

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT
OF THE TRIAL COURT
Civil Action No. 2484CV00824

ADAM OWENS, ALVIN WALKER,
Petitioners,

v.

EDGAR P. BENJAMIN HEALTHCARE CENTER,
Respondent.

[PROPOSED] ORDER FOR THE APPOINTMENT OF RECEIVER

It appearing to the Court that, as a result of conditions created by Respondent’s acts and omissions, an “emergency” exists as defined under G.L. c.111, §72M, and that the entry of this Order appointing a temporary receiver is necessary to preserve the health, safety, and well-being of the residents residing at: Edgar P. Benjamin Healthcare Center, a Massachusetts nursing home facility, located at 120 Fisher Avenue, Boston, Massachusetts which is a long-term care facility (the “Facility”); It further appearing:

That a temporary receiver is necessary: (a) to protect the immediate health and safety of the Facility residents by ensuring that they receive the care and support they need, and (b) to

protect the health and safety of the residents during the coming weeks by taking measures to ensure the Facility retain adequate vendors and staff.

That there is both subject matter and personal jurisdiction as well as sufficient basis of fact presented in the Petitioner's Petition for the Appointment of a Receiver, Affidavits of Alvin Walker, Adam Owens, Leslie Joseph-Henderson, Marise Colsoul, Katherine Blicher, Velma Brinson, Helen Walker, Elizabeth Miranda, Oren Sellstrom, and related pleadings, for the entry of this order:

IT IS HEREBY:

1. ORDERED that Joseph D. Feaster, Jr. (the "Receiver") of Dain Torpy Le Ray Wiest & Garner P.C., located at 175 Federal Street, Suite 1500, Boston, Massachusetts 02110, hereby is appointed temporary receiver of Edgar P. Benjamin Healthcare Center, a Massachusetts nursing home facility, located at 120 Fisher Avenue, Boston, Massachusetts to manage and operate the Facility.
2. ORDERED that the Receiver shall have full power and authority:
 - a. to take custody and control of all cash, property, real property including leasehold interests, bank accounts, accounts receivable and other assets tangible or intangible, now held or hereafter acquired by the Facility and to take possession of all books, records and accounts of the Facility;
 - b. to employ, discharge, assign, supervise and fix the compensation, salaries and wages for all officers, managers, agents, employees and servants of the Facility as Receiver may deem necessary and advisable for the proper operation of the Facility's business and management, preservation and protection of its property and its residents;

- c. to pay wages due to existing employees of the Facility for the purpose of retaining their services during the period of the receivership;
- d. to pay, and satisfy out of any funds now or hereafter coming into the possession of the Facility, for services hereafter rendered;
- e. to buy and sell merchandise supplies and other property and to render services, for cash or on credit for the Facility;
- f. to purchase or otherwise acquire for cash or on credit such materials, equipment, machinery, supplies, services or other property as the Receiver may deem necessary and advisable in connection with the Facility and the management and preservation of said Facility;
- g. to enter into any contracts, in the name of the Facility or in the Receiver's own name, incidental to the normal and usual operation of said Facility and the management and temporary preservation of said Facility or as are necessary or appropriate to consummate transactions authorized by this order;
- h. to keep the assets and business of the Facility insured in such manner and to such extent as the Receiver may deem necessary and advisable;
- i. to collect and to open any mail intended for and/or directed to the Facility;
- j. to collect and receive all rents, income and profits, and all outstanding accounts, insurance proceeds, things-in-action and credits due or to become due to the Facility and to hold and receive all monies thus received to that end that the same may be applied under the Order of the Court;

- k. to open any new bank accounts on behalf of the Facility as the Receiver deems necessary to allow for the collection of any income and disbursement of any necessary payments;
- l. to take possession or control of all of the Facility's existing bank accounts, cash and funds belonging to or for the benefit of the Facility in bank accounts associated with the Property of the Facility (defined below) (regardless from what time period), whether in the name of the Facility, or their agents or employees, and to open, transfer, and change all such bank accounts into the name of the Receiver, if appropriate, or otherwise take such actions as necessary to ensure such bank accounts are under control of the Receiver, all in compliance with legal requirements;
- m. to take possession and control of all payments that are due or pending to the Facility, including amounts paid by the Commonwealth and yet to be deposited into the Facility's account;
- n. to pay and discharge out of any funds now or hereafter coming into the possession of the Facility all taxes and similar charges hereafter lawfully incurred in the operation of said business and the temporary preservation and maintenance of said business, for which Receiver may use all tax identification numbers of the Facility;
- o. to expend those funds required to maintain the conditions at the Facility in compliance with the standards required by the Massachusetts Department of Public Health and the Centers for Medicare and Medicaid Services;

