

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION**

STATE OF FLORIDA,
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

vs.

Case No.: 14-001695-CI

TRI-MED CORPORATION,
TRI-MED ASSOCIATES INC.,
JEREMY ANDERSON,
ANTHONY N. NICHOLAS, III,
ERIC AGER, IRWIN AGER,
TERESA SIMMONS BORDINAT
a/k/a TERESA SIMMONS,
and ANTHONY N. NICHOLAS, JR.,

Defendants.

_____ /

**RECEIVER'S MOTION TO EXPAND SCOPE OF THE RECEIVERSHIP
TO INCLUDE INTERVENTIONAL PAIN CENTER, PLLC,
AND INCORPORATED MEMORANDUM OF LAW**

Pursuant to Fla. Stats. § 517.191(2), Rule 1.100 of the Florida Rules of Civil Procedure, and the March 4, 2014, Order appointing receiver, Burton W. Wiand, as Receiver (the “**Receiver**”) for Tri-Med Corporation (“**Tri-Med**”) and Tri-Med Associates Inc. (“**TMA**”) (Tri-Med and TMA are collectively referred to as the “**Receivership Entities**”), moves the Court to expand the scope of this Receivership to include Interventional Pain Center, PLLC (“**IPC**”). **IPC was created and controlled by, and is still controlled by, Defendant Jeremy Anderson; it was funded through the receipt of nearly \$1 million in money stolen from Tri-Med investors; and Defendant Anderson is continuing to use IPC to steal money generated by accounts receivables that belong to Tri-Med.** As explained below and supported by the Affidavit of Burton W. Wiand, as Receiver, in Support of Motion to Expand Scope of the

Receivership to Include Interventional Pain Center, PLLC (the “**Receiver’s Aff.**”), which is being filed along with this motion, IPC:

(1) was created and has always been controlled by Defendant Jeremy Anderson (“**Defendant Anderson**”) and it received nearly **\$1 million** of investor funds from Tri-Med;

(2) received \$300,000 from Tri-Med **shortly after this Court froze Tri-Med’s assets**, which money was subsequently transferred to Defendant Anderson’s close friend to evade the freeze and disbursed at the direction of Defendant Anderson;

(3) has received at least **\$150,000** in payments on medical account receivables that belong to but have not been turned over to Tri-Med;

(4) is likely in possession of equipment and furnishings purchased with Tri-Med investor funds;

(5) has been used by Defendant Anderson in violation of the asset freeze in this case to funnel money that rightfully belongs to Tri-Med investors to pay for legal fees incurred by Defendant Anderson, sales agent A.J. Brent, and their efforts to dupe defrauded investors into filing an involuntary bankruptcy petition for Tri-Med;

(6) is currently being sued by multiple former IPC employees, which leaves IPC susceptible to money judgments which will further dissipate its assets; and

(7) is subject to this Court’s personal jurisdiction even though it is a Minnesota entity, for the reasons discussed below.

IPC should be added to this Receivership so that additional assets bought with Tri-Med investors’ money can be brought under the Receiver’s control and protection. This Court has previously granted the Receiver’s request to expand this Receivership to include TMFL Holdings, LLC, a company that, like IPC, was funded with Tri-Med investors’ money and controlled by Defendants. *See Receiver’s Aff.* ¶ 2, Ex. 4.

BACKGROUND

1. On March 4, 2014, Florida's Office of Financial Regulation ("OFR") filed this enforcement action against Defendants Tri-Med; TMA; Jeremy Anderson; Anthony N. Nicholas, III; Eric Ager; Irwin Ager; and Teresa Simmons Bordinat a/k/a Teresa Simmons; and on March 25, 2014, filed an amended complaint adding Anthony N. Nicholas, Jr. ("**Defendant Nicholas Jr.**"), as a defendant (collectively, "**Defendants**"). *See* Receiver's Aff. ¶ 2, Ex. 2.

2. Also on March 4th, the Court entered an Order appointing the Receiver (the "**Order Appointing Receiver**") as receiver over Tri-Med and TMA. *See Id.* ¶ 2, Ex. 3. On the Receiver's motion, the Court subsequently expanded this receivership to include TMFL Holdings, LLC on May 13, 2014. *Id.* ¶ 2, Ex. 4.

3. In relevant part, the Order Appointing Receiver prohibited Defendants from accepting, moving, transferring, or withdrawing any assets or property controlled or owned by Defendants or the Receivership Entities. The Order also conferred on the Receiver the duty and authority to "marshal and safeguard all such properties and assets [of Receivership Entities]" and take any actions necessary for the protection of investors. *Id.* ¶ 2, Ex. 3.

4. The Order Appointing Receiver also states,

In the event that the Receiver discovers that funds of investors in the scheme that is the subject of this case have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, *extending this receivership over any person or entity holding such investor funds.*

Id. (emphasis added).

5. Defendants violated Florida securities laws from at least 2011 forward by raising over \$17 million in connection with the offer and sale of unregistered securities based on fraudulent misrepresentations that, among other things, all of the money would be (a) used to

purchase medical practice accounts receivable (“A/R”) backed by Letters of Protection (“LOPs”)¹ and (b) safeguarded by being kept in an attorney trust account. *See* Receiver’s Aff. ¶¶ 7 – 9, 16.

6. Following a lengthy evidentiary hearing on October 22, 2014, this Court found that “[t]he whole series of introduction of evidence and testimony in this case is highly suggestive of numerous criminal offenses that they might be fearful of from tax evasion to securities violations to fraud and theft, et cetera, et cetera.” The Court further found that “the evidence is clear and convincing and reaches a very high level that this was a fraudulent scheme to steal people’s money.”

