

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Case Type: OTHER CIVIL

Court File No. \_\_\_\_\_

In the Matter of the Voluntary Dissolution of  
Rainbow Health Minnesota

**PETITION FOR SUPERVISED  
VOLUNTARY DISSOLUTION**

1. This petition is a statutory proceeding expressly authorized by section 317A.741 of the Minnesota Nonprofit Corporation Act, Minn. Stat. ch. 317A (2023) (the “Nonprofit Act”).

**PARTIES**

2. Petitioner the State of Minnesota, by its Attorney General, Keith Ellison (the “AGO”) has the power “to supervise and investigate corporations under [the Nonprofit Act] and to bring proceedings to secure compliance.” Minn. Stat. § 317A.813.

3. Respondent Rainbow Health Minnesota (“Rainbow Health”) is a Minnesota nonprofit corporation organized under the Minnesota Nonprofit Corporation Act (“Nonprofit Act”), Minn. Stat. ch. 317A. (Declaration of Sara Noel (“Decl.”) Exhibit 1.) Rainbow Health obtained its certificate of incorporation with the Minnesota Secretary of State on April 27, 1983.<sup>1</sup> (Decl. Ex. 1.)

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<sup>1</sup> Minnesota AIDS Medical Project was the organization that filed its certificate of incorporation with the Minnesota Secretary of State in 1983. There was a merger in 2018 with the surviving organization being JustUs Health. Restated Articles were filed on April 2, 2021, with the name Rainbow Health Minnesota.

## **JURISDICTION AND VENUE**

4. Rainbow Health’s registered address with the Minnesota Secretary of State is 701 4<sup>th</sup> Avenue South, Suite 1500, Minneapolis, Minnesota, 55415. (Decl. Ex. 1.)

5. The Nonprofit Act provides that after a “notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued,” the attorney general “may apply to a court within the county in which the registered office of the corporation is located to have the dissolution conducted or continued under the supervision of the court.” Minn. Stat. § 317A.741.

6. On July 26, 2024, Rainbow Health filed a Notice of Intent to Dissolve with the Minnesota Secretary of State pursuant to section 317A.723. (Decl. Ex. 1.)

7. As of September 25, 2024, no certificate of dissolution has been issued. (Decl. Ex. 1.)

8. Jurisdiction is conferred by section 317A.741.

9. Venue is proper under Minnesota Statutes sections 317A.741 and 542.09.

## **FACTUAL BASIS**

### **I. OVERVIEW.**

10. The allegations cited herein pertain to an ongoing investigation. The facts are still being developed.

11. The AGO’s investigation and any subsequent action may include grounds that are in addition to, or different from, those alleged in this Petition. The AGO provides certain facts below that it has obtained from public sources and in its investigation to date relevant to its request to invoke this Court’s jurisdiction prior to the conclusion of its investigation.

12. Rainbow Health is a Minnesota nonprofit corporation, subject to the requirements of the Nonprofit Act and the supervision and enforcement of the AGO. The AGO can investigate and “bring proceedings to secure compliance” with the Nonprofit Act. Minn. Stat. § 317A.813.

13. The AGO can also obtain equitable remedies against corporations that violate the Nonprofit Act under certain conditions, including when the corporation has liabilities and obligations exceeding the corporate assets. Minn. Stat. § 317A.751, subdiv. 5.

14. The AGO also enforces violations of officers’ and directors’ fiduciary duties to the corporation. Directors and officers are required to act in good faith, in a manner they reasonably believe to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. Minn. Stat. §§ 317A.251, subdiv. 1, 317A.361, subdiv. 1.

15. In such cases where fiduciary duty breaches result in losses to the corporation, the AGO can obtain damages and restitution for such losses from the culpable officers and directors, which can be paid to the nonprofit. *See, e.g.*, Minn. Stat. §§ 8.31, subdiv. 3a, 317A.257, subdiv. 2(2). The AGO can also obtain civil penalties and other remedies. *See* Minn. Stat. § 8.31, subdiv. 3.

## **II. CLOSURE AND SUBSEQUENT ACTIVITY.**

16. On July 18, 2024, Rainbow Health publicly announced its immediate closure due to insurmountable financial challenges. (Decl. Ex. 2.)

17. On July 22, 2024, the AGO sent a voluntary letter request (the “Letter Request”) to Rainbow Health. (Decl. Ex. 3.) In the Letter Request, the AGO requested information and documents from Rainbow Health under its authority to conduct investigations and initiate proceedings to ensure compliance with the Minnesota Charitable Solicitation Act, Minn. Stat. ch.

309, the Minnesota Supervision of Charitable Trusts and Trustees Act, Minn. Stat. §§ 501B.33–.45, and the Minnesota Nonprofit Corporation Act, Minn. Stat. ch. 317A. (*Id.*).

