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

13 MICHELLE ROUILLARD, in her official
capacity as the Director of the Department of
14 Managed Health Care,

15 Applicant,

16 v.

17 ALAMEDA ALLIANCE FOR HEALTH and
18 ALAMEDA ALLIANCE JOINT POWERS
19 AUTHORITY,

20 Respondents.
21
22

Case No.: RG14724068

VERIFIED APPLICATION FOR AN ORDER
CONFIRMING THE DIRECTOR'S
APPOINTMENT OF A CONSERVATOR

Dept.: 31
Judge: Grillo
Date: May 8, 2014
Time: 9:00 a.m.

(Health & Saf. Code, § 1393(b), (c); Cal. Rules Ct.,
Rules 3.1150 et seq.)

Exempt from fees (Gov. Code § 6103)

23 TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE
24 COUNTY OF ALAMEDA, AND INTERESTED PARTIES:

25 Michelle Rouillard, the Director (Director) of the California Department of Managed Health
26 Care (DMHC), hereby applies to the Court for entry of an Order (Proposed Order attached hereto),
27 confirming the Director's appointment of J. Mark Abernathy of Berkeley Research, LLC, to serve as
28 Conservator of Alameda Alliance for Health, DMHC License No. 933-0328, and Alameda Alliance

1 Joint Powers Authority, DMHC License No. 933-0440 (hereafter collectively referred to as
2 “Respondent” or “the Plan”).

3 Pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (“Knox-Keene Act”), where
4 any of the conditions enumerated in Health and Safety Code section 1386 exist – including violations of
5 the Knox-Keene Act – the Director may take possession of a health care service plan’s property,
6 business, books, records, and accounts, as conservator. (Health & Saf. Code, § 1393, subd. (a). Where
7 “irreparable loss and injury to the property and business of the plan or to the plan’s enrollees... may
8 occur unless the Director acts immediately...” the Director may do so without notice or a court order.
9 (Health & Saf. Code, § 1393, subd. (b).) Where a conservatorship is authorized, the Director may elect
10 to appoint a conservator over the plan. (Health & Saf. Code, § 1393, subd. (c).) When the Director
11 appoints a conservator, the Director shall “within 10 days of the taking, apply in superior court of the
12 county in which the principal office of the Plan is located for an order confirming the director’s
13 appointment of the conservator.” (Health & Saf. Code, § 1393, subd. (c).) Before the hearing on this
14 Application, notice shall be given as the Court sees fit. (*Id.*)

15 On May 5, 2014, the Director issued an administrative order entitled, “Order Taking Possession
16 of Property and Business of [Respondent].” The Director’s order was based on numerous violations of
17 the Knox-Keene Act, in relation to the Plan’s inability to pay claims from the health care providers who
18 provide services to the Plan’s enrollees, as well as the Plan’s failure to meet financial reserve
19 requirements that has continued since June of 2013. This action is necessary to prevent the Plan from
20 becoming bankrupt and adversely impacting the Plan’s enrollees, who are dependent on the Plan for
21 health care services. Jurisdiction in this court is proper pursuant to Health and Safety Code section 1393,
22 subdivision (c), because Respondent’s principal office is located at 1240 South Loop Road, Alameda,
23 California, 94502, in Alameda County

24 In its attached Memorandum of Points and Authorities, and supporting declarations, the Director
25 presents evidence that Respondent has been given reasonable warnings and time to curb the great
26 number of ongoing violations of the Knox-Keene Act, but has failed to do so.

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1 If the requested relief is not granted, Respondent's enrollees are in danger of suffering
2 irreparable injury. Respondent's inability to maintain a solvent health Plan puts approximately 200,000
3 enrollees at risk of losing coverage for fundamental and necessary health care services.

4 Based on all documents submitted with this Application, the Director has made the proper
5 showing for an Order confirming the Director's appointment of a conservator, and therefore respectfully
6 requests that the Court grant this Application for an Order confirming the Director's appointment of J.
7 Mark Abernathy of Berkeley Research Group, LLC as conservator over Respondent.

8 WHEREFORE, the Director prays that this Court enter the Proposed Order:

- 9 1. Confirming the Director's appointment of the conservator;
- 10 2. For costs of suit herein incurred; and,
- 11 3. For such other and further relief as the Court may deem proper and necessary.

12
13 Dated: May 5, 2014

CAROL L. VENTURA
Deputy Director | Chief Counsel
Office of Enforcement

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15
16 By:


DREW BRERETON
Assistant Chief Counsel
Office of Enforcement
Attorneys for Applicant

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(Health & Saf. Code, § 1393(b), (c); Cal. Rules Ct.,
Rules 3.1150 et seq.)

Exempt from fees (Gov. Code § 6103)

23 The Application of the Director of the CALIFORNIA DEPARTMENT of MANAGED
24 HEALTH CARE (“the Director”) having been filed herein, it being shown to the Court’s satisfaction
25 from said Application that (1) the principal office of ALAMEDA ALLIANCE FOR HEALTH and
26 ALAMEDA ALLIANCE JOINT POWERS AUTHORITY (collectively referred to as “Respondent”) is
27 in this county, (2) the conditions described in Health and Safety Code sections 1393 and 1386 exist for
28 placing Respondent under conservatorship, and good cause appearing,

1 IT IS HEREBY ORDERED that:

2 The Director's conservatorship over Respondent and appointment of J. Mark Abernathy of
3 Berkeley Research Group, LLC as Conservator, issued on May 5, 2014, is confirmed, including but not
4 limited to the terms set forth herein.