IPC Was Created By A Principal Of Tri-Med And Funded With Scheme Proceeds

7. IPC was formed on July 10, 2013, and has a principal place of business at 10653 Wayzata Blvd., Suite 200, Minnetonka, Minnesota 55305. *Id.* ¶ 17, Ex. 6. IPC was in the business of providing medical services, and a significant portion, if not all, of its business consisted of providing medical services to accident victims in exchange for LOPs or similar contractual commitments to pay for services.

8. Most, if not all, of this A/R was assigned to Tri-Med to try to justify part of the large amount of investors’ money transferred from Tri-Med to IPC, and each of the assignment documents specified that Florida law would govern any dispute that arose. *Id.* ¶ 26, Ex. 14. As noted, IPC received numerous wire transfers of investors’ money from Tri-Med; those wires were initiated from Tri-Med bank accounts in Pinellas County.

¹ LOPs are contracts involving a patient who ostensibly suffered injuries during an accident, the patient’s attorney, and the medical services provider under which the patient and attorney agree to pay all or part of the total billed by the medical services provider from the proceeds of any pre-suit settlement or lawsuit settlement or judgment the patient may obtain.

9. Although Minnesota law requires a medical services provider such as IPC to be owned and operated by a licensed doctor, in reality IPC was owned, operated, and controlled by Defendant Anderson, who is not a licensed doctor. Former IPC employee Dr. Ketroser, who was hired by Defendant Anderson, explained under oath:

Defendant Anderson was the *de facto* owner and operator of IPC and exercised absolute and sole control over IPC. This included sole control over IPC's books and records, hiring and firing decisions, and both critical and day-to-day business operations.

Receiver's Aff. ¶ 18, Ex. 7 at ¶ 4 (Affidavit of David Ketroser ("**Ketroser Aff.**")).²

10. Defendant Anderson even admitted controlling IPC's bank account in a December 29, 2013, email he sent to an accountant for Tri-Med:

"IPC costs is A/R that IPC (Interventional Pain Center) sold to Tri Med Corp. [Defendant Nicholas Jr.] ... would transfer them money into my account from the Tri Med Trust account and I would transfer it to the IPC banking account that I control."

Receiver's Aff. ¶ 42, Ex. 24.

11. Dr. Ketroser also testified that Defendant Anderson located all funding for IPC's operations. *Id.* ¶ 18, Ex. 7 at ¶ 5. That funding came from Tri-Med investors. Specifically, from IPC's formation in July 2013 until this Court placed Tri-Med in receivership in March 2014, IPC received at least \$970,000 in transfers from Tri-Med of investor funds as follows:

| <u>Date</u> | <u>Amount</u> | <u>From</u> | <u>Check #</u> |
|-------------|---------------|-------------|----------------|
| 7/31/2013 | \$1,496.07 | Tri-Med | 10060 |
| 7/31/2013 | \$13,682.80 | Tri-Med | 10062 |
| 8/12/2013 | \$15,000.00 | Tri-Med | 10069 |
| 8/30/2013 | \$21,500.00 | Tri-Med | 10079 |
| 9/13/2013 | \$17,000.00 | Tri-Med | 10093 |
| 9/15/2013 | \$20,000.00 | Tri-Med | 10096 |

² Indeed, given that IPC was funded and created using investor funds subject to the asset freeze incorporated into the Orders Appointing Receiver, Defendant Anderson's continual operation of IPC and use of those funds is in direct violation of the asset freeze.

| | | | |
|---------------|---------------------|---------|-------|
| 9/26/2013 | \$112,689.00 | Tri-Med | Wire |
| 10/9/2013 | \$100,000.00 | Tri-Med | 10099 |
| 10/28/2013 | \$50,000.00 | Tri-Med | 10105 |
| 11/13/2013 | \$20,000.00 | Tri-Med | 10114 |
| 11/27/2013 | \$25,000.00 | Tri-Med | 10122 |
| 12/6/2013 | \$10,000.00 | Tri-Med | 10126 |
| 12/11/2013 | \$30,000.00 | Tri-Med | 10129 |
| 12/27/2013 | \$30,000.00 | Tri-Med | 10141 |
| 1/13/2014 | \$30,000.00 | Tri-Med | Wire |
| 1/28/2014 | \$50,000.00 | Tri-Med | Wire |
| 2/12/2014 | \$70,000.00 | Tri-Med | Wire |
| 2/26/2014 | \$50,000.00 | Tri-Med | Wire |
| 2/26/2014 | \$5,000.00 | Tri-Med | 10159 |
| 3/5/2014 | <u>\$300,000.00</u> | Tri-Med | Wire |
| Total: | \$971,367.87 | | |

Receiver's Aff. ¶¶ 21 – 22. IPC was funded and created using these funds.³ *Id.*

12. Defendant Anderson also caused the transfer of \$50,000 of Tri-Med investors' money to IPC on August 14, 2013, through a Georgia limited liability company, which operated a restaurant, in which Defendant Anderson had made an investment in his name using Tri-Med investor funds. *Id.* ¶ 24, Exs. 11, 12.

13. Further, at least \$6,000 of Tri-Med investors' money was transferred to IPC through an account in the name of Tri-Med Management, Inc. ("TMM"), which was an entity owned, operated, and controlled by Defendant Anderson that derived all of its funds from Tri-Med. *Id.* ¶ 25, Ex. 13.

