



FILED

ALAMEDA COUNTY

JUL 23 2014

CLERK OF THE SUPERIOR COURT

By Nancy A. Pose

Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

MICHELLE ROUILLARD, in her official
capacity as the Director of the Department of
Managed health Care,

Applicant,

vs.

ALAMEDA ALLIANCE FOR HEALTH and
ALAMEDA ALLIANCE JOINT POWERS
AUTHORITY,

Respondents.

No. RG14 724068

ORDER AFTER HEARING GRANTING
APPLICANT'S APPLICATION FOR
ORDER CONFIRMING APPOINTMENT
OF A CONSERVATOR

The application of Plaintiff Michelle Rouillard, in her official capacity as the Director of the Department of Managed Health Care ("Director"), for order confirming Director's appointment of a conservator, came on regularly for hearing on July 16, 2014, in Department 516 of this court, the Honorable Brenda F. Harbin-Forte, presiding. Director appeared through counsel, Heidi L. Lehrman, Esq. Respondents Alameda Alliance for Health and the Alameda Alliance Joint Powers Authority (collectively "Alliance") appeared through counsel, Douglas B. Habig, Esq.

A tentative ruling granting Director's application was published and was contested by Alliance. The matter was argued and taken under submission.

The court, having considered the pleadings and arguments of the parties, and good cause appearing, hereby modifies its tentative ruling and orders as follows:

The application is GRANTED.

On May 5, 2014, Director issued an administrative order seizing control of Alliance and appointing a conservator to conduct the business of Alliance, pursuant to Director's statutory authority under Health & Safety Code section 1393, subs. (b) & (c).¹ The following day, Director filed an application in the superior court seeking an order confirming Director's appointment of the conservator as required by section 1393, subd. (c).

Section 1393, subd. (a) prescribes the standard for a court's review of such an application. It provides:

The superior court of the county in which is located the principal office of the plan in this state shall, upon the filing by the director of a verified application showing any of the conditions enumerated in Section 1386 to exist, issue its order vesting title to all of the assets of the plan, wherever situated, in the director or the director's successor in office, in his or her official capacity as such, and direct the director to take possession of all of its books, records, property, real and personal, and assets, and to conduct, as conservator, the business or portion of the business of the person as may seem appropriate to the director, and enjoining the person and its officers, directors, agents, servants, and employees from the transaction of its business or disposition of its property until the further order of the court.

(Section 1393, subd. (a).)

In her verified application, Director has demonstrated that several of the conditions enumerated in section 1386 exist.

First, section 1386 authorizes Director to take disciplinary action against a health plan where the plan is in violation of any provision of the Knox-Keene Act ("the Act") or any regulation promulgated pursuant to the Act. (*Section 1386, subd. (b)(6).*) Director has shown

¹ All further statutory references are to the California Health & Safety Code unless otherwise indicated.

that Alliance is in violation of several key provisions of the Act. Specifically, Alliance had a backlog of 280,000 claims that had not been processed or paid as of the time of Director's application, and missed an agreed-upon May 1, 2014 deadline to have processed the claims backlog. (*Declaration of Gil Riojas ("Riojas Decl."), paragraph 25; Declaration of Mark Abernathy, paragraphs 25, 30.*) Alliance's inability to process claims gives rise to statutory violations for failure to have and demonstrate a procedure for prompt payment or denial of claims (*Section 1375.1, subd. (a)(3)*), and engaging in unfair payment for failure to timely pay, contest, or deny claims. (*Sections 1371 & 1371.35; Cal. Code Regs., tit. 28, section 1300.71, subds. (g) & (i).*) Furthermore, Alliance has failed to maintain minimum tangible net equity ("TNE") over the past 10 months preceding Director's application, as required by a regulation adopted pursuant to the Act. (*Section 1376, Cal. Code Regs., tit. 28, section 1300.76; Riojas Decl., paragraphs 10, 16.*) Alliance did not present any evidence to contradict or qualify this evidence of statutory violations presented by Director.

