

their business, except at her direction, and (c) an injunction barring actions by third parties that may interfere with the conservation and rehabilitation.

SUBJECT MATTER JURISDICTION

2. The Supreme Judicial Court has exclusive and original jurisdiction of this action pursuant to G.L. c. 175, § 180B, and G.L. c. 176G; § 20.

PARTIES AND RELATED ENTITIES

3. Pursuant to G.L. c. 176G, §§ 10, 14, 16, 17 and 20, the plaintiff Commissioner of Insurance ("Commissioner") is charged with regulating the financial condition of health maintenance organizations ("HMO's") in the Commonwealth.. The Commissioner is also charged, pursuant to G.L. c. 176G, § 2, and G.L. c. 175, § 3A, with the administration and enforcement of the insurance laws of the Commonwealth as applicable to HMO's.

4. The defendant Harvard Pilgrim Health Care, Inc., is a non-profit corporation organized and existing under the laws of the Commonwealth and an HMO licensed to do business in Massachusetts and Maine. Harvard Pilgrim Health Care, Inc., is the sole member of Pilgrim Health Care, Inc., and Harvard Pilgrim Health Care of New England, Inc.

5. The defendant Pilgrim Health Care, Inc., is a non-profit corporation organized and existing under the laws of the Commonwealth and an HMO licensed to do business in Massachusetts.

6. The defendant Harvard Pilgrim Health Care of New England, Inc., is a non-profit corporation organized and existing under the laws of the Commonwealth and an HMO licensed to do business in Massachusetts and New Hampshire.

STATEMENT OF FACTS

7. Harvard Pilgrim Health Care, Inc., Pilgrim Health Care, Inc., Harvard Pilgrim Health Care of New England, Inc., and their affiliates (collectively, "HPHC") provide health care coverage to approximately 1.1 million group, individual, Medicaid and Medicare members in New England. HPHC provides services through employed health care professionals and through contracts with physicians, hospitals and other health care providers.

8. During 1996 and 1997, HPHC pursued a pricing strategy based on market growth. This growth resulted in a significant deterioration in financial performance in 1997 and 1998 that has continued through at least the first eleven months of 1999 because of, among other things, the effect of premium rates set in 1998.

9. HPHC's audited financial statements for the year ending December 31, 1998, reported a net loss (under generally accepted accounting principles) of \$54 million and a fund balance (surplus) of \$239 million.

10. Beginning in June 1999, the Board of HPHC brought on a new management team, and that team developed and sought to implement a turnaround plan including substantial price increases, renegotiated provider contracts, and improved financial controls. The turnaround plan also included the increase of HPHC's statutory net worth and liquidity by selling real estate and equipment, including a sale and leaseback transaction to be financed with the proceeds of certain bonds to be issued pursuant to approval by the Massachusetts Health and Educational Facilities Authority.

11. While HPHC was thinly capitalized in light of its annual premium of approximately \$2.5 billion, the turnaround plan was being implemented and was projected to restore HPHC. In September, 1999, HPHC projected a 1999 operating loss of \$109 million with a year end surplus of approximately \$100 million and a net gain in 2000 of \$4 million. In December 1999, HPHC projected a 1999 operating loss of \$134 million but that its operating loss

would decrease to \$31 million in 2000 and become a \$52 million gain in 2001.

12. In the course of reconciling accounts and preparing its 2000 budget in early January, 2000, HPHC found several errors in past accounting practices that caused it to increase its projected 1999 losses. It immediately informed the Commissioner, and, on January 4, 2000, it advised that it projected that (1) its 1999 loss would increase to at least \$150 million, and (2) its year end fund balance under generally accepted accounting principles would be reduced to approximately less than \$50 million and, under the more conservative statutory basis, would be approximately a negative \$100 million.

13. This deterioration in 1999 operating results precludes promptly closing the bond transaction referred to in paragraph 10 above.

14. In view of these unexpected changes in HPHC's reported financial condition which significantly worsen HPHC's extremely thin capital position, the Commissioner has determined that HPHC is in an unsound financial condition within the meaning of G.L. c. 176G, § 20, and that she must act to protect the interests of HPHC' members, providers and other creditors.

15. It is in the best interest of the public and the members, providers and other creditors of HPHC for the Court to appoint the Commissioner as Temporary Receiver for the purposes of conservation and rehabilitation pursuant to G.L. c. 176G, § 20, and G.L. c. 175, § 180B, and to issue a temporary injunction pursuant to G.L. c. 175, § 180B enjoining HPHC, its directors, officers, employees and agents from further conducting or operating the business of HPHC except upon the order of the Temporary Receiver. The condition of HPHC as described above requires the appointment of a Temporary Receiver to further monitor the condition of HPHC, take control of its property and assets, oversee the continued operation of HPHC for the purpose of conserving its assets and rehabilitating HPHC, and to take such measures as may be proper to eliminate the causes and conditions noted herein.