³ During the initial few months, IPC also sporadically received checks that appear to have been payment for services provided to patients. These amounts, however, were insignificant, *see* Receiver's Aff. ¶ 23, and in any event, in all likelihood at least some, if not all, of those checks should have been turned over to Tri-Med since, as detailed in paragraph 16, *infra*, most if not all of IPC's A/R was assigned to Tri-Med.

14. In sum, IPC received approximately \$1 million of Tri-Med investors' money; the vast majority of it came directly from Tri-Med and a small part of it came indirectly through TMM and a Georgia limited liability company.

15. That money was used for a variety of unauthorized purposes, including payment of IPC's general expenses and employee salaries; transfers to Defendant Anderson's girlfriend, Holly Kwon; and transfers to TMM which were used to by Defendant Anderson to pay his personal expenses, including his rent in a high-priced luxury building. Receiver's Aff. ¶ 34.

***Most, If Not All, Of IPC's A/R Was Assigned To Tri-Med,
Yet Tri-Med Has Never Received Any Money IPC
Has Been Paid In Satisfaction Of That A/R***

16. As mentioned above in paragraph 8, from September 2013 to March 2014, IPC and Tri-Med entered into multiple "Assignments of Medical Receivables" (the "**Assignments**") which assigned to Tri-Med most, if not all, of IPC's A/R, with a purported face value of at least \$1.3 million.⁴ See *Id.* ¶ 26, Ex. 14. These Assignments were purportedly signed by Defendant Nicholas Jr. on behalf of Tri-Med and by IPC officer Dr. Chad Hill ("**Hill**") on behalf of IPC.

⁴ These numbers may be modified as the Receiver continues his review and analysis of the accounts receivable and there is a strong likelihood that the numbers will decrease because, for example, this number likely includes receivables which were double sold by medical providers and ones which otherwise may not be valid.

Notably, often the Assignment of IPC's A/R to Tri-Med was done as an afterthought to justify earlier transfers of money from Tri-Med to IPC. For example, at least one time, Defendant Anderson needed an infusion of money into IPC from Tri-Med to pay IPC expenses and only later re-characterized the transfer as being for purchase of A/R. In an email exchange between Defendants Anderson and Nicholas Jr., Defendant Anderson wrote:

I need you to transfer 50,000 into my account so I can transfer it into IPC account to make payroll and month end bills. I need this done today because payroll hits tomorrow. I will make sure Ekta gets you at least 150,000 in billing on a similar work sheet and list it as "IPC DPS Book Value 2".

Id. ¶ 40, Ex. 22.

17. Despite the Assignments, **the Receiver has never seen any evidence that IPC ever turned over to Tri-Med any money that IPC received as payment for any of that A/R.**

18. Specifically, the Receiver recently learned that Defendant Anderson, through IPC, has collected **nearly \$150,000** in just 2014 alone on the A/R assigned from IPC to Tri-Med. Receiver's Aff. ¶ 32, Ex. 16. Information available to the Receiver also suggests that Defendant Anderson continues to collect on the receivables previously sold to Tri-Med and thus misappropriate monies rightfully belonging to Tri-Med. *Id.* ¶ 32. Nevertheless, **not a single penny has been turned over to Tri-Med; rather, it has been used by Defendant Anderson for his personal benefit and for other unauthorized purposes.** *Id.* Indeed, Dr. Ketroser testified in his affidavit that "while IPC received payments on the A/R sold to Tri-Med, Defendant Anderson did not transfer any of that money to Tri-Med." *Id.* ¶ 18, Ex. 7 at ¶ 9.

19. For example, IPC assigned to Tri-Med A/R with a total face value of \$23,473.10 for services provided by IPC to patient L.B. (the "**L.B. Receivables**") as reflected in Assignments 1, 3, 4, and 7. *Id.* ¶ 30. On June 5, 2014 – after the Court entered the Order Appointing Receiver – IPC received \$17,206.50 as payment for the L.B. Receivables. *Id.* ¶ 31, Ex. 15. However, no one ever contacted the Receiver to turn over those payments to Tri-Med as was required by the Order Appointing Receiver and the Assignments.

20. Collection of money on A/R assigned from IPC to Tri-Med is also confirmed by emails between Defendants Anderson and Nicholas Jr., such as a December 5, 2013, email which discussed taking more money from Tri-Med for each Assignment. *Id.* ¶ 41, Ex. 23. None of those collections have ever been turned over to Tri-Med.

21. Hill testified that Defendant Anderson continues to be actively involved in IPC:

18 Q. When was the last time you saw Jeremy
19 Anderson?
20 A. Um, what is it, Friday? On Tuesday or
21 Wednesday of this week I was over at the office.

Receiver's Aff. ¶ 20, Ex. 9 (referring to June 2 or 3, 2015).

22. The continuing inflow of payments on the IPC A/R assigned to Tri-Med is a valuable asset of the Receivership Entities, and Defendant Anderson's continued control and operation of IPC has prevented those assets and funds from being turned over to the Receivership Estate despite IPC's receipt of defrauded Tri-Med investors' money for that A/R.⁵

***Defendants Invoked Their Fifth Amendment Rights
And Refused To Answer Relevant Questions***

23. During deposition testimony, Defendant Anderson, the only Defendant that appeared to be involved in IPC and the relationship between Tri-Med and IPC, asserted his Fifth Amendment Constitutional right against self-incrimination when asked (a) about the relationship between IPC and Tri-Med; (b) whether Tri-Med monies were provided to IPC; and (c) whether IPC's initial funding derived from Tri-Med funds. Receiver's Aff. ¶ 19, Ex. 8.

