

**BEFORE THE INSURANCE COMMISSIONER OF THE  
STATE OF OKLAHOMA**

In re: Acquisition of GlobalHealth, Inc., )  
an Oklahoma domestic Health )  
Maintenance Organization, )  
By Kinderhook Capital Fund III, L.P. )

Case No. 13-1325-TRN

**FILED**

JAN 29 2014

INSURANCE COMMISSIONER  
OKLAHOMA

**ORDER**

On the 29th day of January, 2014 the above matter came for review by the Oklahoma Insurance Commissioner through his duly appointed Hearing Examiner.

The Applicant was represented by J. Angela Ables of the law firm of Kerr, Irvine, Rhodes and Ables, Oklahoma City, Oklahoma. The Oklahoma Insurance Commissioner was represented by Kelley C. Callahan, Senior Counsel and Julie Meaders, Deputy General Counsel. John D. Miller was appointed by the Honorable John Doak, Oklahoma Insurance Commissioner, for the purpose of acting as Hearing Officer and making all determinations pertinent to the acquisition of control of GlobalHealth, Inc. John McCarter, Chief Financial Analyst, appeared and testified on behalf of the Financial Division of the Oklahoma Insurance Department. Financial Analyst, Kim Lopez, of the Commissioner's Financial Division also attended the Hearing representing the Financial Division. Louis Aurelio, Managing Director of Kinderhook Capital Fund III, L.P., (hereinafter "Kinderhook"), appeared and testified on behalf of Applicant Kinderhook.

The Hearing Officer, having reviewed the Form A and all documentation relating thereto, having heard oral testimony, received evidence and being fully advised in the premises, finds as follows:

## **JURISDICTION**

1. That the Oklahoma Insurance Commissioner has jurisdiction of this matter pursuant to the provisions of the Oklahoma Insurance Code, 36 O.S. § 1651 et seq., and § 6930, the Oklahoma Administrative Code 365:40-3-11 and 365:40-3-19 and the Administrative Procedures Act, 75 O.S. Section 250 et seq.

2. That the Hearing Examiner was properly appointed pursuant to the provisions of the Administrative Procedures Act, the Oklahoma Administrative Code and the Oklahoma Insurance Code, specifically 36 O.S. 2013 §§ 313 and 319, and Article 16 A of Title 36 and Section 6930 in conformance with the applicable statutes and rules and regulations of the Oklahoma Insurance Commissioner.

## **FINDINGS OF FACT**

1. That Kinderhook ("Applicant") filed a Form A Acquisition Statement with the Oklahoma Insurance Commissioner on or about December 19, 2013, for the purpose of receiving approval as a "control" person of GlobalHealth, Inc., an Oklahoma domestic health maintenance organization ("GlobalHealth"). The acquisition of control was to be effected pursuant to a Securities Purchase and Contribution Agreement by and between Momentum Health Acquisition, Inc., Momentum Health Holdings, LLC, Momentum Health, LLC, the Oklahoma City Clinic, R. Scott Vaughn and Dr. John M. Bell and Applicant.

2. That the address of the Applicant is as follows:

Kinderhook Capital Fund, III, L.P.  
521 Fifth Avenue, 34<sup>th</sup> Floor  
New York, New York 10175

3. That the proposed acquisition of GlobalHealth, the Oklahoma domestic health maintenance organization, will be effected pursuant to an acquisition by Kinderhook of 66.93% of the interests of the ultimate holding company owning GlobalHealth. Kinderhook will acquire 66.93% of Momentum Health Holdings, the ultimate parent of GlobalHealth at Closing.

4. Additionally, the Oklahoma City Clinic and R. Scott Vaughn, certain “Rollover Investors” comprised of existing owners of GlobalHealth will have their ownership interests adjusted to a collective position of 33.1%, partially from sale of interests and partially from reinvestment of present owners, whereby R. Scott Vaughn will own 23.08% and Oklahoma City Clinic will own 9.9% of the ultimate holding company which controls GlobalHealth.

5. That the terms of the Securities Purchase and Contribution Agreement set forth as Exhibit “A” of the Form A detailed the total purchase price of the acquisition enterprise to be Forty Five Million Dollars (\$45,000,000) subject to customary adjustments set forth in the Agreement. That post-acquisition, the Oklahoma domestic health maintenance organization’s business will continue to be managed and operated as it operates presently.

6. That the home office address of GlobalHealth is 701 N. E. 10<sup>th</sup>, Oklahoma City, Oklahoma 73104.

7. That the Applicant herein filed sworn biographical affidavits on behalf of all Applicant’s three ultimate controlling individuals, Thomas Tuttle, Christian Michalik and Robert Michalik and had same verified by a third party verification service who reported directly to the Oklahoma Insurance Commissioner’s Office its findings.

8. That testimony at the Hearing was that the consideration for the sale and acquisition of the shares in the holding company described in the Form A Statement was arrived at through arms-length negotiations with the Sellers and the Applicant.

9. That after the acquisition described in the Form A, the Applicant would control the domestic health maintenance organization, GlobalHealth, through direct ownership in Momentum Health Holdings, LLC, the ultimate holding company of the health maintenance organization. .

10. That the ultimate controlling persons of Kinderhook are Thomas Tuttle with 28.40%, Robert Michalik with 21.30% and Christian Michalik with 21.30% of Kinderhook, all of whom filed biographical affidavits and had same verified with a third party verification service who reported to the Insurance Department their findings.

