

IN THE SECOND CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT

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STATE OF TENNESSEE,)
ex rel. ROBERT E. COOPER, JR.,)
ATTORNEY GENERAL and REPORTER,)

Plaintiff,)

v.)

JURY DEMAND

HRC MEDICAL CENTERS, INC., a domestic)
corporation, *formerly known as HAIR*)
RESTORATION CENTERS OF TENNESSEE,)
INC., HRC MANAGEMENT MIDWEST, LLC,)
a foreign limited liability company,)
DAN E. HALE, D.O., *individually and as an*)
officer, and DON HALE, *individually and as an*)
officer,)

No. 12C4047

Defendants.)

ORDER APPOINTING *PENDENTE LITE* RECEIVER
OVER HRC MEDICAL CENTERS, INC.

The State has moved for a *pendente lite* receiver to be appointed over Defendant HRC Medical Centers, Inc., (“HRC Medical”) pursuant to Tennessee Code Annotated § 48-24-301(1)(D) and Tennessee Code Annotated § 48-24-302(c), pursuant to this Court’s general receivership and equitable authority under Tennessee Code Annotated § 29-1-103, and pursuant to Tennessee Code Annotated § 47-18-108(b)(1) within the Tennessee Consumer Protection Act.

In support of the State’s Motion, the State relies on the total record before the Court along with the 94 supporting exhibits to its original TRO motion, which include a version of

the Complaint that provides footnotes to the record for facts alleged; sworn testimonies from four former employees; fifty-two consumer affidavits; the affidavits of Ted Louis Anderson, M.D., PhD, Director of the Department of Gynecology at Vanderbilt University Medical Center; the affidavit of Laurie Tompkins, an Advanced Practice Registered Nurse at Vanderbilt Women's Center and an Associate Professor at the Vanderbilt University Medical School; and the Defendants' BHRT advertisements. The Court has also considered the Responses of the Defendants in opposition to the requested relief, the affidavit (as supplemented) of Defendant Dr. Hale (along with 3 volumes of printed data in support thereto) and 44 Defense exhibits.

Based on a review of the record, the arguments advanced at hearing, and the parties' briefs, the State's Motion is GRANTED as set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this case, and jurisdiction over all parties hereto. Venue in this court is proper.
2. This order is within the authority granted to this Court under Tenn. Code Ann. § 48-24-301 *et seq.*, Tenn. Code Ann. § 29-1-103, and Tenn. Code Ann. § 47-18-108(b)(1).
3. The Attorney General has authority to seek a receiver over a corporation that "has carried on, conducted, or transacted business or affairs in a persistently fraudulent or illegal manner" under Tenn. Code Ann. §§ 48-24-301(D) and 48-24-302(c).
4. This Court also has more general equitable authority to appoint receivers. Circuit courts vested with the same equitable powers as a chancery court, *see* Tenn. Code Ann. § 16-10-111, and are specifically "vested with the power to appoint receivers for the

safekeeping, collection, management, and disposition of property in litigation in such court, whenever necessary to the ends of substantial justice, in like manner as receivers are appointed by courts of chancery.” Tenn. Code Ann. § 29-1-103.

5. In addition, this Court has the broad pre-judgment authority and discretion under the TCPA to “make such orders or render such judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act, or practice, any money or property . . . or anything of value wherever situated, which may have been acquired by means of any act or practice declared to be unlawful by [the TCPA].” Tenn. Code Ann. § 47-18-108(b)(1).

6. The State has shown a likelihood of success on the merits of TCPA cause of action and this Court’s prior Findings of Fact and Conclusion of Law contained in the Statutory Temporary Injunction are incorporated by reference.

7. The State has also shown a likelihood that Defendants will be shown to have intentionally misrepresented or omitted reference to the benefits, efficacy, side effects and risks of Defendant HRC Medical’s BHRT, which were known to the parties, and which placed consumers at risk of developing serious health conditions or debilitating or embarrassing side effects, intentionally misrepresented that Defendant HRC Medical’s BHRT restores a user’s hormones to the levels that he or she had in his or her prime or in his or her twenties and thirties, as well as intentionally misrepresented the amount of credible scientific evidence in support of BHRT safety claims (“hundreds of studies,” “many” studies).

8. Further, the State has shown a likelihood of showing that Defendant HRC Medical fraudulently made it appear on insurance reimbursement documents and internal

paperwork as if the hormone pellets inserted were ordered from the compounding pharmacy after patient visits when the pellets were on hand at HRC Medical before the consumer visit.