⁵ Defendant Anderson has stonewalled the Receiver's efforts to discover information about IPC and the A/R assigned to Tri-Med. Specifically, the Receiver subpoenaed IPC on March 29, 2014 (the "**IPC Subpoena**"), shortly after learning of IPC. *Id.* ¶ 43, Ex. 25. Among other things, the IPC Subpoena sought documents about IPC's relationship with Defendant Anderson and Receivership Entities; the A/R assigned by IPC to Tri-Med; and the money received by IPC on the assigned A/R. Although IPC produced documents showing assignment of A/R to Tri-Med, it did not produce documents responsive to the majority of document requests, including requests about money received by IPC for the A/R that was assigned to Tri-Med. The Receiver had to retain Minnesota counsel to compel production under the IPC Subpoena, and on January 27, 2015, a Minnesota court ordered IPC to produce documents responsive to the IPC Subpoena by February 10, 2015. *Id.* ¶ 44, Ex. 26. IPC still failed to produce documents responsive to the majority of the requests.

IPC Received A \$300,000 Wire Transfer From Tri-Med In Violation Of The Asset Freeze

24. On the morning of March 5, 2014, the Court entered the Order Appointing Receiver which, in relevant part, froze Tri-Med's and Defendants' assets and prohibited Defendants from moving, transferring, or concealing any funds or assets in their possession or control. Receiver's Aff. ¶ 2, Ex. 3. Defendants each received notice of the Order shortly after it was entered, including Defendant Anderson, through email and other means. Despite the freeze, at 2pm that same day, Defendant Anthony N. Nicholas, Jr. wire transferred \$300,000 from Tri-Med to IPC (the "\$300,000 Transfer"). *Id.* ¶ 36, Ex. 18.

25. The wire transfer confirmation contained a notation for "Purchase of AR," but this was a lie. Rather, the transfer was made so Defendant Anderson could evade the asset freeze through his control of IPC's bank account. Once the money reached IPC's account, Defendant Anderson immediately moved the money to Hill's personal account to further evade the asset freeze by writing two checks totaling \$175,000 to Hill. *Id.* ¶ 37, Ex. 19. Hill testified,

9 A. It was to cover any IPC expenses,
10 because our payroll account has already been shut
11 down at that time from Tri-Med Management, not our
12 but IPC's money that was in Tri-Med Management was
13 already shut down, and the fear was IPC's accounts
14 would get shut down, too, and we would have to
15 close the doors tomorrow.

21 Q. So that's why the money came from IPC
22 to you, you or somebody at IPC didn't want to keep
23 it in IPC's account; is that right?

24 A. That is correct.

8 Q. Why did IPC write you a check for
9 \$75,000 on March 13th?
10 A. Once again, the fear amongst all of us
11 that, you know, if -- if the Receiver was able to
12 shut down this account, they could shut down this
13 account any day, and any day we could end up losing
14 however much money was in there.

Receiver's Aff. ¶ 20, Ex. 9.

26. These were not legitimate transfers to Hill; rather, they were designed to evade the asset freeze and give control of Tri-Med assets to Defendant Anderson. After the \$175,000 was deposited in Hill's savings account at Wings Financial Credit Union, the following transfers were made from that account – transfers that Hill testified were done at Defendant Anderson's direction:

- A \$75,000 wire transfer on March 11, 2014, to a Wells Fargo bank account belonging to Akerman, LLP, a law firm which represented Defendants Anderson and Nicholas III early in this matter;
- A \$7,215.15 wire transfer on March 18, 2014, to Chase Bank to cover IPC's employee payroll;
- A \$10,000 wire transfer on March 20, 2014, to a Suntrust Bank account for "Lux Investor Services, Inc.," which is a company tied to an unlicensed attorney who has been assisting Defendants;
- Wire transfers of \$15,000, \$10,000, and \$25,000 on March 20, 2014, April 17, 2014, and April 23, 2015, respectively, to a Regions Bank account belonging to attorney William Borja, who represented Defendants Anderson and Nicholas Jr. for some time after Akerman LLP withdrew; and
- A \$25,000 wire transfer on March 28, 2014, to a Comerica Bank account in the name of a defrauded Tri-Med investor;

Receiver's Aff. ¶ 38, Ex. 20; ¶ 20, Ex. 9.

27. Hill testified that Defendant Anderson told him that money was all being used to pay attorneys to prevent IPC's assets from being frozen. Receiver's Aff. ¶ 20, Ex. 9. But only two of those transfers went to attorneys and neither of them ever represented IPC; rather, they represented certain individual Defendants, including Defendants Anderson and Nicholas Jr.

***Defendant Anderson Continues To Use
IPC To Steal Assets That Belong To Tri-Med***

28. Defendant Anderson is also using IPC to circumvent the asset freeze imposed by the Order Appointing Receiver by using money that belongs to Tri-Med to pay for the legal representation of certain Defendants and third parties Defendants have recruited to interfere with the Receivership. Specifically, over \$20,000 has been transferred directly or indirectly from IPC to former Tri-Med sales agent and Defendant Anderson ally A.J. Brent ("**Brent**") through wire transfers and checks for payment of attorney's fees for certain third parties who have been deceived by Defendant Anderson, Brent, and others into placing Receivership entities into bankruptcy to interfere with the Receiver and OFR. Money held by IPC was transferred to Hill, and Defendant Anderson then directed Hill to transfer that money to Brent, falsely claiming that Brent "worked at an attorney's office." *Id.* ¶ 20, Ex. 9.