11. That the proposed ownership of GlobalHealth, post-transaction, will be continue to be owned 100% by Momentum Health LLC, but the ultimate holding company, Momentum Health Holdings, LLC will be owned and controlled as follows:

66.93% owned by Kinderhook

23.08% owned by R. Scott Vaughn

9.99% owned by Oklahoma City Clinic, P.C.

12. That testimony at the Form A Hearing and other information submitted by Applicant indicated that the ultimate controlling persons of Kinderhook, as well as all individuals for whom biographical affidavits were filed, had never been the subject of a criminal proceeding.

13. That the financial statements of Kinderhook reflected Assets and Partner's Capital of the following amounts since inception of the Fund to present:

	Assets	Partner's Capital
12-31-10	\$94,905,377	\$88,157,440
12-31-11	\$141,332,979	\$126,071,019
12-31-12	\$235,662,122	\$196,981,870

And unaudited within 90 day current financial information as of June 30, 2013 of Assets of \$220,128,385 and Partner's Capital of \$218,462,191.

### **CONCLUSIONS OF LAW**

1. That Applicant has complied with the provisions of the Oklahoma Insurance Holding Company Act, 36 O.S. 2013 §1651 et seq. and § 6930.

2. That the Hearing was held pursuant to the Administrative Procedures Act, 75 O.S. § 250 et seq., the Oklahoma Insurance Code, 36 O.S. § 101 et seq. and the promulgated Rules and Regulations of the Oklahoma Insurance Commissioner.

3. That the Oklahoma Insurance Commissioner has jurisdiction of this matter pursuant to 36 O.S. § 1651 et seq. and § 6930.

4. That the Applicant was given lawful Notice of Hearing on January 22, 2014, setting the date, time, place and location of the Hearing.

5. That Waivers of Notice of Hearing were filed by the Applicant herein, by the domestic health maintenance organization and also by its sole holding company owner

6. That the Hearing was recorded electronically by members of the Oklahoma Insurance Commissioner's staff pursuant to the Administrative Procedures Act and a full stenographic record was requested by the Applicant which the Hearing Examiner designated as the official record of the Hearing.

7. That both the Insurance Commissioner's office and the Applicant attended the Hearing, made arguments, presented testimony and stated that they had nothing further to submit to the Hearing Examiner.

8. That based upon a preponderance of the evidence submitted at the Hearing, the Hearing Officer finds that no evidence was submitted that after the proposed acquisition, the Oklahoma domestic health maintenance organization, GlobalHealth, Inc., would not be able to satisfy the requirements for the issuance of a license to write the line or lines of business for which it is presently licensed.

9. That no evidence was submitted that the transactions described in the Form A filing would substantially lessen competition or tend to create a monopoly in the State of Oklahoma.

10. That no evidence was submitted that the financial condition of the Applicant was such that it would jeopardize the interests of present or future policyholders of GlobalHealth.

11. That the terms of the acquisition are fair and reasonable based upon the information contained in the Form A Statement as filed with the Insurance Commissioner and testified to at the Hearing.

12. That the future plans the Applicant intends for the Oklahoma domestic health maintenance organization appear to be fair and reasonable and in the public interest based upon the information contained in the Form A Statement as filed with the Insurance Department and as testified at the Hearing.

13. That no evidence was submitted that the competence, experience and integrity of the persons who will control the health maintenance organization post acquisition is such that the interests of the public, or future policyholders of the domestic HMO, will be affected adversely by the transactions described herein.

**ORDER**

**THEREFORE**, no criteria for disapproval specified in 36 O.S.2013 §1653(d) (1) having been found, **IT IS HEREBY ORDERED** that the Application of Kinderhook Capital Fund, III, L.P. to acquire GlobalHealth, Inc., is hereby **APPROVED** effective as of the date of the Hearing.

**WITNESS MY HAND** and official seal this 29<sup>th</sup> day of January, 2014.



**JOHN DOAK  
INSURANCE COMMISSIONER  
STATE OF OKLAHOMA**

By \_\_\_\_\_

*John D. Miller*  
**John D. Miller, Esq.  
Hearing Officer**

**APPROVED AS TO FORM:**

*Kelley C. Callahan*  
\_\_\_\_\_  
Kelley C. Callahan, Esq.

Senior Attorney  
Oklahoma Insurance Commissioner's Office

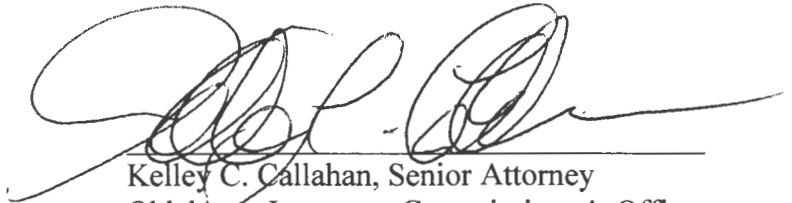
*J. Angela Ables*  
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J. Angela Ables, Esq.

Kerr, Irvine, Rhodes and Ables  
Attorney for Applicant

**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing Order was personally delivered on the 27<sup>th</sup> day of January, 2014, to the following:

J. Angela Ables  
Attorney for Applicant  
Kerr, Irvine, Rhodes and Ables, P.C.  
201 Robert S. Kerr, Suite 600  
Oklahoma City, Oklahoma 73102



Kelley C. Callahan, Senior Attorney  
Oklahoma Insurance Commissioner's Office