16. To prevent widespread disruption of health care in the Commonwealth and to protect the value of HPHC's ongoing business and franchise, the Court should in its order grant obligations incurred on behalf of HPHC during the period of Temporary Receivership administrative priority. This would encourage the orderly continuation of HPHC's business while the Commissioner prepares a rehabilitation plan to improve and restore the condition of

HPHC. The Commissioner would propose to report to the Court within thirty days of her appointment with recommendations for further action concerning HPHC.

17. In order to avert the potential public health care disruption that would arise in the event that HPHC members were unable to obtain medical and health care services and supplies, the Court in its order should require all providers who provide services or supplies to HPHC members to keep open and continue to provide services and supplies to HPHC members and to provide full access to medical records during the period of the Temporary Receivership.

18. To avert the potential public health care disruption that would arise in the event that HPHC members were unable to obtain medical and health care services and supplies, the Court in its order should enjoin all persons from taking any action that would close or threaten to close HPHC's facilities or limit, in any way, the uninterrupted provision of medical and health care services and supplies at HPHC's facilities or through the providers who provide services and supplies to HPHC members;

19. Upon entry of the Order of Temporary Receivership for the purpose of conservation and rehabilitation, litigation against HPHC, its directors, officers, employees

and agents, or the Commissioner, as Temporary Receiver, in courts other than this Court is likely. The continuation, commencement or prosecution of such litigation or other proceedings in other courts or forums, and the time and expense involved in defending such litigation or proceedings, could interfere with the temporary receivership proceeding in this Court and the orderly resolution of HPHC's difficulties. Litigation against HPHC, its directors, officers, employees and agents, or the Commissioner, as Temporary Receiver, conducted outside of a temporary receivership proceeding in this Court, could materially hinder the discharge of the Temporary Receiver's responsibilities, and frustrate the purpose and policies of the Commonwealth as expressed in G.L. c. 176G, § 20, and G.L. c. 175, § 180B. Since such actions or proceedings would interfere with a temporary receivership proceeding, they should be enjoined, to the full extent of the Court's jurisdiction, if the Court enters the order of temporary receivership.

20. Litigation or other proceedings affecting the interests of HPHC or the Commissioner, as Temporary Receiver, may be instituted, prosecuted or continued in jurisdictions outside Massachusetts. Moreover, the Commissioner, as Temporary Receiver, may find it necessary

or desirable to institute or defend litigation or other proceedings in jurisdictions outside Massachusetts, or to take other action requiring legal attention in jurisdictions outside Massachusetts, to protect HPHC and its interests or otherwise to discharge the Temporary Receiver's responsibilities. Accordingly, the Commissioner may need to employ attorneys or to continue the employment of attorneys previously employed by HPHC or the Commissioner, as special or local counsel to represent the interests of HPHC or the Commissioner, as Temporary Receiver, in the proper defense, prosecution or other disposition of litigation, other proceedings and other legal matters, all upon such terms and conditions as the Commissioner, as Temporary Receiver, considers necessary in accordance with G.L. c. 175, and to pay for said services out of the funds or assets of HPHC.

21. The Commissioner further requests, pursuant to G.L. c. 175, § 179 and § 18DB, that she be authorized to continue to employ special counsel. In accordance with G.L. c. 175, § 179 and § 18DB, the Commissioner seeks authorization to fix the compensation of special counsel, and to continue to pay that compensation and all other necessary expenses of taking possession of HPHC and of

conducting this proceeding, out of the funds or assets of HPHC.

22. Pending submission to the Court of any further proposed plans or requests for appointment, and pursuant to G.L. c. 175, § 180B, the Commissioner, in order to perform her duties as Temporary Receiver, may require authorization to delegate such authority to and to pay such appropriate personnel as the Commissioner, as Temporary Receiver, deems reasonably necessary to carry out the operations of HPHC in conservation and rehabilitation, subject to compliance with the provisions of G.L. c. 175, the supervision of the Commissioner, as Temporary Receiver, and subject to further orders of the Court.

STATEMENT OF CLAIM

23. The allegations contained in Paragraph 1 through 22 of this Verified Complaint and Request for Appointment of Temporary Receiver are reasserted as if set forth herein.

24. The foregoing allegations demonstrate that HPHC is in an unsound financial condition within the meaning of G.L. c. 176G, § 20, and G.L. c. 175, § 6. Therefore, grounds exist under G.L. c. 176G, § 20, and G.L. c. 175, § 180B, for the granting of the injunctive relief requested, and for the appointment of the Commissioner as

Temporary Receiver for the purposes of conservation and
rehabilitation of HPHC.

