STATE OF WEST VIRGINIA
WEST VIRGINIA ETHICS COMMISSION
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September 6, 2017

Carte P. Goodwin, Esq.
Frost Brown Todd, LLC
Laidley Tower
500 Lee Street, Ste 401
Charleston, WV 25301-3207

RE: James E. Rubenstein

Dear Mr. Goodwin:

This will confirm that your client, James Rubenstein, has fulfilled the requirements of the Conciliation Agreement dated February 2, 2017, which consists of payment of a $7,000 fine to the Ethics Commission and restitution in the amount of $138.25 to the West Virginia Division of Corrections.

The above-captioned matter accordingly will be closed.

Sincerely,

Rebecca L. Stepto
Executive Director

RLS/tla

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

JAMES E. RUBENSTEIN,
Commissioner of the Division of Corrections,
and former Deputy Secretary,
West Virginia Department of Military Affairs and Public Safety

Pre-Complaint Conciliation Agreement

The West Virginia Ethics Commission and James E. Rubenstein freely and voluntarily enter into the following Conciliation Agreement pursuant to W.Va. Code § 6B-2-4(s) to resolve all potential charges arising from the allegations of Rubenstein's violations of the Ethics Act discussed below.

Findings of Fact

1. James E. Rubenstein has served as the appointed Commissioner of the Division of Corrections ("Corrections"), West Virginia Department of Military Affairs and Public Safety ("DMAPS") since June 2001.

2. Rubenstein was simultaneously serving as the Deputy Secretary of DMAPS from July 1, 2014, through the summer of 2016. In this position, his work station was in the DMAPS headquarters in Charleston.

3. Rubenstein was a "public official" as defined in the West Virginia Governmental Ethics Act ("Ethics Act"), at W.Va. Code § 6B-1-3(k), at all relevant times herein.

4. The Ethics Commission has jurisdiction over alleged violations of the Ethics Act, at W.Va. Code §§ 6B-1-1 through 6B-3-11, committed by public officials

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such as Rubenstein.

5. By letter agreement dated October 11, 2016, executed by and between Rubenstein and the Kanawha County Prosecuting Attorney (the "Referral Agreement"), the parties agreed to refer this matter to the Ethics Commission. In the Referral Agreement, Rubenstein agreed to cooperate to the extent necessary and appropriate to facilitate the Ethics Commission's investigation and resolution of this matter through the negotiation and execution of a mutually agreeable Conciliation Agreement.

6. The allegations against Rubenstein arise from the facts discovered by the West Virginia Legislature's Commission on Special Investigations ("CSI") during an investigation which is summarized in a Report of Investigation dated November 16, 2015.

7. The CSI report alleges facts which constitute two violations of the Ethics Act.

8. Rubenstein sought and received improper reimbursement from the state in the amount of $138.25 for a one-night hotel stay at the Charleston Four Points Sheraton on February 9, 2015.

9. On or about February 21, 2015, Rubenstein, who primarily resided in St. Marys, West Virginia, submitted a request to the DMAPS Cabinet Secretary for reimbursement of hotel lodging expenses of $138.25 for February 9, 2015.

10. Based on the West Virginia State Travel Policy in effect at the time, which did not include an express prohibition on employees seeking reimbursement for travel from their home to their official workstation, Rubenstein understood that he was entitled to reimbursement for the hotel stay. *See* section 6.1, State Travel Policy, effective

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September 1, 2010.

11. On March 2, 2015, upon receipt of Rubenstein's request for travel reimbursement, the Executive Assistant to the DMAPS Cabinet Secretary questioned the validity of Rubenstein's request. She sent Rubenstein the following email:

> I have the travel settlement for 2/9/15-2/10/15. With Charleston being your home office, did you have something on the evening of the 9th that required you to stay in Charleston?

12. On March 2, 2015, Rubenstein responded by email as follows:

> I planned on staying in town as Feb. 10th was Corrections Day and there were things going on throughout Monday, 2/9. Plus water froze up in my apartment and I scurried. If this isn't possible or practical I understand and please delete the request. I felt I was in reason with submitting but stand corrected if necessary. Thanks ....