29. This is further detailed in the Supplemental Opposition to Motion Seeking Relief from Injunction Following Discovery of Defendants' Role in Bankruptcy Related Motions and Request for Order to Show Cause filed by OFR on March 6, 2015, along with its supporting evidence. In that Opposition, OFR detailed how Defendant Brent received over \$20,000 in checks and wires originating from IPC's bank account and that of Tony In, an IPC manager, that were subsequently used to pay for attorney's fees incurred in filing a motion to place Tri-Med into involuntary bankruptcy. Defendant Anderson has also caused IPC to transfer funds directly to attorneys on his behalf. *Id.* ¶ 38, Ex. 20

30. IPC has also transferred at least \$1,500, presumably at Defendant Anderson's direction, to Mary Ann Nicholas, the daughter of Defendant Nicholas Jr. *Id.* ¶ 39, Ex. 21.

Defendant Anderson Forged Over \$1 Million Worth Of Checks

31. IPC had a bank account at Voyager Bank (the “**IPC Voyager Account**”) over which Dr. Michael Mai had signing authority. *Id.* ¶ 33, Ex. 16. Numerous checks appearing to contain the signature of Dr. Mai were written on this account from July 2013 to January 2015 for various purposes including numerous checks to Dr. Chad Hill, significant transfers to TMM, checks for Defendant Anderson's monthly rent at a luxury hotel, and transfers to Defendant Anderson's girlfriend. *Id.* ¶ 34.

32. On January 23, 2015, Dr. Mai filed a police report with the Minnetonka Police Department stating, in relevant part, that he had ceased his association with IPC on or before September 2013, and that he had neither signed nor authorized anyone else to sign any checks written on the IPC Voyager Account following this date. *Id.* ¶ 35, Ex. 17. According to the police report, more than \$1.2 million in checks were signed with Dr. Mai's forged signature from September 2013 to December 2014. *Id.* One of the reasons cited by Dr. Mai in the police report was his concern with “some ‘shady’ things the [sic] Anderson was doing such as referring his clients to other people as well as other money issues.” *Id.*

33. Dr. Hill testified that he never saw Dr. Mai sign or write any checks written out to him, and that those checks were handed to him by Defendant Anderson. *Id.* ¶ 20, Ex. 9.

IPC Is A Defendant In Multiple Cases, And Adverse Judgments Will Jeopardize Assets That Rightfully Belong To This Receivership

34. IPC is a defendant in several lawsuits in Minnesota seeking lost wages and other damages, including the following:

- *David Ketroser M.D. v. Interventional Pain Center PLLC et al.*, Case No. 27-CV-15-4375;
- *Center for Pain Management P.A. et al. v. Interventional Pain Center PLLC*, Case No. 27-CV-14-18620; and
- *Adam Locketz et al. v. Interventional Pain Center PLLC et al.*, Case No. 27-CV-14-19465.

35. If any of those plaintiffs obtain a judgment against IPC, it will jeopardize IPC's outstanding A/R assigned to Tri-Med and any other assets held by IPC that were funded with Tri-Med investors' money, which likely include most, if not all, of them.

36. Placing IPC into receivership will allow the Receiver to take control and preserve the IPC A/R assigned to Tri-Med and the other assets purchased with Tri-Med investors' money for the benefit of defrauded investors.

MEMORANDUM OF LAW

37. This Court's power to supervise this receivership and decide the appropriate actions to be taken in its administration is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). "It is well established that the court which appoints a receiver may issue orders as are necessary and proper for the property and interests of those concerned." *City of Kissimmee v. Dep't of Env'tl. Regulation*, 753 So. 2d 770, 772 (Fla. 5th DCA 2000). Indeed, the Order Appointing Receiver specifically states that if the Receiver discovers that investor funds were transferred to other persons or entities, the Receiver "shall" petition the Court to extend the Receivership "over any person or entity holding such investor funds." Receiver's Aff. ¶ 2, Exs. 3, 4; *see Puma Enters. Corp. v. Vitale*, 566 So. 2d 1343, 1345 (Fla. 3d DCA 1990) (court has power to expand scope of receivership when it appears that receivership assets have been transferred or otherwise dissipated).

I. THIS COURT HAS PERSONAL JURISDICTION OVER IPC

38. Although IPC is located in Minnesota, this Court has personal jurisdiction over it because IPC (1) is within the reach of Florida's long arm statute, Fla. Stats. § 48.193 (“**Section 48.193**”), and (2) has had sufficient “minimum contacts” with Florida so that “maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice’” imposed by the Due Process Clause of the U.S. Constitution's Fourteenth Amendment. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *see Cable/Home Commc'n Corp. v. Network Prod., Inc.*, 902 F.2d 829, 854-855 (11th Cir. 1990); *Venetian Salami Co. v. J.S. Parhenais*, 554 So. 2d 499, 500-02 (Fla. 1989).

39. Relevant to personal jurisdiction, as shown above, IPC derived its funding from Tri-Med in Florida, which raised the money from Florida investors by selling securities in Florida. The individual who controlled IPC, Defendant Anderson, also was Tri-Med's principal. Further, IPC entered into at least nine contracts with Tri-Med over the course of almost a full year to sell most, if not all, of its A/R to Tri-Med in Florida, and each of those contracts stipulated to application of Florida law. In addition, each off those contracts required IPC to turn over payments on all of the assigned A/R to Tri-Med in Florida.