18. This investigation is ongoing. Rainbow Health, through its counsel, has cooperated with the AGO by providing documents and information responsive to the Letter Request and participating in weekly phone meetings with the AGO.

19. On July 26, 2024, Rainbow Health filed with the Secretary of State its Notice of Intent to Dissolve under section 317A.723. (Decl. Ex. 1.)

20. On August 8, 2024, Rainbow Health issued a media statement addressing the dissolution of the organization. In this statement, Rainbow Health stated “Our priority is to meet all legal obligations and ensure assets are distributed in accordance with the law.” Rainbow Health also stated, “We are doing our best to wind down with limited resources in order to maximize payment on our outstanding debts and other obligations.” (Decl. Ex. 4.)

21. In partnership with the Minnesota Department of Human Services and The Aliveness Project, many former HIV care responsibilities have been transferred to The Aliveness Project. (Decl. Ex. 4.)

22. Rainbow Health has terminated all employees except for Wendy Berry, who the AGO understands works in human resources. (Decl. 2.)

23. On August 19, 2024, Rainbow Health filed with the AGO its Notice of Intent to Dissolve under section 317A.811. As part of the notice, Rainbow Health provided a list of assets with an estimated total of \$566,268.75. On this notice, Rainbow Health stated the organization has approximately \$900,000 in debts and liabilities, including “\$400,000 for 30 days’ notice to unionized employees.” (Decl. Ex. 5).

24. On August 22, 2024, Rainbow Health provided the AGO financial detail estimating the cost associated with the thirty days' notice to unionized employees to be \$268,666.91. In addition, the employees are requesting payout of remaining Paid Time Off and two weeks of severance estimated at \$96,272.75 and \$127,936.63 respectively. (Decl. Ex. 6).

25. Under the Nonprofit Act, assets are distributed by the board or officers upon dissolution in a specific order of priority. *See* Minn. Stat. § 317A.735. The priority is as follows:

- (1) distribution of assets received and held for a special use or purpose under subdivision 2;
- (2) payment of costs and expenses of the dissolution proceedings, including attorney fees and disbursements;
- (3) payment of debts, obligations, and liabilities of the corporation;
- (4) distribution of assets pursuant to articles or bylaws of the dissolving corporation or the rules or canons of another organization under subdivision 3; and
- (5) distribution of remaining assets under subdivision 4.<sup>2</sup>

26. The AGO has received and continues to receive complaints from former Rainbow Health patients about the abrupt closure, and from employees about payments for the thirty days' notice to unionized employees, as well as statements of support from the public for prioritizing payments to employees.

27. Initially, Rainbow Health represented that its "priority is to meet all legal obligations and ensure assets are distributed in accordance with the law." (Decl. Ex. 4). During communications with counsel, it was conveyed that the organization was trying to clarify its assets and liabilities, including the payments for the thirty days' notice to unionized employees. Counsel also conveyed requests from the union to prioritize payments for employees. (Decl. 3.)

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<sup>2</sup> Subdivision 4 directs, "The distribution of assets held for or devoted to a charitable or public use or purpose is subject to section 501B.31."

28. In a September 19, 2024 update, Rainbow Health Counsel communicated to the AGO that the organization may not have sufficient funds to satisfy all of its debts and obligations, including payments to employees. Specifically, when discussing the costs to prepare the final audits and tax filings for the organization, Rainbow Health Counsel stated those costs “could take up what’s left.” Rainbow Health stated to the AGO that the payment to employees for the thirty days’ notice falls in line with other creditor claims constituting the “debts, obligations, and liabilities of the corporation.” *See* Minn. Stat. § 317A.735 subdiv. 1(3). Rainbow Health alleges that the cost of dissolution, including the costs to prepare the final audits and tax filings, take priority over the thirty days’ notice payment to employees as “costs and expenses of the dissolution proceedings.” *Id.* subdiv. 1(2). Rainbow Health further alleges that the “costs and expenses of the dissolution proceedings” do not include wages to employees other than those to move through dissolution (e.g., the costs associated with paying the remaining employee, Wendy Berry). However, Rainbow Health has acknowledged statutory ambiguity in the priority and timeline for payment of employees in a dissolution. (Decl. 4.)

29. The AGO has also received inquiries from former patients about the process to obtain records from Rainbow Health. The AGO has helped facilitate the process to obtain such records. (Decl. 5.)

30. Although Rainbow Health has indicated in communications with the AGO that it will not dissolve until its final returns and audits are prepared sometime in 2025, Rainbow Health could give notice to creditors and claimants of its filing of its Intent to Dissolve with the Secretary of State and AGO. Such notices would start the tolling of deadlines for certain remedies available to the AGO and Rainbow Health’s creditors and claimants. *See* Minn. Stat. §§ 317A.727

(providing creditors 90 days to submit claims), 317A.811 (providing the AGO up to 75 days to object to a dissolution).

