAP 84, receivables over 90 days past due must be non-admitted.

In order to overcome the surplus drain caused by its non-admitted MSO receivables, PUP entered into a financing arrangement with a bank whereby it purportedly sold its MSO receivables over 90 days old and leased them back (purported "sale leaseback" transactions). "Sale leaseback" transactions were also entered into for non-admitted equipment. Cash obtained in these transactions was restricted and was not available to pay claims. Per SSAP 4, the restricted cash should have been non-admitted[10]. As of 12/31/2013, approximately $29,535,000 of restricted

[9] See Sataur Statement Under Oath pages 144-156.
[10] SSAP No. 4 states "*Assets having economic value other than those which can be used to fulfill policyholder obligations, or those assets which are unavailable due to encumbrances or other third party interest should not be*

cash was held by PUP in separate accounts and reported on its balance sheet as an admitted asset.[11]

Regulatory Actions

On November 22, 2013, the OIR sent a letter to the President and CEO of PUP directing PUP to non-admit approximately $16.9 million of receivables and to replace the non-admitted receivables with admissible assets within 30 days and to file an amended statutory financial statement for the quarter ended September 30, 2013 by December 22, 2013. The letter stated that noncompliance with the directive would result in the Company filing an insolvent statutory financial statement requiring the Office to take administrative action.

On March 14, 2014, the OIR issued an Order to PUP to non-admit $12.5 million of restricted cash that was unavailable to pay losses and claims because the cash collateralized “sale leasebacks”. PUP was further advised that failure to replace the non-admitted assets with admitted assets would cause PUP’s Surplus to be impaired as of September 30, 2013. PUP held approximately $17 million of additional restricted cash that was subject to similar regulatory action by the OIR at that time. PUP appealed the order and continued to carry the restricted cash on its balance sheet as an admitted asset.[12]

Included in the audit report opinion of PUP’s December 31, 2013 financial statements was an “Emphasis of Matter Regarding Regulatory Action and Going Concern.” Emphasis was placed on the OIR’s March 14, 2014 order described above. In addition emphasis was placed on the significant collection risk of the $26 million of past due MSO receivables purportedly sold in “sale leaseback” transactions and $32 million of MSO receivables on PUP’s balance sheet as admitted assets. According to the audit report, these issues raised substantial doubt about PUP’s ability to continue as a going concern.[13]

On April 16, 2014, PUP received letters notifying of its default on ten “sale leaseback” transactions. The default resulted in the cancellation of the purported leases, the return of the past due MSO receivables (and non-admitted equipment) to PUP and the loss of $28,916,683 of PUP’s restricted cash that was recovered by the lessor banks. PUP reported negative surplus of $(12,934,195) on its April 30, 2014 financial statement.

On April 16, 2014, PUP agreed to a consent order of rehabilitation or liquidation that provided for the appointment of a receiver if PUP failed to obtain $30 million of additional surplus by June 3, 2014. PUP failed to obtain additional surplus funding and on June 9, 2014, Circuit Judge Charles A. Francis signed the “Consent Order Appointing the Florida Department of Financial Services as Receiver for Purposes of Immediate Rehabilitation and Automatic Liquidation effective July 1,

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recognized on the balance sheet, and are, therefore, considered non-admitted”.

[11] Per note 13 of the audit report of PUP for the years 2013 and 2012 issued by McGladrey LLP on April 1, 2014.

[12] Per note 14 of the audit report of PUP for the years 2013 and 2012 issued by McGladrey LLP on April 1, 2014.

[13] Per page 2 of the audit report of PUP for the years 2013 and 2012 issued by McGladrey LLP on April 1, 2014

2014, Injunction and Notice of Automatic Stay."

Causes of Insolvency:

The Receiver conducted an investigation of PUP's finances in accordance with the court order appointing the receivership and Florida Statute Section 631.391.The investigation determined that there were significant misstatements in PUP's quarterly and year-end financial statements for 2011, 2012 and 2013; and that the misstatements were material in 2012 and 2013. PUP's financial Statement errors resulted from its improper accounting for the "sale leaseback" transactions PUP entered into and PUP's failure to properly identify and non-admit MSO receivables over 90 days past due in accordance with SSAP 84.

PUP entered into thirteen "sale leaseback" transactions whereby it purportedly sold non-admitted assets (MSO receivables over 90 days old and 2 transactions for non-admitted equipment). Two transactions were terminated early. In exchange for the non-admitted assets, PUP received restricted cash, approximately $32.5 million in total.