40. These facts confer on this Court long-arm jurisdiction under several provisions of Section 48.193. First, Section 48.193(1)(a)(1) is satisfied because IPC is an entity “engaging in ... a business or business venture in this state.” Although a “business venture” can be a single project or transaction (*see Atlantis Marina & Yacht Club, Inc. v. R&R Holdings, Inc.*, 766 So.2d 1163, 1165 (Fla. 3d DCA 2000)), here IPC had numerous business dealings with Tri-Med over almost a full year. Second, Section 48.193(1)(a)(2) is also satisfied because IPC “committed a tortious act within this state” each time it failed and continues to fail to turn over to Tri-Med money collected on A/R it assigned to Tri-Med. *See Int'l Harvester v. Mann*, 460 So. 2d 580

(Fla. 1st DCA 1984) (“[T]he commission of a tort [in Florida] for purposes of establishing long-arm jurisdiction does not require physical entry into the state, but merely requires that the place of *injury* be within Florida.”) (original emphasis); *Carida v. Holy Cross Hosp.*, 424 So. 2d 849 (Fla. 4th DCA 1982) (same). Third, Section 48.193(1)(a)(6) is also satisfied because IPC “Caus[ed] injury to persons or property within this state arising out of an act or omission by the [IPC] ... outside this state, if at or about the time of the injury ... [IPC] ... was engaged in solicitation ... activities within this state” Fourth, Section 48.193(7) is also satisfied because IPC breached “a contract in this state by failing to perform acts required by the contract to be performed in this state” each time it failed to turn over to Tri-Med in Florida payments IPC received on assigned A/R. Fifth, Section 48.193(2) is also satisfied because IPC was “engaged in substantial and not isolated activity within this state” as it had “continuous and systematic general business contacts” with Florida by obtaining its funding from Tri-Med and its investors in Florida, executing nine contracts with Tri-Med over almost a full year, and committing to turn over to Tri-Med in Florida payments IPC received on A/R. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984); *Carib-USA Ship Lines Bahamas Ltd. v. Dorsett*, 935 So. 2d 1272 (Fla. 4th DCA 2006). Although only one of Section 48.193’s provisions needs to be satisfied, the facts here satisfy five of those provisions.

41. These facts also establish that personal jurisdiction over IPC does not violate the Due Process Clause of the U.S. Constitution’s Fourteenth Amendment. Due process requires that a nonresident have “fair warning” that a particular activity may subject it to the jurisdiction of a foreign sovereign. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). To satisfy due process here, (1) IPC must have had sufficient “minimum contacts” with Florida and (2) the exercise of jurisdiction over IPC must not offend “traditional notions of fair play and substantial

justice.” *Id.* Determining whether “minimum contacts” with Florida exist requires consideration of (1) whether there was purposeful availment of a privilege to conduct business in Florida; (2) whether the alleged contacts give rise to the alleged cause of action; and (3) whether IPC should reasonably anticipate being hailed into a Florida court. *Id.* at 474-75; *World-wide Volkswagen Corp. v. Woodson*, 44 U.S. 286 (1980). All three elements are satisfied as IPC deliberately sought and obtained funding from Tri-Med and its investors in Florida; it assigned most, if not all, of its A/R to Tri-Med in Florida; it memorialized those assignments in at least nine separate contracts explicitly governed by Florida law; and it committed to pay to Tri-Med in Florida all payments it received on the assigned A/R. Unquestionably, this Court’s exercise of jurisdiction over IPC will not offend “traditional notions of fair play and substantial justice.”

II. THIS RECEIVERSHIP SHOULD BE EXPANDED TO INCLUDE IPC

42. Among the factors to be considered in deciding whether to expand a receivership are (1) commingling of funds; (2) unauthorized diversion of funds or assets to other than corporate purposes and to the detriment of creditors; (3) concealment and misrepresentation of the identify of responsible ownership and management; (4) non-functioning of other officers or directors; and (5) treatment by an individual of corporate assets as his own. *See SEC v. Elmas Trading Corp.*, 620 F. Supp. 231, 234 (D. Nev. 1985), *aff’d*, 805 F.2d 1039 (9th Cir. 1986); *see also SEC v. Elliott*, 953 F.2d 1560, 1565, n.1 (11th Cir. 1992) (holding that court may extend equitable receivership over related entities). “The particular situation must generally present an element of injustice of fundamental unfairness.” *Elmas Trading Corp.*, 620 F. Supp. at 234. A more flexible approach is warranted in cases like this one that involve enforcement of securities laws. *Id.* at 233. A key goal for expansion of a receivership is “to ensure that all available assets are brought within the receivership and may properly be distributed to creditors.” *Id.* That is

precisely the purpose of this motion and, as explained below, the facts here warrant expansion of this Receivership to include IPC.

A. IPC Was Funded With Money From Tri-Med And Its Investors

43. As *Elmas Trading* explained, it is crucial that the alleged wrongdoers not be able to dissipate money rightfully belonging to investors into entities related to or affiliated with the receivership entity. 620 F. Supp. at 233-34 (expansion of receivership warranted to include related entities upon showing of *inter alia* a comingling of funds that presents “an element of injustice or fundamental unfairness”). The Receiver’s Affidavit and its extensive evidence establishes that Tri-Med investors’ funds served as IPC’s funding and that IPC depended entirely on these infusions to start and keep its business operating: after Defendant Anderson started IPC in July 2013, he transferred **nearly \$1 million** of Tri-Med investor funds from Tri-Med to IPC in the ensuing eight months. *See id.* at 235 (“[I]t also appeared that several of these entities relied heavily on Elmas and ROBL for any business transactions. This raises the inference of intertwined operations and mere corporate shells.”); Receiver’s Aff. ¶ 21.