31. As of the date of this filing, the dissolution is ongoing.

### **REQUEST FOR COURT SUPERVISION**

32. The AGO seeks court supervision to ensure proper oversight over the corporation pending dissolution, provide for the orderly disposition of assets, and minimize prejudice to the Attorney General's ongoing investigation.

33. By filing its Notice of Intent with the Secretary of State, Rainbow Health initiated the process to wind down its affairs despite the ongoing AGO investigation and has triggered this Court's authority to supervise the dissolution and issue equitable relief under the Nonprofit Act. *See* Minn. Stat. § 317A.723.

34. Section 317A.741 states that “[a]fter the notice of intent to dissolve has been filed with the Secretary of State and before a certificate of dissolution has been issued,” the attorney general “may apply to a court within the county in which the registered office of the corporation is located to have the dissolution conducted or continued under the supervision of the court under sections 317A.751 to 317A.765.”

35. Sections 317A.751 to 317A.765 set forth a process for the orderly disposition of claims and assets.

36. Section 317A.753, subdivision 1 states that “[i]n dissolution proceedings the court may issue injunctions, appoint receivers with powers and duties the court directs, take other actions required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.”

37. Section 317A.751, subd. 2 states that “[a] court may grant equitable relief in a supervised voluntary dissolution under section 317A.741.”

38. Section 317A.751, subdivision 5 sets forth separate grounds for dissolution or equitable relief, in addition to cases where section 317A.741 applies. These include, but are not limited to, cases where liabilities and obligations exceeding the corporate assets. *Id.* subdiv. 5(7).

39. Section 317A.753, subdivisions 4 and 5 direct the order of priority for claims under Section 576.51 and the proper disposition of remaining assets under Section 317A.735.

40. Under Minn. Stat. § 576.51, the priority is as follows:

- (1) claims secured by liens on receivership property, which liens are valid and perfected before the time of appointment, to the extent of the proceeds from the disposition of the collateral in accordance with their respective priorities under otherwise applicable law, subject first to reimbursing the receiver for the reasonable and necessary expenses of preserving, protecting, or disposing of the collateral, including allowed fees and reimbursement of reasonable expenses of the receiver and professional;
- (2) actual, necessary costs and expenses incurred during the receivership, other than those expenses allowable under clause (1), including allowed fees and reimbursement of reasonable expenses of the receiver and professionals employed by the receiver under section 576.32;
- (3) claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan, earned by the claimant within the 90 days before the time of appointment or the cessation of the respondent's business, whichever occurs first, but only to the extent of the dollar amount in effect in United States Code, title 11, section 507(4);
- (4) allowed unsecured claims, to the extent of the dollar amount in effect in United States Code, title 11, section 507(7), for each individual, arising from the deposit with the respondent, before the time of appointment of the receiver, of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use by individuals that were not delivered or provided;

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41. Unlike creditors or members, the AGO may obtain supervised voluntary dissolution without any further limitations or proof. *See* Minn. Stat. § 317A.741 (applying “good cause”



precondition solely to applications by creditors or members). Nonetheless, as described above, good cause exists for court supervision of Rainbow Health's voluntary dissolution.

42. Through this Petition, the AGO waives no rights, powers, privileges, claims, or remedies. The AGO expressly reserves all other rights, privileges, powers, claims, and remedies, including but not limited to all potential claims for liability against Rainbow Health, its current and former officers and directors, and third parties that may arise from its investigation.

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WHEREFORE, the AGO respectfully requests that this Court assume jurisdiction over the dissolution of Rainbow Health to enable it to order such equitable remedies as the Court determines just and proper upon notice and hearing, including but not limited to:

- a. Requiring check-ins, reporting, timelines, and transparency to the AGO and the Court during the dissolution process;
- b. Issuing injunctions, restrictions, and conditions on Rainbow Health and its officers and directors for the winding down of its affairs and disposition of its assets;
- c. Determining the order of priority for claims and the property disposition of remaining assets, pursuant to section 317A.753.
- d. Determining the claims of claimants and creditors, if any, pursuant to section 317A.759;
- e. Ordering other equitable relief as the Court determines just and proper; and
- f. Entering a decree of dissolution pursuant to section 317A.763.

Dated: September 25, 2024

Respectfully submitted,

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ATTORNEYS FOR STATE OF MINNESOTA

**MINN. STAT. § 549.211 ACKNOWLEDGMENT**

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211.

/s/ Sara Noel  
SARA NOEL  
Assistant Attorney General