RELIEF REQUESTED

WHEREFORE, the Commissioner prays that this Court:

- (1) Enter a Temporary Injunction and Order:
 - (a) Appointing the Commissioner and her successors in office as the Temporary Receiver of HPHC for the purposes of conservation and rehabilitation;
 - (b) Directing the Commissioner, as Temporary Receiver, to take immediate control of the property and assets of HPHC and to administer them under the general supervision of this Court and to report to the Court within thirty days as to proposed further action;
 - (c) Requiring all providers who provide services or supplies to HPHC members to keep open and continue to provide services and supplies to HPHC members and to provide full access to medical records during the period of the Temporary Receivership in order to avert the potential public health care crisis that would arise in the event that HPHC members were unable to obtain medical services and supplies;
 - (d) Providing that obligations incurred on behalf of HPHC after entry of the Temporary Injunction and Order and during the period of Temporary Receivership shall have administrative expense priority and may be paid before payment of obligations incurred prior to entry of the Temporary Injunction and Order;
 - (e) Enjoining HPHC, its directors, officers, employees and agents from further proceeding with the business of HPHC, except upon the order or direction of the Temporary Receiver;
 - (f) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, enjoining and restraining all persons from instituting or continuing to prosecute any suit, action or other proceeding against HPHC, its directors, officers, employees or agents, or against the Commissioner as

Temporary Receiver of HPHC; or from executing or issuing or causing the execution or issuance of any writ, process, summons, attachment, subpoena, replevin, execution or other proceeding for the purpose of impounding or taking possession of or interfering with any property owned by or in the possession of HPHC, or owned-by HPHC and in the possession of any of its directors, officers, employees or agents, or owned by HPHC and in the possession of the Commissioner as Temporary Receiver; and

- (g) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, enjoining and restraining all persons from taking any action that would close or threaten to close HPHC's facilities or limit, in any way, the uninterrupted provision of medical and health care services and supplies at HPHC's facilities or through the providers who provide services _and supplies to HPHC members;
- (h) Pursuant to G.L. c. 175, § 179 and § 180B, authorizing the Commissioner, as Temporary Receiver, to employ or to continue to employ such special counsel, including counsel in other jurisdictions, and consultants as she deems necessary, and to fix and pay or to continue to fix and pay the compensation of such special counsel and consultants and all other necessary expenses of taking possession of HPHC and of conducting this proceeding out of the funds or assets of HPHC as appropriate; and
- (i) Authorizing the Commissioner, as Temporary Receiver, to take such other action as she deems appropriate to effectuate the purposes of the order.

(2) On further application and after due notice and an opportunity to be heard, enter a Permanent Injunction and Order:

- (a) Appointing the Commissioner and her successors in office as the Permanent Receiver of HPHC for the purposes of conservation and rehabilitation;
- (b) Directing the Commissioner, as Permanent Receiver, to take immediate control of the property and assets of HPHC and. to administer them under the general supervision of this Court;
- (c) Providing that obligations incurred on behalf of HPHC after entry of the Temporary Injunction and Order and during the period of Receivership shall have administrative expense priority and may be paid before payment of obligations incurred prior to entry of the Temporary Injunction and Order;
- (d) Enjoining HPHC, its directors, officers, employees and agents from further proceeding with the business of HPHC, except upon the order/or direction of the Permanent Receiver;
- (e) Pursuant to G.L. C. 175, § 179 and § 180B, authorizing the Commissioner, as Permanent Receiver, to employ or to continue to employ such special counsel, including counsel in other jurisdictions, and consultants as she deems necessary, and to fix and pay or to continue to fix and pay the compensation of such special counsel and consultants and all other necessary expenses of taking possession of HPHC and of conducting this proceeding out of the funds or assets of HPHC as appropriate;
- (f) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, enjoining and restraining all persons from instituting or continuing to prosecute any suit, action or other proceeding against HPHC, its directors, officers, employees or agents, or against the Commissioner as Permanent Receiver of HPHC; or from executing or issuing or causing the execution or issuance of any writ, process, summons, attachment, subpoena, replevin, execution or other proceeding for the purpose of impounding or taking possession of or interfering with any property owned by or in the possession of HPHC, or owned by HPHC and in the

possession of any of its directors, officers, employees or agents, or owned by HPHC and in the possession of the Commissioner as Permanent Receiver; and

- (g) Authorizing the Commissioner, as Permanent Receiver, to take such other action as she deems appropriate to effectuate the purposes of the order.

- (3) Grant such other relief as may be appropriate.

LINDA L. RUTHARDT COMMISSIONER
OF INSURANCE

By her attorney,
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Date: January 4' 2000

VERIFICATION

I, Linda L. Ruthardt, state that I am the duly qualified Commissioner of Insurance of the Commonwealth of Massachusetts, and that I have read the allegations set forth in the Verified Complaint and Request for Appointment of Temporary Receiver, and that they are true to the best of my, knowledge, information and belief.

Linda L. Ruthardt
Commissioner of
Insurance

Date: January 4, 2000