B. Nearly \$1 Million Of Investor Funds Was Improperly Diverted To IPC, Including \$300,000 After This Court Froze Tri-Med’s Assets

44. The Receivership should be expanded to include IPC also because IPC was funded through the unauthorized diversion of approximately \$1 million raised from Tri-Med investors to their detriment. As explained above in paragraphs 5, 8, and 15, although Tri-Med investors were told Tri-Med would use investor funds to buy LOPs, they were not told that nearly \$1 million of their money would be used to fund the startup of a Minnesota pain clinic created and controlled by Defendant Anderson, including the payment of IPC’s expenses and salaries. *Id.* ¶¶ 21, 34. And although \$517,000 of those funds purportedly were for the purchase of IPC A/R under the Assignments, the balance of the money was simply stolen without any

effort whatsoever to justify the diversion of those funds, and even the \$517,000 ostensibly used to pay for the Assignments was, in effect, stolen since none of the money generated by the assigned IPC A/R has ever been turned over to Tri-Med.

45. Similarly, investors were not told that tens of thousands of their dollars would be funneled to IPC and subsequently to Tri-Med Management, which was also owned and controlled by Defendant Anderson and used by him to divert money for his personal and living expenses. And they also were not told that Defendant Anderson transferred large amounts of those funds from IPC to third parties with no business relationship to IPC or Tri-Med, including Defendant Anderson's girlfriend, Holly Kwon. *Id.* at ¶ 34.

46. Further still, Defendants improperly transferred to IPC \$300,000 from Tri-Med after they were provided notice that Tri-Med's assets had been frozen by this Court. *See supra* ¶¶ 11, 24.

47. But most notably, Tri-Med investors were never told that none of the money collected by IPC on the A/R it assigned to Tri-Med ostensibly in exchange for the almost \$1 million of Tri-Med investor funds that IPC received from Tri-Med would ever be turned over to Tri-Med. In short, the evidence establishes that Tri-Med investor funds were improperly diverted to IPC.

C. IPC Has Failed To Turnover To Tri-Med Any Money Generated By A/R Assigned By IPC To Tri-Med

48. As previously mentioned, of the nearly \$1 million of Tri-Med investor funds diverted from Tri-Med to IPC, at least \$517,000 was ostensibly designated by Defendants for the purchase of IPC A/R purportedly having face value of approximately \$1.3 million. *See supra* ¶ 16. Under the terms of the sale of that A/R to Tri-Med, IPC was responsible for negotiating

payment of that A/R with patients and turning over to Tri-Med all of the money collected by IPC on that A/R.

49. The Receiver recently learned that Defendant Anderson and IPC have collected **nearly \$150,000** in payments on the assigned A/R in 2014 alone, yet Tri-Med has never received any of that money. Receiver's Aff. ¶ 32, Ex. 16. Dr. Ketroser also testified in his affidavit that "while IPC received payments on the A/R sold to Tri-Med, Defendant Anderson did not transfer any of that money to Tri-Med." *Id.* ¶ 18, Ex. 7 at ¶ 9. Put simply, Defendant Anderson and IPC have stolen and are continuing to steal from Tri-Med and its investors all of the money being generated by the assigned A/R. This is yet another ground under *Elmas Trading* for extending this receivership over IPC.

D. IPC And Tri-Med Shared Common Ownership

50. The Receivership also should be expanded over IPC because Defendant Anderson was both the owner of Tri-Med and the *de facto* owner of IPC. While Defendant Anderson was prohibited under Minnesota law from being listed as an owner of IPC because IPC was a medical services provider, the evidence establishes that he was the *de facto* owner and operator of IPC. *Elmas Trading Corp.*, 620 F.Supp. at 237 (sufficient evidence existed to expand receivership to include entity despite fact that defendants were not listed as officers or directors of entity). Dr. Ketroser has stated: "Defendant Anderson was the *de facto* owner and operator of IPC and exercised absolute and sole control over IPC". Receiver's Aff. ¶ 18, Ex. 7 at ¶ 4.

51. This is further established by (1) the fact that Defendant Anderson caused Tri-Med to transfer approximately \$1 million to IPC which served as IPC's sole source of funding; (2) his responsibility for making hiring and firing decisions and other critical and day-to-day operational decisions for IPC; (3) his maintenance of IPC's books and records; (4) his control of IPC's bank accounts; and (5) an office maintained by him at IPC. *Id.* ¶¶ 18, 36, 56.

52. Previously, Defendant Anderson conceded in his personal accounting filed with this Court that he is a 50% co-owner of Tri-Med. *Id.* ¶ 12, Ex. 5. As such, IPC and Tri-Med share common ownership.

53. In sum, the evidence establishes that this Receivership should be expanded to include IPC.

III. INCLUDING IPC IN THIS RECEIVERSHIP IS REQUIRED BY THE ORDER APPOINTING RECEIVER

54. Expansion of this Receivership to include IPC is consistent with directives in this Court's Order Appointing Receiver. In relevant part, that Order states,

In the event that the Receiver discovers that funds of investors in the scheme that is the subject of this case have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, *extending this receivership over any person or entity holding such investor funds.*

Order Appointing Receiver, Section VIII(1) (Receiver's Aff. ¶ 2, Ex. 3.) (emphasis added). The record evidence establishes that IPC is an "entity holding ... investor funds" because it was not only funded with investors' money but it also holds and controls other assets purchased with investor funds, mainly the large volume of A/R that was assigned to Tri-Med. *Id.* ¶ 26, Ex. 14.

55. Further, the Order Appointing Receiver requires the Receiver to "marshal and safeguard" all of the assets of the Receivership Entities and to take whatever actions are necessary for the protection of the investors. Order Appointing Receiver, Section VIII(1) (Receiver's Aff. ¶ 2, Ex. 2). Extending this Receivership over IPC would also allow the Receiver to fulfill these obligations.