- p. to comply with all applicable rules and regulations governing the operation of a long term care facility and, as necessary, relocate and transfer residents living in the Facility;
 - q. to continue the business of operation and managing the Facility subject to the requirements of paragraph 5 below;
 - r. to do any and all acts not inconsistent with the terms and conditions of this Order to carry out the purpose thereof; and
 - s. to petition this court requesting any additional authority the Receiver deems necessary or desirable to effectuate the purposes of this Order and the receivership.
3. ORDERED that all persons or entities, including without limitation the Facility directors, officers, employees and agents, having possession or custody thereof shall turn over or cause to be turned over to the Receiver possession and control of: (a) all real estate or real estate interests (including leasehold interests) owned directly or indirectly by the Facility; (b) all books and records, funds, assets, and personalty of the Facility; and (c) any other property of the Facility now or at any time hereafter coming under its possession, custody or control (collectively, "Property of the Facility"). The Receiver may engage attorneys or other professionals, as appropriate, in order to advise and assist the Receiver in carrying out its duties and appearing in court or other proceedings on its behalf.
4. ORDERED that the Respondent shall have neither possession nor control of, nor any right to, the Property of the Facility or money or other proceeds derived from Property of the Facility unless and until the receivership is terminated and the Receiver is

discharged. The Respondent is hereby ordered and directed to comply in all respects with this order, and are hereby enjoined and restrained from impeding or interfering in any manner with the exercise by the Receiver of its rights, powers, and duties hereunder. From and after the date of this Order, neither the Respondent, nor any agents of the Respondent shall enter into any lease, contract, or agreement of any kind or character relating to Property of the Facility, and shall not grant any lien upon its security in Property of the Facility. The Respondent is hereby enjoined and restrained from collecting any revenues, receivables, proceeds, or other sums payable with respect to Property of the Facility.

5. ORDERED that during the pendency of the receivership, the Receiver shall consult with the Department of Public Health and with the Attorney General in executing the plans if closure of the Facility is approved. The Receiver shall not close the facility without leave of court.
6. ORDERED that any certifications or licensure by the Department of Public Health to the Facility hereunder shall run only to the Receiver appointed herein and shall not be construed to be a certification of the Facility on behalf of any person other than the Receiver, nor shall the certification or licensure in any way affect the certification or licensure status of the Facility upon the termination of the receivership.
7. ORDERED that the costs of this receivership are approved by the Court shall be deemed reasonable operating costs of the Facility and a lien in favor of the Commonwealth for such costs shall be placed on the property upon which the Facility is located as provided by G.L. c. 111, §72Q. Such lien shall not in any way limit recourse to any additional remedy for recouping the Commonwealth's expenditures

from the licensees or any person(s) responsible for the affairs of the licensees or the owners of the Facility. The Receiver may request loans or advances from the Commonwealth or its agencies for the costs of the receivership and the operating costs of the Facility. The Commonwealth and its agencies may, in their discretion and to the extent permitted by law, make such loans or advances, which will constitute expenditures of the Commonwealth pursuant to G.L. c.111, §72O for which a lien in favor of the Commonwealth shall be placed on the property upon which the Facility is located as provided by G.L. c.111, §72Q. The Receiver's compensation shall be on an hourly basis for its professionals at the rates agreed to by the Receiver and the Department of Health. The Receiver shall maintain records of its professionals' time.

8. ORDERED that the Receiver shall have no obligations to expend funds in excess of the funds or receipts actually collected or received by the Receiver. The liability of the Receiver and any person or entity engaged by the Receiver hereunder in and shall be limited to Property of the Facility and proceeds therefrom, in accordance with G.L. c. 111, §72S, and neither the Receiver nor any person or entity engaged by the Receiver hereunder shall be personally liable for any actions taken pursuant to this Order or carrying out the Receiver's duties, excepting only claims which arise from the gross negligence or intentional wrongdoing of such person as determined by a final order of this or another court of competent jurisdiction. No person shall bring an action against the Receiver without first securing leave of this Court in accordance with G.L. c. 111, §72S.
9. ORDERED that the Receiver shall file reports of its operations with this Court showing its progress in maintaining health care standards and its receipts,

disbursements, accruals and profit or loss for the reporting period and for the duration of these proceedings. Said reports shall be served by the Receiver on all parties to this action.