5 1. Title to all assets of ALAMEDA ALLIANCE FOR HEALTH, DMHC License No. 933
6 0328, – including but not limited to, books, records, accounts, property, real and personal – is vested to
7 the Director;

8 2. Title to all assets of ALAMEDA ALLIANCE JOINT POWERS AUTHORITY, DMHC
9 License No. 933 0440, – including but not limited to, books, records, accounts, property, real and
10 personal – is vested to the Director;

11 3. The Director shall retain title of all assets until returned to Respondent, or until further
12 order of the Director, or subject to an order of the Court;

13 4. Respondent and its officer, directors, board members, agents, and employees are enjoined
14 from transacting any of the business of Respondent, whether in the State of California or elsewhere, or
15 from disposing of, using, transferring, selling, assigning, canceling, alienating, hypothecating, or
16 concealing in any manner or in any way, or assisting any person in any of the foregoing, of the property
17 or assets of Respondent, and subject to fine and/or imprisonment for failing to comply with the
18 Director's Order and/or this Order;

19 5. Respondent and its officers, directors, agents, and employees may act only under the
20 express direction and authority of the Director and those individuals to whom the Director has delegated
21 her authority pursuant to Health and Safety Code sections 1341.2 and 1393(c), and Government Code
22 sections 7 and 11182;

23 6. Any and all persons having possession, custody or control of any of the books, records, or
24 assets of Respondent shall immediately deliver any and all of the books, records, or assets in their
25 possession, custody or control to the conservator at 1240 South Loop Road, in Alameda, California;

26 7. Any person having possession, custody or control of and refusing to deliver to the
27 conservator any of the books, records, or assets of a plan against which a seizure order has been issued
28 by the Director shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars

1 (\$10,000) or imprisonment not to exceed one year, or both the fine and imprisonment. (Health & Saf.
2 Code §1393(b).);

3 8. J. Mark Abernathy of Berkeley Research Group, LLC, is confirmed as conservator of
4 ALAMEDA ALLIANCE FOR HEALTH, DMHC License No, 933 0328;

5 9. J. Mark Abernathy of Berkeley Research Group, LLC, is hereby confirmed as
6 conservator of ALAMEDA ALLIANCE JOINT POWERS AUTHORITY, DMHC License No. 933
7 0440;

8 10. The conservator is authorized to take possession of the property, business, books, records,
9 accounts, assets, offices, and premises of Respondent pending further disposition of its business;

10 11. The conservator shall retain possession until the property, business, books, records,
11 accounts, assets, offices, and premises of Respondent are returned to Respondent, or until further order
12 of the Director;

13 12. The conservator shall be able to pay necessary costs of the ongoing operation of
14 Respondent without further formal order of the Director or the Court;

15 13. The conservator, while in the possession of the property, business, books, records,
16 accounts, assets, offices, and premises of Respondent, has the same powers and rights, and is subject to
17 the same duties and obligations as the Director with respect to Respondent;

18 14. During the time that the conservator is in possession of the property, business, books,
19 records, accounts, assets, offices, and premises of Respondent, the rights of Respondent and of all
20 persons with respect to Respondent are the same as if the Director had taken possession of the property,
21 business, and assets of Respondent, for the purpose of carrying out the conservatorship;

22 15. That the conservator, while in possession of the property, business, books, records,
23 accounts, assets, offices, and premises of Respondent, shall have the rights, power, and privileges of
24 Respondent and its officers and directors for the purpose of carrying out the conservatorship;

25 16. That all expenses of any conservatorship shall be paid from the assets of Respondent and
26 shall be a lien on Respondent which shall be prior to any other lien;

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1 17. That any person having possession of any of the books, records, or assets of Respondent
2 shall cooperate with the conservator in the performance of his or her duties, under the Director's Order
3 and/or this Order, or be subject to fine and/or imprisonment;

4 18. All agents of Respondent and all brokers who have done business with Respondent shall
5 remit all funds collected by them, or in their hands, or deliver enrollee or policyholder lists directly to
6 the conservator, under the Director's Order and/or this Order, or be subject to fine and/or imprisonment;

7 19. The conservator shall post a bond with the DMHC as the Director deems proper, which
8 bond shall remain in full force and effect and inure exclusively to the DMHC for the purposes of this
9 appointment of a conservatorship;

10 20. The conservator shall, within 90 days after the initial appointment, submit a report to the
11 Director, providing a status of the following five business areas: management, operations, quality of
12 care, financial and affiliates and provide a follow up report to the Director every 30 days thereafter; and,

13 21. The conservator's fees shall not exceed \$400 per hour, senior manager fees shall not
14 exceed \$350 per hour, and staff fees shall not exceed \$200 per hour. The conservator shall provide to
15 the Director a monthly line item account of work performed every 30 days.

16 IT IS SO ORDERED.

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18 Dated: _____

19 JUDGE OF THE SUPERIOR COURT