13. Rubenstein's asserted reason for staying at the hotel on February 9, 2015, (that the pipes in his Charleston apartment had frozen so he needed another place to stay) was personal.

14. On March 16, 2015, Rubenstein submitted the same request for reimbursement to his subordinate, Corrections' Director of Administration, without the knowledge of the DMAPS Cabinet Secretary or his Executive Assistant.

15. The State Travel Policy in effect at the time authorized the spending officer of a state agency, which in the case of the Division of Corrections would be Rubenstein, to "manage, approve or disapprove" travel-related expenses. *See* section 2.1, State Travel Policy, effective September 1, 2010.

16. The DMAPS secretary informed the CSI that the protocol for reimbursement of Rubenstein's expenses was that they required the approval of the DMAPS Cabinet

Secretary.

17. Corrections Director of Administration, unaware that the request had been questioned by the Executive Assistant to the DMAPS Cabinet Secretary, approved Rubenstein's reimbursement request.

18. In the Prosecutor's Referral Agreement, Rubenstein agreed to repay the State of West Virginia the amount of $138.25 for the hotel bill.

19. CSI's report also summarized its investigation of Rubenstein's use of a two-room garage apartment at 1632½ Kanawha Boulevard East in Charleston beginning in February 2011.

20. The apartment was owned by RE Enterprises, LLC, a West Virginia limited liability company comprised of two members: Terrence E. Rusin, the registered agent, and Freddie Sizemore. RE Enterprises, LLC, is a real estate holding company that owns only one property, 1632 Kanawha Boulevard, which is the office building for PsiMed, Inc., a West Virginia corporation.

21. Terrence E. Rusin is also the owner and registered agent of PsiMed Corrections, LLC, a state Corrections/DMAPS vendor.

22. Terrence E. Rusin is also an owner and officer of PsiMed, Inc., a West Virginia corporation.

23. PsiMed, Inc., is a subcontractor to Wexford Health Sources, Inc., a foreign corporation authorized to do business in West Virginia. Wexford has a contract with the State for the provision of certain health care services to the Division of Corrections.

24. Upon information and belief, Wexford Health Services, Inc., received

monies from the state between February 2011 and June 2014 for medical services it provided pursuant to its contract with Corrections and DMAPS, and PsiMed, Inc., received a portion of these monies through its subcontract with Wexford.

25. PsiMed, Inc., was, at all pertinent times herein, doing or seeking to do business with Corrections and DMAPS and/or engaged in activities which were regulated or controlled by Corrections and DMAPS.

26. PsiMed, Inc., at all pertinent times herein, had financial interests which may have been substantially and materially affected, in a manner distinguishable from those of the public generally, by the performance or nonperformance of Rubenstein's official duties.

27. PsiMed, Inc., at all pertinent times herein, had a matter before the agency on which Rubenstein or a subordinate was known by him to be working and/or was a vendor to Corrections and DMAPS, and Rubenstein or a subordinate of his exercised authority or control over a public contract with PsiMed, Inc.

28. According to a verbal agreement between Rubenstein and Terrence Rusin and his company, RE Enterprises, LLC, Rubenstein would live in the apartment without paying rent or utilities in exchange for Rubenstein furnishing the apartment and leaving the furniture behind when he ended his use of the apartment.

29. Rubenstein used the garage apartment until November 2013, when he moved his primary residence to St. Marys, West Virginia.

30. Rubenstein paid for cable television services from Suddenlink Communications for the apartment from 2011 until June 2014.

31. Rubenstein continued to have access to the apartment after he moved to St. Marys in November 2013. He and Terrence Rusin agreed that, beginning in November 2013, Rubenstein would be required to pay $50 each night he used the apartment.

32. Rubenstein intended to stay in the apartment overnight on February 9, 2015, until he learned that the water pipes had frozen.