10. ORDERED that the Receiver shall, within two weeks of the entry of this Order, report to the Court the existence of any lease of, mortgage upon, or security interest in any Property of the Facility, held by or owned by any party to this action or any other person that the Receiver shall apply to this Court for an order prior to paying any lease, rent, or mortgage payment. In making such report, the Receiver shall comply with the provisions of G.L. c.111, §72P.
11. ORDERED that pursuant to G.L. c. 111, §72N, no personal shall impede the operation of this receivership and there shall be an automatic stay of any action that would interfere with the functioning of the Facility upon entry of this Order until the receivership is terminated, unless otherwise ordered by this Court.
12. ORDERED that all persons, firms, and corporations be, and they hereby are, enjoined from disturbing or interfering with the present gas, telephone, service, heat, electrical service, water supplies or any other utility of the like kind, now being furnished to the Facility, and from cutting off or disconnecting the furnishings of any service, except upon notice to the Receiver in writing and after the Receiver has had an opportunity to be heard before this Court.
13. ORDERED that all creditors to the Facility, and any and all persons or parties are restrained and enjoined from taking possession of or interfering with the Property of the Facility, whether by attachment, trustee process, levy or otherwise, from discontinuing services to the Facility or from instituting or further prosecuting in any

manner, any suit, action, or other proceeding without advance leave of this Court in each instance.

14. ORDERED that all banks or other financial institutions in which the Facility may have accounts and their employees, representatives and agents, are hereby enjoined, restrained and stayed from setting off any amounts in said accounts against any debt owed to said financial institutions or any of them by the Facility and said financial institutions, employees, representatives and agents, be enjoined, restrained, and stayed from stopping payment upon any drafts, checks, money orders letters of credit or the like, issued to or for the Facility or issued to others for the benefit of the Facility, or from in any way attempting to set off funds, accounts, or the like which are now available for use by or for the benefit of the Facility, except upon notice to the Receiver in writing and after the Receiver has had an opportunity to be heard before this Court.
15. ORDERED that all lessors of either real property or furniture, furnishings, equipment or other personal property of any nature whatsoever to the Facility or any of them, are enjoined, restrained and stayed from in anyway interfering with the usual use of such property by the Facility, except upon notice to the Receiver in writing and after the Receiver has had an opportunity to be heard before this Court.
16. ORDERED that all insurance companies and their employees, representatives and agents, which provide insurance coverage to the Facility are enjoined, restrained and stayed from cancelling such insurance coverage except upon notice to the Receiver in writing and after the Receiver has had an opportunity to be heard before this Court.

17. ORDERED that all persons and companies providing alarm and fire protection services or equipment to the Center, their employees, representative and agents, are enjoined, restrained and stayed from disconnecting or cancelling such services or equipment except upon notice to the Receiver in writing and after the Receiver has had an opportunity to be heard before this Court.
18. ORDERED that this Order for the Appointment of a Temporary Receiver shall remain in effect until such time as the health and safety of the residents of the Facility is no longer a concern, which is anticipated to be no more than ninety days, or until further order of the Court, provided, however, that if the Petitioners and the Receiver agree that the term of the receivership should be extended, they may file a joint notice with the Court, served on all parties to this action, which notice shall automatically extend to the term of the receivership to such extended date, unless the Court rules otherwise.
19. ORDERED that this Order may be modified and/or extended pursuant to further order of this Court.
20. ORDERED that because of the limited assets to the Facility the Receiver shall not be required to give a surety company bond.
21. ORDERED that except, as specific in this Order, the Receiver shall be relieved from the requirements in Mass. R. Civ. P. (66)(b)-(e).
22. ORDERED that the Court shall retain jurisdiction and supervision of all matters concerning the Receiver, the receivership created hereby and Property of the Facility. Any and all actions which affect the Receiver or Property of the Facility shall be brought in this Court.

23. ORDERED that during and at the termination of said receivership the Court may make such further orders as are just and proper.

Date:

Associate Judge
Superior Court