WEISMAN LAW OFFICES, LLC

25 CENTRAL AVENUE
P.O. BOX 260
WATERBURY, CONNECTICUT 06720
JLWESQ1@AOL.COM

Tel.: 203-757-1561
Fax: 203-573-9525

Joseph H. Weisman
Jonathan Weiser
(Of Counsel)

Jeffrey L. Weisman
Dov Braunstein

February 13, 2007

ATTN: Ms. Diana Caliendo
Connecticut General Assembly
Judiciary Committee
Legislative Office Building
Room 2500
300 Capital Avenue
Hartford, Connecticut 06106

Re: HJ00057 RESOLUTION CONFIRMING THE DECISION OF THE CLAIMS COMMISSIONER TO DISMISS THE CLAIM AGAINST THE STATE OF MAYER WEBER.

Written Statement Concerning Claimant's Request For Review of Dismissal of Claim

The Claimant, Mayer Weber, respectfully requests that the following be considered by the Judiciary Committee of the Connecticut General Assembly in determining whether to approve the Memorandum of Decision of the Claims Commissioner, dated December 13, 2006:

The Claimant, Mayer Weber, was the licensee affiliated with two separate health care facilities commonly known as Rosewood Health & Rehabilitation Center ("Rosewood"), and Golden Acres d/b/a Coleman Park Nursing Home ("Coleman") (collectively, the "Facilities") from January 2001 until November 8, 2004. In January 2001, the Respondent, the State of Connecticut Department of Social Services ("DSS"), agreed in writing to pay certain monies for various expenses associated with operating the facilities; inexcusably, the State would later fail to abide by the terms of that agreement (the "Agreement").

Prior to purchasing Coleman, the Claimant entered into an Agreement with DSS, whereby Coleman would be reimbursed by the State for services provided, at a rate of

$170.00, per patient, per day. The parties further agreed that any equipment or construction improvements required by the State of Connecticut Department of Public Health would be reimbursed by the State, on an amortization schedule above the $170.00 patient rate that the State had agreed to. In violation of its agreement, the State only paid $165.00, per patient per day, for the fiscal year ending June 2001. After the Claimant filed an amended cost report exceeding $170.00, the State increased its daily rate payments to a mere $165.80. The eighty-cent increase, intended to cover construction improvements, was considerably below the Claimant's output cost.

With respect to the second fiscal year of July 2001 through June 30, 2002, the legislature passed a law increasing reimbursement payments for all nursing homes throughout the State by 2.5%. The 2.5% increase that Coleman received from the State was not based on the originally agreed upon rate of $170.00, but rather on the decreased reimbursement rate of $165.00. This led to a continuous shortfall, per patient, per day. Moreover, the State disallowed the costs of the salaries for Coleman's Administrator, Assistant Administrator, and for the cost of the Claimant's annual salary, a small and reasonable amount of $32,000 per year, without benefits.

Similarly, the State disregarded its obligations towards Rosewood. The State had initially agreed to reimburse Rosewood at a rate of $180.00 for CCH licensure and $145.00 for RHNS licensure, for the fiscal year February 2001 through June 30, 2001. Any property improvements, such as equipment or construction, required by the Department of Health, were to be reimbursed by the State, at an amortization schedule above the $180.00 and $145.00 amounts agreed to by the State. After the Claimant filed an amended cost report, the State began paying Rosewood at a rate of $180.00 and $142.00, respectively. In fact, after accounting for additional costs that were required by the State, that facility should have been reimbursed well above the $180.00 and $145.00 amounts.

During the second fiscal year, July 2001 through June 30, 2002, Rosewood's reimbursement rate was $170.00 for CCH licensure, and $142.00 for RHNS licensure. Although Rosewood's costs continued to increase, the State refused to adjust Rosewood's reimbursement rate. Moreover, the State never adjusted the rates by an increase of 2.5%, as required by the Connecticut legislature.

This improper reimbursement was not the only manner in which the State violated the Claimant's rights. The Claimant, in operating the Facilities, outsourced laundry, housekeeping and dietary assistance to OPL Health Care Services Group, a publicly traded company. The State denied Rosewood reimbursement and penalized Rosewood for using OPL Health's services, despite the fact that at least twenty nursing homes in the State were using the same company for their professional services, without incurring any penalties. Additionally, the State also induced the Claimant to sign a consent form to invest large sums of money to upgrade and improve both Facilities; the improvements were not reimbursed, costing the Claimant nearly $1,000,000.00.

