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At IAS Part 17 of the Supreme Court of the State of New York, at the courthouse located at 60 Centre St in the City, County, and State of New York, on the 5<sup>th</sup> day of November 2021.

Present: Hon. Shlomo S Hagler  
Justice

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

MOT. SEQ. 001

In the Matter of

Index No. 453561/2021

the Application of

ORDER TO SHOW CAUSE

Adrienne A. Harris, Acting Superintendent of Financial Services of the State of New York, for an order to take possession and liquidate the business and affairs of

FRESENIUS HEALTH PLAN OF NEW YORK, INC.

Based on the verified petition ("Verified Petition") of Adrienne A. Harris, Acting Superintendent of Financial Services of the State of New York ("Superintendent"), duly verified on October 28, 2021, the supporting Affidavit of Alice W. McKenney, dated October 21, 2021 ("McKenney Aff."), and the exhibits and schedules attached thereto, and it ~~appearing~~ <sup>being alleged</sup> that the relief sought should be granted;

NOW, on motion of Letitia James, Attorney General of the State of New York, attorney for the Superintendent, and after due deliberation having been had thereon;

LET, Fresenius Health Plan of New York, Inc. ("Fresenius") and all creditors, claimants, <sup>or their counsel</sup> and interested persons, show cause before <sup>IAS Part 17 of</sup> this Court at the Courthouse located at 60 Centre Street, Room # 335 in the City, County, and State of New York, on the 24<sup>th</sup> day of November, 2021, at 2:00 clock p. m., <sup>remotely via Microsoft Teams</sup> or as soon thereafter as counsel can be heard ("Return Date"), why an order substantially in the form of the order annexed as Exhibit "1" to the

Verified Petition ("Liquidation Order") should not be made, pursuant to Article 74 of the New York Insurance Law ("Insurance Law"), *inter alia*: (1) placing Fresenius into liquidation under Insurance Law Article 74; (2) appointing the Superintendent, and her successors in office, as liquidator of Fresenius ("Liquidator"); (3) directing the Liquidator to take possession of Fresenius' property and to liquidate Fresenius' business and affairs; (4) vesting title to all of Fresenius' property, contracts, and rights of action and all of its books and records, wherever located, in the Liquidator and her successors; (5) permitting the Liquidator to deal with the property and business of Fresenius in Fresenius' name or in the name of the Liquidator; (6) granting the injunctions provided for in Insurance Law § 7419(a), permanently enjoining and restraining all persons and entities from wasting the assets of Fresenius, and permanently enjoining and restraining all persons and entities, except as authorized by the Liquidator, from transacting Fresenius' business or disposing of Fresenius' property; (7) granting the injunctions provided for in Insurance Law § 7419(b), permanently enjoining and restraining all persons and entities from interfering with the Liquidator or this proceeding, obtaining any preferences, judgments, attachments, or other liens, or making any levy against Fresenius, its assets or any part thereof, and commencing or prosecuting any actions or proceedings against the Liquidator, Fresenius, the New York Liquidation Bureau, or their present or former employees, attorneys, or agents, relating to this proceeding or the discharge of their duties under Insurance Law Article 74 in relation thereto; (8) vesting all rights in Fresenius' contracts and agreements, however described, in the Liquidator and permitting the Liquidator to, in her discretion, reject any contracts to which Fresenius is a party, in which case all liability under such contracts or agreements shall cease and be fixed as of the date of rejection; (9) requiring that any bank, savings and loan association, other financial institution, or any other entity or person, that has on deposit or in its possession, custody or control

any of Fresenius' funds, accounts (including escrow accounts), or assets shall immediately, upon the Liquidator's request and direction: (a) turn over custody and control of such funds, accounts or assets to the Liquidator; (b) transfer title of such funds, accounts, or assets to the Liquidator; (c) change the name of such accounts to the name of the Liquidator; (d) transfer funds from such bank, savings and loan association, or other financial institution; and (e) take any other action reasonably necessary for the proper conduct of the liquidation proceeding; (10) requiring that FHP Insurance Holding Company, Inc., the immediate parent and controlling party of Fresenius, and all other persons or entities having property, papers (including attorney work product and documents held by attorneys) and/or information, including, but not limited to, health plans ("Plans"), underwriting data, any reinsurance or other insurance policies, claims files (electronic or paper), software programs and/or bank records owned by, belonging to, or relating to Fresenius shall preserve such property and/or information and immediately, upon the Liquidator's request and direction, assign, transfer, turn over and deliver such property and/or information to the Liquidator; (11) authorizing, permitting, and allowing the Liquidator to sell, assign, or transfer any and all stocks, bonds, or other securities at the best price reasonably obtainable at such times and upon such terms and conditions as, in her discretion, she deems to be in the best interest of the creditors of Fresenius, and further authorizing the Liquidator to take such steps and to make and execute such agreements and other papers as may be necessary to effect and carry out such sales, transfers, and assignments, without the further approval of this Court; (12) establishing a date by which all claims against Fresenius, other than the Liquidator's claims for administrative expenses, and all evidence supporting such claims, must be submitted to the Liquidator ("Bar Date") that is the earlier of: (a) the contractual time period established for the timely submission of claims in all Plans or agreements between Fresenius and a hospital or other provider of healthcare services ("Provider")