33. The CSI report was inconclusive as to when Rubenstein stopped using the apartment. He still had a key to the garage apartment when he was interviewed by CSI on July 7, 2015.

34. Rubenstein spent $3,616.57 to purchase furniture and other items for the apartment in accordance with his verbal agreement with Mr. Rusin and RE Enterprises, LLC. Rubenstein left the furnishings in the apartment.

35. Because of his agreements with Mr. Rusin to purchase furniture for the apartment and pay for individual night stays at the apartment, and that fact that RE Enterprises was not a direct vendor of the State, Rubenstein did not understand his actions to be violations of the Ethics Act at the time. Furthermore, Rubenstein believed his arrangement with Mr. Rusin would inure to the benefit of the State, as it would save the State the cost of reimbursing Rubenstein for travel to and lodging in Charleston. Rubenstein states that his actions were a result of a lack of vigilance on his part and that he profoundly regrets any appearance of impropriety. He asserts that he did not intend to use his office for the private gain of himself.

36. In the Prosecutor's Referral Agreement, Rubenstein agreed to pay an

amount representing the difference between the fair market value of the apartment and the value of any furnishings or other rental payments made by Rubenstein.

Relevant Legal Provisions

W.Va. Code § 6B-2-5(b)(1) states:

> A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W.Va. Code § 6B-2-5(c)(1):

> A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:
>
> (A) Is doing or seeking to do business of any kind with his or her agency;
>
> (B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

W.Va. Code § 6B-2-5(h) states:

(1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee,

exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations;

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

Conciliation of Violation

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I, James Eli Rubenstein, admit that I violated the above-referenced provisions of the West Virginia Governmental Ethics Act by requesting and receiving reimbursement from the state for my hotel stay in Charleston on February 9, 2015, and by accepting the use of an apartment by Terrence Rusin. In order to resolve this matter, I am entering into this Agreement. For this Conciliation Agreement to be finalized, I understand that the Ethics Commission must approve it and must determine which sanctions to impose. In consideration for the settlement of this matter, I agree to the Commission's imposition of the following sanctions:

1. A public reprimand,
2. Repayment of One Hundred Thirty-Eight Dollars and Twenty-Five Cents ($138.25) to the Division of Corrections for the one-night hotel stay on February 9, 2015, and
3. A fine in the amount of $7,000, an amount representing the difference between the fair market value of the apartment and the value of any furnishings or other rental payments made by Rubenstein, payable in seven equal monthly installments of $1,000 beginning on March 1, 2017.

If the Ethics Commission approves the Agreement, it will enter an Order in which it approves the Agreement and sets forth the sanctions listed above.

Both parties understand that, pursuant to W.Va. Code § 6B-2-4(s), this Conciliation Agreement and Commission Order must be made available to the public.

2/2/17
Date

Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

February 1, 2017
Date

James Eli Rubenstein

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BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

JAMES E. RUBENSTEIN,
Commissioner of the Division of Corrections and former Deputy Secretary, West Virginia Department of Military Affairs and Public Safety

COMMISSION'S ORDER

After considering the Findings of Fact, Relevant Legal Provisions and Conciliation of Violation in the Conciliation Agreement, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and James Rubenstein as required by W.Va. Code § 6B-2-4(t). In accordance with W.Va. Code § 6B-2-4(s), the Commission imposes the following sanctions:

1. A public reprimand;

2. Repayment of One Hundred Thirty-Eight Dollars and Twenty-Five Cents ($138.25) to the Division of Corrections for the one-night hotel stay on February 9, 2015, and

3. A fine in the amount of $7,000, an amount representing the difference between the fair market value of the apartment and the value of any furnishings or other rental payments made by Rubenstein. The fine shall be paid in payments of $1,000 per month by March 1, 2017; April 1, 2017; May 1, 2017; June 1, 2017; July 1, 2017; August 1, 2017, and the final payment shall be paid by September 1, 2017.

2/2/17
Date

Robert J. Wolfe, Chairperson
West Virginia Ethics Commission