IV. EXPANSION OF THE RECEIVERSHIP TO INCLUDE IPC IS ALSO WARRANTED BY ADVERSE INFERENCES DRAWN FROM DEFENDANTS ANDERSON'S AND NICHOLAS JR.'S EXERCISE OF THEIR FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION

56. During depositions, Defendant Anderson refused to answer questions about his relationship with IPC or transfers of Tri-Med investor funds to IPC, invoking his constitutional Fifth Amendment right against self-incrimination. This Court should draw adverse inferences from this refusal to testify. *See, e.g., Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976); 8 J. Wigmore, *Evidence* 439 (McNaughton rev. 1961); *Fraser v. Sec. & Inv. Corp.*, 615 So. 2d 841 (Fla. 4th DCA 1993); *Atlas v. Atlas*, 708 So. 2d 296 (Fla. 4th DCA 1998).

57. Although the record evidence alone establishes the impropriety of the transfer of Tri-Med investor funds to IPC and IPC's subsequent failure to turn over to Tri-Med any money IPC has received from the A/R assigned to Tri-Med, it is also supported by the adverse inferences that should be drawn from Defendant Anderson's assertion of his Fifth Amendment right that IPC improperly received Tri-Med investor funds and that it was part of Defendants' fraudulent investment scheme.

CONCLUSION

Because (1) the Court has personal jurisdiction over IPC; (2) the Court has the authority to expand the receivership to include IPC; (3) the evidence establishes Tri-Med investor funds were misappropriated and improperly diverted to IPC; (4) IPC continues to refuse to turn over and misappropriate money it receives as payment of A/R it assigned to Tri-Med; and (4) expansion of this Receivership to include IPC is critical for the Receiver to continue marshaling assets that rightfully belong to the Receivership estate and, ultimately, defrauded investors, the Receiver respectfully asks this Court to enter an Order expanding the Receivership to include Interventional Pain Center, PLLC.

STATEMENT OF OFR'S POSITION

OFR agrees with the relief requested in this motion.

s/Gianluca Morello

Gianluca Morello, FBN 034997

gmorello@wiandlaw.com

Michael S. Lamont, FBN 0527122

mlamont@wiandlaw.com

Jordan D. Maglich, FBN 0086106

jmaglich@wiandlaw.com

WIAND GUERRA KING P.A.

5505 West Gray Street

Tampa, FL 33609

Tel.: (813) 347-5100

Fax: (813) 347-5198

Attorneys for Burton W. Wiand, as Receiver for Tri-Med Corporation, Tri-Med Associates, Inc., and TMFL Holdings, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 6, 2015, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court by using the Florida Courts E-Filing Portal, which served the following parties and non-parties:

Douglas Holcomb, Esq.
Office of Financial Regulation
400 West Robinson Street
Suite S225
Orlando, FL 32801
Primary Email: douglas.holcomb@flofr.com
*Attorney for Plaintiff State of Florida,
Office of Financial Regulation*

A. Gregory Melchior, Esq.
Assistant General Counsel
Office of Financial Regulation
1313 Tampa Street, Suite 615
Tampa, FL 33602-3394
Primary Email: Greg.Melchior@flofr.com
Secondary Email:
Sharon.Sutor@flofr.com
*Attorney for Plaintiff State of Florida,
Office of Financial Regulation*

Luke Lirot, Esq.
LUKE CHARLES LIROT, P.A.
2240 Belleair Road, Suite 190
Clearwater, FL 33764
Primary Email: luke2@lirotlaw.com
Secondary Email: krista@lirotlaw.com
Secondary Email: jummy@lirotlaw.com
*Attorney for Defendants Eric Ager and Irwin
Ager*

Thomas C. Little, Esq.
THOMAS C. LITTLE, P.A.
2123 NE Coachman Road, Suite A
Clearwater, FL 33765
Primary Email:
tomlittle@thomasclittle.com
Secondary Email: janet@thomasclittle.com
*Attorney for Defendants Eric Ager and Irwin
Ager*

Edwin B. Kagan, Esq.
Edwin B. Kagan, P.A.
2709 North Rocky Point Drive
Suite 102
Tampa, FL 33607
Primary Email: ebkagan@earthlink.net
Secondary Email: livingston22@live.com
*Attorney for Defendant Teresa Simmons
Bordinat*

John A. Anthony, Esq.
Antony & Partners, LLC
201 North Franklin Street, Suite 2800
Tampa, FL 33602
Primary Email:
janthony@anthonyandpartners.com
Secondary Email:
vcisco@anthonyandpartners.com
eservice@anthonyandpartners.com
*Attorneys for Certain Non-Party
Unaffiliated Investors*

Eric D. Jacobs, Esq.
Jennis & Bowen, P.L.
400 North Ashley Drive
Suite 2540
Tampa, FL 33602
Primary Email: mpalmer@jennisbowen.com
Secondary Email:
eservice@jennisbowen.com
kfoley@jennisbown.com
Attorney for Non-Party A.J. Brent

Douglas E. Nepp, Esq.
Nepp & Hackert, LLC
One West Lake Street, Suite 185
Minneapolis, MN 55408
Primary Email: doug@nepphackert.com
*Attorney for Defendants Jeremy Anderson,
Anthony N. Nicholas, III, and Anthony N.
Nicholas, Jr.*

Timothy A. Patrick, Esq.
2102 West Cass Street
Tampa, FL 33606
Primary Email:
Timpatrick813@gmail.com
*Attorney for Defendants Jeremy Anderson,
Anthony N. Nicholas, III, and Anthony N.
Nicholas, Jr.*

s/Gianluca Morello
Gianluca Morello, FBN 034997