for the provision of such services to beneficiaries under the Plans ("Members"); or (b) the date that is six (6) months from the date of entry of the Liquidation Order sought in this petition, and providing that all claims submitted after the Bar Date are barred and discharged; (13) providing, in accordance with Insurance Law § 4307(d), that: (a) no former Member shall be liable to any Provider for any services covered by Fresenius; (b) no Provider shall collect, or attempt to collect, any amounts owed by Fresenius from any former Member; and (c) no Provider shall maintain any action against any former Member to recover any such amount (except that the foregoing shall not apply in respect of any coinsurance amounts, copayments, and/or deductibles owed by any former Member); (14) authorizing the Liquidator, in her discretion, to refrain from adjudicating claims of any class unless and until she determines that it is likely that the Fresenius estate will have sufficient assets to pay claims of such class; (15) extending immunity to the Superintendent in her capacity as Liquidator of Fresenius, her successors in office, the New York Liquidation Bureau, and their agents and employees, for any cause of action of any nature against them, individually or jointly, for any act or omission when acting in good faith, in accordance with the orders of this Court, or in the performance of their duties pursuant to Insurance Law Article 74; and (16) granting such other and further relief as the Court may deem proper and just.

AND, sufficient cause having been <sup>alleged</sup> ~~shown~~ therefor, pursuant to Insurance Law § 7418(a)(1), let service of a copy of this order to show cause and its supporting papers be made (i) by <sup>personal service</sup> ~~overnight delivery~~ within five (5) days after the entry of this Order to Show Cause upon (a) Fresenius Health Plan of New York, Inc., Attention: Scott Dickison, President and CEO of Fresenius Health Plan of New York, Inc., 3711 S. MoPac Expressway, Building 2, Suite 300, Austin, TX 78746; and (b) Fresenius Health Plan of New York, Inc., 315 East 62<sup>nd</sup> Street, 4<sup>th</sup> Floor, New York, NY 10065; and (ii) by posting on the internet web page maintained by the New York

Liquidation Bureau at <http://www.nylb.org> at least fifteen (15) days prior to the Return Date; and such service shall be deemed good and sufficient service; and it is hereby

ORDERED, that all answering papers and supporting documentation ("Answering Papers") be served on the Superintendent so as to be received at least seven (7) days prior to the Return Date, and that service on the Superintendent shall be made by first class mail or overnight carrier at the following addresses:

Office of the Attorney General  
28 Liberty Street  
New York, NY 10005  
Att'n: Roderick Arz

with a copy to

New York Liquidation Bureau  
180 Maiden Lane, 15th Floor  
New York, NY 10038  
Att'n: General Counsel

and any such Answering Papers shall be e-filed with the Court on or before the Return Date; and it is further

ORDERED, that pursuant to Insurance Law § 7419(a), pending the <sup>hearing</sup> ~~determination~~ of this application, Fresenius, its officers, directors, shareholders, former Members, trustees, agents, servants, employees, policyholders, attorneys, and managers, and all other persons, are hereby restrained, except as authorized by the Superintendent, from transacting Fresenius' business or disposing of Fresenius' property, and all persons are restrained from wasting any of Fresenius' assets; and it is further

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ORDERED, that pursuant to New York Insurance Law § 7419(b), pending <sup>the hearing</sup> ~~a determination~~ of ~~on~~ this application, Fresenius, its officers, directors, shareholders, former Members, trustees, agents, servants, employees, attorneys, and managers, and all other persons are hereby restrained

from obtaining preferences, judgments, attachments, or other liens, or making any levy or commencing or prosecuting any actions or proceedings against Fresenius or its assets, and all actions or proceedings against Fresenius are stayed.

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Oral Argument  
Directed

ENTER

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J.S.C.

SELOMO S. HAGLER, J.S.C.

SELOMO S. HAGLER, J.S.C.

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