9. Further, the State has shown a likelihood of showing that employees of Defendant HRC Medical would falsely indicate that doctors at Defendant HRC Medical, including Defendant Dan Hale and Dr. Charles Emerson, reviewed and approved prescriptions for BHRT and other drugs on pellet ordering forms, prescriptions, and insurance reimbursement forms, when they did not.

10. This Order is necessary to the end of substantial justice and, coupled with the State's Temporary Injunction Motion, is issued to prevent fraudulent and deceptive commercial conduct and to restore ascertainable losses to consumers which may have been acquired by means of an act or practice that violates the TCPA.

ORDER

IT IS FURTHER ORDERED that John C. McLemore, who is not a party or person interested in this action be, and he hereby is, appointed *Pendente Lite* Receiver over Defendant HRC Medical and all of the tangible and intangible assets and property, both personal and real, of Defendant HRC Medical until further order of this Court, and all of the assets are hereby placed *in custodia legis* and shall be subject to the exclusive jurisdiction of this Court. The Receiver shall be the agent of this Court, and solely the agent of this Court, in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court.

I. RECEIVER'S DUTIES

IT IS FURTHER ORDERED that the Receiver shall have all powers at law and equity to carry out his duties and shall perform his duties under the supervision of the Court.

IT IS FURTHER ORDERED that the Receiver is authorized and directed to accomplish the following:

A. Assume full control of Defendant HRC Medical by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of Defendant HRC Medical, including any Defendant, from control of, management of, or participation in, the affairs of Defendant HRC Medical;

B. Take exclusive custody, control, and possession of all assets, documents, and other materials of, or in the possession, custody, or under the control of, Defendant HRC Medical, wherever situated. The Receiver shall have full power to divert and read mail and to sue for, collect, receive, take in possession, hold, and manage all assets, documents, and materials of Defendant HRC Medical and other persons or entities whose interests are now under the direction, possession, custody, or control of Defendant HRC Medical. The Receiver may review and use documents and any other materials or information, including but not limited to medical records and customer files in the possession, custody, or under the control of Defendant HRC Medical in order to accomplish his duties as Receiver. The Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to Defendant HRC Medical. Provided, however, that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer was a victim of the unfair or deceptive acts or practices or other violations of law alleged in the Complaint in this matter, without prior Court approval;

C. Take all steps necessary to secure each location from which Defendant HRC Medical operates its business. Such steps may include, but are not limited to, any of the following, as the Receiver deems necessary or advisable: (1) serving this Order; (2) completing a written inventory of all receivership assets; (3) obtaining pertinent information from all employees and other agents of Defendant HRC Medical, including, but not limited to, the name, home address, Social Security Number, job description, passwords or access codes, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) recording any or all portions of verbal conversations with or instructions given to Defendants, Defendant HRC Medical's employees, or other agents of Defendant HRC Medical; (5) photographing and video taping any or all portions of the location; (6) securing the location by changing the locks and disconnecting any computer modems or other means of access to the computer or other records maintained at that location; (7) moving assets, equipment, furniture, documents or other items from any location from which Defendant HRC Medical operates for the purpose of securing such items; (8) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises documents or assets of Defendant HRC Medical; and (9) arranging to have any medical waste removed from any location at which Defendant HRC Medical is operating its business. Law enforcement personnel, including, but not limited to, highway patrol, police, or sheriffs, may assist the Receiver in implementing these provisions in order to keep the peace and maintain security. If requested by the Receiver, law enforcement may provide appropriate and necessary assistance

to the Receiver to implement this Order and is authorized to use any necessary and reasonable force to do so;

D. Conserve, hold, and manage all assets of Defendant HRC Medical, and perform all acts necessary or advisable to preserve the value of those assets in order to prevent any irreparable loss, damage, or injury to consumers or creditors of Defendant HRC Medical, including, but not limited to, obtaining an accounting of the assets and preventing the unauthorized transfer, withdrawal, or misapplication of assets; Enter into contracts; and Purchase insurance as advisable or necessary;

E. Market and sell Defendant HRC Medical's assets without Court approval of any sale to maximize the Receivership estate or minimize losses;

F. Prevent the inequitable distribution of assets and determine, adjust, and protect the interests of consumers and creditors who have transacted business with Defendant HRC Medical;

G. Manage and administer the business of Defendant HRC Medical until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary, which includes but is not limited to retaining, hiring, or dismissing any employees, independent contractors, or agents;

H. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;

I. Make payments and disbursements from the Receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted

by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by Defendant HRC Medical prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure assets of Defendant HRC Medical, such as rental payments and utilities;

J. Suspend business operations of Defendant HRC Medical if in the judgment of the Receiver such operations cannot be continued legally and profitably;

K. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts or arbitration proceedings as the Receiver deems necessary and advisable to preserve or recover the assets of Defendant HRC Medical, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order including, but not limited to, actions challenging fraudulent or voidable transfers;

L. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Receiver in his role as Receiver, or against Defendant HRC Medical, as the Receiver deems necessary and advisable to preserve the assets of Defendant HRC Medical, or as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

M. Issue subpoenas to obtain documents, records, and testimony pertaining to the Receivership, and conduct discovery in this action on behalf of the Receivership estate;

N. Open one or more bank accounts as designated depositories for funds of Defendant HRC Medical. The Receiver shall deposit all funds of Defendant HRC Medical in such a designated account and shall make all payments and disbursements from the Receivership estate from such an account.

O. Maintain accurate records of all receipts and expenditures incurred as Receiver; and

P. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.

II. TAXES

IT IS FURTHER ORDERED that Receiver, notwithstanding any other provision hereof, shall be under no obligation to complete or file any tax returns on behalf of Defendant HRC Medical for income, sales, personal property or other taxes arising prior to the date of this Order. While acting as receiver, the Receiver shall comply with all applicable laws and regulations relating to tax reporting requirements. Receiver shall furnish officers of Defendant HRC Medical with such access to the books and records within the Receiver's custody or control as may reasonably be necessary in order for the officers of Defendant HRC Medical to complete and file any tax returns on its own behalf.

III. TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER

IT IS FURTHER ORDERED that Defendants, their Representatives, and any other person or entity with possession, custody or control of property of or records relating to Defendant HRC Medical, including but not limited to its officers, directors, shareholders, employees, contractors and agents, shall upon notice of this Order by personal service or otherwise immediately notify the Receiver of, and, upon receiving a request from the Receiver, immediately transfer or deliver to the Receiver possession, custody, and control of, the following:

A. All assets of Defendant HRC Medical;

B. All documents of Defendant HRC Medical including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;

C. All computers, servers, and data in whatever form used to conduct the business of Defendant HRC Medical;

D. All assets belonging to other persons or entities whose interests are now under the direction, possession, custody, or control of, Defendant HRC Medical; and

E. All keys, codes, and passwords necessary to gain or to secure access to any assets or documents of Defendant HRC Medical, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property.

In the event that any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Section III, the Receiver may file *ex parte* an Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, Writs of Possession or Sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct any sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to seize the asset, document, or other item covered by this Section and to deliver it to the Receiver.

IV. PROVISION OF INFORMATION TO RECEIVER

IT IS FURTHER ORDERED that Defendants shall provide to the Receiver, immediately upon request, the following:

A. A list of all assets and property, including accounts, of Defendant HRC Medical that are held in any name other than the name of Defendant HRC Medical, or by any person or entity other than Defendant HRC Medical; and

B. A list of all agents, employees, officers, servants or those persons in active concert and participation with the Individual Defendants and Receivership Defendant, who have been associated or done business with Defendant HRC Medical.

V. COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that Defendants, their Representatives, and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Receiver in taking and maintaining possession, custody, or control of the assets of Defendant HRC Medical. This cooperation and assistance shall include, but not be limited to: providing information to the Receiver that the Receiver deems necessary in order to exercise the authority and discharge the responsibilities of the Receiver under this Order; providing any password required to access any computer, electronic file, or telephonic data in any medium; advising all persons who owe money to Defendant HRC Medical that all debts should be paid directly to the Receiver; and transferring funds at the Receiver's direction and producing records related to the assets and sales of Defendant HRC Medical. The entities obligated to cooperate with the Receiver under this provision include, but are not limited to, banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, precious metals dealers and other financial institutions and depositories of any kind, and all third-party billing agents, common carriers, and other telecommunications companies, that have transacted business with Defendant HRC Medical.

VI. INTERFERENCE WITH THE RECEIVER

IT IS FURTHER ORDERED that Defendants and their Representatives are hereby restrained and enjoined from directly or indirectly:

A. Interfering with the Receiver managing, or taking custody, control, or possession of, the assets or documents subject to this Receivership;

B. Transacting any of the business of Defendant HRC Medical;

C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, Defendant HRC Medical, or the Receiver; and

D. Refusing to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any order of this Court.

VII. STAY OF ACTIONS AGAINST RECEIVERSHIP DEFENDANT

IT IS FURTHER ORDERED that, except by leave of this Court, during pendency of the Receivership ordered herein, Defendant HRC Medical, its Representatives, and all investors, creditors, stockholders, lessors, customers and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of Defendant HRC Medical, and all others acting for or on behalf of such persons, are hereby enjoined from taking action that would interfere with the exclusive jurisdiction of this Court over the assets or documents of Defendant HRC Medical, including, but not limited to:

A. Petitioning, or assisting in the filing of a petition, that would cause Defendant HRC Medical to be placed in bankruptcy;

B. Commencing, prosecuting, or continuing a judicial, administrative, or other action or proceeding against Defendant HRC Medical, including the issuance or employment of process against Defendant HRC Medical, except that such actions may be commenced if necessary to toll any applicable statute of limitations;

C. Filing or enforcing any lien on any asset of Defendant HRC Medical, taking or attempting to take possession, custody, or control of any asset of Defendant HRC Medical; or attempting to foreclose, forfeit, alter, or terminate any interest in any asset of Defendant HRC Medical, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;

D. Initiating any other process or proceeding that would interfere with the Receiver managing or taking custody, control, or possession of, the assets or documents subject to this Receivership.

Provided that, this Order does not stay: (1) the commencement or continuation of a criminal action or proceeding; (2) the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or (3) the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

VIII. COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the

cost of actual out of-pocket expenses incurred by them, from the assets now held by, in the possession or control of, or which may be received by, Defendant HRC Medical subject to the terms below. Subject to the terms below, Receiver and his contractors shall be paid at the rate shown in the attached fee chart. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of entry of this Order. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

Assets for the Receivership estate, including any assets subsequently obtained by Receiver, shall be used first to satisfy reasonable attorneys' fees and expenses that Receiver incurs. In the event that the Receivership estate does not have sufficient assets to satisfy reasonable attorneys' fees, the State of Tennessee will pay up to, but no more than \$100,000, in reasonable Receiver's and attorneys' fees approved by the Court following an application by the Receiver containing time sheets or other records that state the basis for the attorneys' fee request in sufficient detail. Not including any costs associated with mail notice to consumers, which shall be paid for separately, in the event that the Receivership estate does not have sufficient assets to satisfy reasonable expenses incurred by Receiver, the State of Tennessee will pay up to, but no more than \$15,000 in reasonable expenses approved by the Court following an application by the Receiver that includes a submission that provides invoices or otherwise sufficiently states the basis for expenses.

IX. RESIGNATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver may resign on leave of Court and by giving thirty (30) days advance written notice to this Court. Upon providing such notice and approval by this Court of an accounting of the Receiver's duties hereunder, and funds held pursuant hereto, the Receiver shall be released and discharged from further obligation hereunder. The receiver may only be removed on order of this Court for good cause after notice and hearing pursuant to a motion by any interested party.

X. ACCESS TO BUSINESS OFFICES AND RECORDS

IT IS FURTHER ORDERED that in order to allow the State and the Receiver to preserve assets and evidence relevant to this action, and to expedite discovery, the State and Receiver, and their representatives, agents, and assistants, shall have immediate access to the business premises of Defendant HRC Medical. Such locations include, but are not limited to 405 Duke Drive, Suite 240, Franklin, Tennessee, 301 14th Avenue North, Nashville, Tennessee, and 9123 Cross Park Drive Northwest, Knoxville, Tennessee. The State and the Receiver, and their representatives, agents, and assistants, are authorized to employ the assistance of law enforcement officers as they deem necessary to effect service and to implement peacefully the provisions of this Order. The State and the Receiver, and their representatives, agents, and assistants, are authorized to remove documents from Defendant HRC Medical's premises in order that they may be inspected, inventoried, and copied for the purpose of preserving discoverable material in connection with this action.

Furthermore, the Receiver shall allow the Defendants reasonable access to the premises and business records of Defendant HRC Medical within its possession for the

purpose of inspecting and copying materials relevant to this action. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

XI. DURATION OF ORDER

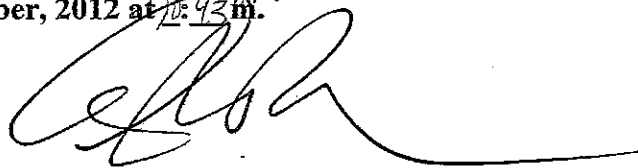
Until resolution of this matter at trial, this Order shall remain in full force and effect unless vacated or amended by this Court.

XII. NO BOND REQUIRED

This receivership order shall be entered without bond pursuant to Tenn. Code Ann. § 48-24-302(d), which requires a bond only under private judicial dissolution provision, and Tenn. Code Ann. § 47-18-116.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

This the 27th day of December, 2012 at 10:43 AM.



Amanda McClendon, JUDGE

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