These huge losses for the Facilities, caused by the State's failure to properly reimburse the Facilities as agreed upon, eventually forced the Facilities into receivership. On July 1, 2004, DSS agreed in writing to release $1,198,000.00 to the Claimant (the "Admitted Funds"), to be applied toward the satisfaction of certain outstanding claims, including such claims for which the Claimant faced personal liability; those funds represented only a fraction of the monies that DSS owed the Claimant.

Ultimately, on November 8, 2004, the Claimant was forced to effectuate a transfer of ownership of the Facilities to a third party. At the closing of transfer of title, DSS released approximately $389,000.00 in purported settlement of all existing claims, despite having earlier promised to release $1,198,000.00; there was no basis for, nor an accounting for the reduction in the monies owed to the Claimant or the Admitted Funds. The Claimant, had he not been driven into this position by the State, would have realized a profit from the Facilities, and could have sold the Facilities, to a third-party of his own choosing, for a substantial profit.

Accordingly, the Claimant first submitted a Notice of Claim, with the Office of Claims Commissioner, by certified mail on November 7, 2005. The claimant filed a revised claim on December 7, 2005, pursuant to C.G.S. § 4-157-4, which permits amendments, as of right, within 90 days of initial filing. In a motion to dismiss the claim, the State contended that the Claimant's claim was time barred, and that the Court authorizing the sale of the Facilities retained jurisdiction over the matter. The Claimant filed an Objection to the Motion to Dismiss.

On December 13, 2006, the Office of Claims Commissioner dismissed the claim, concluding that the Claims Commissioner did not have jurisdiction over the present claim, as any issues regarding the sale should be addressed by the Court approving the original stipulation and sale. The Claims Commissioner noted that any grievances regarding rate structure were time-barred.

The Claimant respectfully disagrees with the conclusions of the Claims Commissioner on multiple grounds. First, the Claimant disputes that the court-approved settlement of October 18, 2004 fully resolved this matter as to the Claimant (the "Order"). Although the Order approving the sale of the Facilities to a third-party may have applied to the Facilities, it did not apply to the Claimant, Mayer Weber. Granted, the Court may have retained jurisdiction over the stipulation as to the Facilities, but the court *never had* jurisdiction as to the Claimant, Mr. Weber, and therefore this claim was appropriately filed with the Claims Commission.

The Claimant's claim against the State is entirely separate and distinct from any action that may have been brought by the Facilities. As a direct result of the State's violation of its agreement with the Facilities, by withholding reimbursements to which the Facilities were entitled, the Facilities suffered extreme financial hardship, forcing the Facilities into receivership. The creation of the receivership ultimately led to a forced sale of the Facilities to a third-party. Had the State not put the Facilities in the treacherous financial position that it did, the Claimant could have realized a better

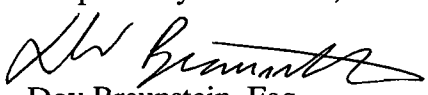
financial gain on the Facilities, avoided receivership, and sold the facilities to a third-party of his own choice, at a profit.

Moreover, as noted in Claimant's Objection to the Motion to Dismiss, the enforceability of the stipulation itself must be called into question. The court-order simply approved the sale of the Facilities to a third-party, on terms that required the State to pay the Facilities' creditors. The Court, by its Order, did not intend to have the State short change the Facilities at the sale of those facilities, nor was the Order intended to allow the State to plainly disregard the promises made by the State in its July 2004 letter to the Claimant, or to disregard the terms of the stipulation. Accordingly, the State, by its improper conduct at closing, was in violation of the stipulation which it now seeks to enforce.

Second, contrary to the Claims Commissioner's conclusion, this claim against the Department of Social Services should not be time-barred. As noted, the culmination of the State's violation of the Claimant's rights, in a huge financial amount, occurred at the closing of the sale of the Facilities on November 8, 2004. The claim was brought within the statute on November 7, 2005. The State's failure to keep the mandated rate structure promised to the Claimant is but the beginning of the Claimant's claim against the State; the State's abuse of Mr. Weber's rights continued through the State's agreement with the Claimant on July 1, 2004, the State's inexcusable violation of that agreement, and the forced sale of the Facilities in November, 2004.

For the foregoing reasons, the Claimant respectfully requests that the General Assembly reject the recommendation of the Claims Commissioner dismissing the claim, and order that this claim be returned to the Claims Commission for determination.

Respectfully Submitted,



Dov Braunstein, Esq.
Attorney for Claimant

Cc: Daniel Shapiro, Esq.
Assistant Attorney General
P.O. Box 120
55 Elm Street
Hartford, CT 06141-0120