Second, Director has also shown that the plan is no longer able to meet the standards required of all health plans doing business in the State of California. (*Section 1386, subd. (b)(4).*) Specifically, as discussed above, the inability to timely process claims is a violation of sections 1371 & 1371.35, requiring claims to be paid within 30-45 days of receipt by the health care service plan. (*Sections 1371, 1371.35, Cal. Code Regs., tit 28, section 1300.71, subd. (g); Riojas Decl., paragraph 31.*)

Third, Director has also shown that the continued operation of the plan will constitute a substantial risk to enrollees. (*Section 1386, subd. (b)(6).*) Director presented evidence that as a consequence of Alliance's failure to pay its claims, providers -- frustrated by not getting paid - may stop supplying health care services to enrollees. (*Riojas Decl., paragraph 34.*)

Likewise, when and if Alliance is able to process and pay claims, with interest and penalties, it is possible Alliance will find that its unknown expenses have outpaced its cash flow, resulting in an inability of Alliance to pay for future care and leaving it at risk for bankruptcy. (*Riojas Decl., paragraph 32.*)

Despite agreeing to a briefing schedule providing additional time to file an opposition on the merits, Alliance has failed to present *any* evidence in support of its opposition to Director's application. Indeed, Alliance does not contest that the statutory conditions for seizure and appointment of a conservator under section 1393 exist. Alliance argues that Director has not met the traditional requirements for a preliminary or permanent injunction, but it is well established that where an injunction is authorized by statute, a litigant need not allege or prove the existence of the usual equitable grounds for issuance of an injunction; it is enough that the statutory conditions are satisfied. (*See, e.g., Porter v. Fiske (1946) 74 Cal.App.2d 332, 338, citing Henderson v. Burd ((2d Cir. 1943) 133 F.2d 515, 517.)*)

Moreover, while Alliance argues that Director has not met the requirements for section 1392, Director is proceeding under section 1393, not 1392. The court does not find persuasive Alliance's argument that excusing Director from also satisfying section 1392 would render section 1392 superfluous. As Director correctly points out, section 1393 is the specific statute that applies to appointment of a conservator, while section 1392 is a general statute applicable to other situations.

The court appreciates Alliance's arguments that there is an appearance of a conflict of interest on the part of the proposed conservator, who initially served as a consultant for Alliance to assist it in cleaning up its financial affairs. However, Alliance has not established the actual existence of a conflict, so the court will approve of Director's chosen conservator.

As noted above, section 1393, subd. (a) requires a court, upon finding that any of the conditions enumerated in section 1386 exist, to issue an order vesting title of all assets to the plan in Director's office and directing Director as conservator to conduct the business of the plan. Because Director has shown that not just one, but several of the conditions specified in section 1386 exist, the court hereby GRANTS Director's application.

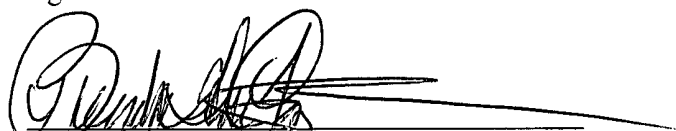
As requested by Alliance, the court will place a time limit on the conservatorship. Director is given a maximum of one year to rehabilitate Alliance. In the final order, the court will set a hearing date for a progress report from Director regarding the success of efforts to rehabilitate Alliance. As further requested by Alliance, Director shall permit the Board of Directors of Alliance to participate in the interviewing and selection of the new management team for Alliance.

Director's objections to evidence filed on July 9, 2014 are OVERRULED. Alliance did not submit any evidence in support of its reply, and Director's objections are made to statements in Alliance' opposition brief. Alliance' arguments in its brief are not evidence.

The court will conform and sign Director's proposed order confirming verified application for Director's appointment of a conservator, which was filed on May 5, 2014, and that conformed order will serve as the court's final order.

The clerk shall serve a copy of this Order After Hearing on all parties. Counsel for Director shall file and serve a notice of entry of order on all parties no later than ten (10) days after the date of the clerk's certificate of mailing.

Dated: July 23, 2014


HON. BRENDA F. HARBIN-FORTE
JUDGE OF THE SUPERIOR COURT

CLERK'S CERTIFICATE OF MAILING

Action No. RG14-724068

Case Name: Rouillard Vs. Alameda Alliance For Health

I certify that the following is true and correct: I am the clerk of the above-named Court and not a party to this cause. I served the Order After Hearing Granting Plaintiff's Application For Order Confirming Appointment of a Conservator by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices to the addresses listed below.

Dated: JUL 23 2014

LEAH T. WILSON
Executive Officer/Clerk of the Superior Court

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