PUP accounted for the restricted cash as an admitted asset in violation of SSAP 4. Each transaction failed to qualify as a sale as required by SSAP 22 due to PUP's continuous and unabated control over the assets purported to have been sold. Accordingly, each "sale leaseback" transaction should have been accounted for by the deposit method or as a financing.[14]

PUP's sale-leaseback accounting method contributed to material accounting errors in PUP's quarterly and annual statutory financial statements for the reporting periods from September 30, 2011 through March 31, 2014. Additionally, PUP's statutory financial statements that were filed with the OIR for the reporting period from September 30, 2011 through March 31, 2014 did not comply with SSAP.

<u>Following is a list of financial statement errors</u>:

- Statutory capital and surplus balances were materially overstated
- MSO Receivables were materially overstated
- Admitted assets were materially overstated
- Liabilities were materially understated
- The purported sale and leaseback transactions pertaining to MSO receivables and property and equipment were incorrectly accounted for under SSAP and lacked proper disclosures in the notes to the statutory financial statements
- PUP's net income was materially overstated
- Restricted cash funds were not properly disclosed in PUP's notes to the statutory financial statements

[14] See SSAP 22 paragraphs 16 to 18.

- Credit risk associated with collectability of MSO Receivables was concealed
- The accounting failed to comply with various SSAPs
- PUP's non-compliance with capital and surplus requirements was concealed
- PUP's deteriorating liquidity and insolvency was concealed

The following chart illustrates the cause and effect of the above errors:

Description	12/31/2011	12/31/2012	12/31/2013	3/31/2014
Per PUP Financial Statements:				
Total Assets	$ 25,226,986	$ 51,271,731	$ 97,079,843	$ 110,724,998
Total Liabilities	19,918,547	43,638,122	85,314,926	96,184,908
Total Capital and Surplus	$ 5,308,439	$ 7,633,609	$ 11,764,917	$ 14,540,090
Adjustments per Receiver's Investigation:				
Non admit restricted cash	$ (500,000)	$ (4,495,769)	$ (30,102,670)	$ (29,839,805)
Liability for debt assumed via "sale leaseback" transactions	(460,904)	(2,275,842)	(27,847,693)	(26,441,273)
Change in MSO receivables over 90 days old	(1,005,321)	(4,291,402)	(24,930,678)	(24,930,678)
Adjusted Capital and Surplus	**$ 3,342,214**	**$ (3,429,404)**	**$ (71,116,124)**	**$ (66,671,666)**

Underwriting Results:

According to the PUP Financial Statements, there were Net Underwriting Gains of $1,542,293 for 2011, $3,865,711 for 2012, $4,799,542 for 2013, $743,685 for the quarter ended 3/31/2014 and $1,441,703 for the four months ended April 30, 2014.

Underwriting results are misleading without taking into consideration the MSO receivables. The MSO receivables are the result of risk sharing deficits. The deficits are the result of PUP operating losses that have been apportioned to the MSOs by contract. As of 4/30/2014, the admitted and non-admitted MSO receivables totaled approximately $63 million[15] That is $63 million of operating losses that were never recorded as losses in PUP's financial statements, but were instead recorded as receivables from the MSOs. PUP could not collect those receivables, which should have been written off and surplus reduced for the full amount of the write off[16].

[15] Per Exhibit 3, Healthcare Receivables to the April 30, 2014 statutory financial statement.
[16] Per SSAP 84 paragraph 20 d.*Evaluation of the collectability of risk sharing receivables shall be made quarterly. If in accordance with SSAP N.5 it is probable the balance is uncollectable, any uncollectable receivable shall be written off and charged to income in the period the determination is made.*

$63 million[17] greatly exceeds all of the profits ever recorded by PUP in its financial statements for all years and periods of its existence, which means that PUP's operations were never profitable.

PUP's insolvency was caused by PUP's unprofitable operations apportioned to MSOs and PUP's failure to collect the resulting MSO receivables.

Summary and Conclusion:

According to PUP's 4/30/2014 financial statements, PUP's surplus was negative $(12,934,195) but with uncollected MSO receivables of approximately $63 million PUP's financial condition was much worse than its negative surplus indicated. In the Receiver's financial statement for PUP in Liquidation as of September 30, 2014 MSO receivables were $61,626,772 and fully reserved for collectability. The Receiver's 9/30/2014 Balance Sheet indicated that liabilities exceeded assets by approximately $82 million.

[17] The total amount of MSO receivables and payables were adjusted by the Receiver after the receipt of a final reconciliation of the PUP Medical Advantage Contract from CMS on February 22, 2017. After adjustment, the MSO receivables totaled $35,525,653.