

**STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

**Before the Commissioner of Financial and Insurance Services**

In the matter of:

Ultimed HMO of Michigan, Inc.

No. 05-047-M

**STIPULATION FOR ENTRY OF A  
CONSENT ORDER OF TRANSITION TO REHABILITATION  
AND  
CONSENT ORDER OF TRANSITION TO REHABILITATION**

**STIPULATION**

Ultimed HMO of Michigan, Inc. (“Ultimed” or the “Company”) and the Michigan Department of Labor and Economic Growth, Office of Financial and Insurance Services (“OFIS”) stipulate and agree to the following:

**A. Jurisdiction**

1. Ultimed is a Michigan health maintenance organization (“HMO”) incorporated and authorized to do business under Chapter 35 of the Michigan Insurance Code of 1956, as amended, MCL 500.3501 – 500.3580 (the “Insurance Code”).
2. Pursuant to MCL 500.8102, the rehabilitation proceedings agreed to in this Stipulation may be applied to Ultimed because (a) it is transacting insurance business in Michigan and claims arising from that business may exist now or in the future; and (b) Ultimed has insureds who reside in Michigan.

**B. The May 3, 2004 Order of Supervision**

3. Ultimed is subject to the terms and conditions of an Order of Supervision entered by OFIS Commissioner Linda A. Watters (the "Commissioner") on May 3, 2004, a copy of which is attached hereto as Exhibit A. The Order of Supervision contains eleven (11) requirements that Ultimed was obligated to satisfy to abate the Commissioner's determination, also set forth in the Order, that Ultimed is operating its business in a hazardous condition.

Ultimed has failed to comply with at least six (6) of these eleven requirements by:

- a. Failing to actively seek out new capital sources or pursue the possibility of an affiliation, joint venture, or merger with another HMO for the purpose of restoring compliance with all statutory financial requirements;
- b. Failing to submit a bi-weekly written progress report to the Commissioner or her designee that includes an executive summary discussion of key activities and events that have occurred at the Company. At a minimum, these progress reports were to include any new measures taken to improve operations, reduce costs, or improve the financial condition of the Company, and were expected to provide useful information that would have allowed OFIS to monitor the Company's progress on a "real time" basis. Since November 5, 2004, Ultimed has submitted only one such progress report, which OFIS received on April 21, 2005.
- c. Failing to continue to file a balance sheet, income statement, and cash flow statement prepared in accordance with the accounting standards prescribed by the Commissioner within 30 days after each month's end. The accounting standards to be used for such financial statements were the NAIC "orange blank" format or Generally Accepted Accounting Principles with a reconciliation to Statutory

Accounting Principles. In addition, the financial statements were to be substantially similar to annual and quarterly statement filings and were required to cover operations for the previous month end and year-to-date. Ultimed has not filed any of these required financial statements for the year 2005.

- d. Failing to submit the following within 10 days after the Order of Supervision was entered, or by May 13, 2004: (i) Evidence of a current reinsurance agreement that meets the requirements of Section 3559 of the Insurance Code, MCL 500.3559; and (ii) A formal response to OFIS' letter dated February 9, 2004.
- e. Failing to provide a monthly claims report detailing information on claims received, claims in process, the number of claims paid in the month, the number of claims pending, and the reason any claims were in pending status. The claims report was to be in sufficient detail to allow OFIS to determine if claims were being paid appropriately and on a timely basis. Ultimed has not filed a monthly claims report since September 2004.
- f. Disposing of, conveying, or encumbering assets or its business in force and/or transferring its property without the prior approval of the Commissioner.

Consequently, the Commissioner's prior determination that Ultimed is operating its insurance business in a hazardous condition remains unabated.

**C. Additional Findings of Fact**

4. According to its March 31, 2005 Quarterly Statement, Ultimed's assets included a receivable from its parent, subsidiaries and affiliates in the amount of \$1,602,308. At the time, this receivable represented 59% of the Company's total assets and 97% of its capital and surplus. The March 31, 2005 Quarterly Statement also showed a receivable in the amount

\$501,827 arising from current federal and foreign income tax recoverable and interest thereon. This receivable amount was identical to the amount recorded as of December 31, 2004. Combined, these two receivables represented 78% of the Company's total assets and 128% of its capital and surplus. As of March 31, 2005, Ultimed showed only \$105,293 in liquid assets, casting doubt upon the future liquidity of the Company.

5. Based upon financial information produced by Ultimed during OFIS' most recent special examination of the Company completed on October 3, 2005, Ultimed's assets currently include a receivable from affiliates in the claimed amount of \$3,452,000. This receivable now represents approximately 70% of the Company's total assets. In addition, Ultimed currently reports a federal income tax receivable in the increased amount of \$958,000, representing approximately 19% of the Company's total assets. Combined, these two receivables now represent nearly 89% of Ultimed's total assets and approximately 215% (calculated based upon the incomplete information provided to OFIS) of the Company's total reported capital and surplus. Alarming, Ultimed's only reported assets other than these two receivables are: (a) its \$500,000 statutory minimum deposit required by MCL 500.3553(3); and (b) \$55,000 in cash, evidenced by its most recent bank account statement. This current financial information reaffirms the Commissioner's prior determination that Ultimed is operating its business in a hazardous financial condition.

6. OFIS has additionally experienced an increase in the volume of complaints from members, agents, and providers regarding Ultimed's business practices. There is a similar pattern regarding the type of complaints, which indicate that the Company is not paying valid claims. As of June 30, 2005, Ultimed's liabilities included unpaid claims in the approximate

amount of \$2,444,000. Based upon the progressive reduction in the number of Ultimed's employees, it is reasonable to conclude that this amount has since increased.

7. In addition to its liability for unpaid claims, as of June 30, 2005, Ultimed's reported liabilities included an unpaid claim adjustment expense in the amount of \$69,000 (increased from \$33,100 as of December 31, 2004) and general expenses due or accrued in the amount of \$403,000 (increased from \$67,132 as of December 31, 2004). Accordingly, Ultimed's dwindling liquid assets are being offset by ever-increasing liabilities, again reaffirming the Commissioner's prior determination that Ultimed is operating its business in a hazardous financial condition.

8. Ultimed has continually failed to file required documents or respond to the Commissioner's inquiries in a timely manner, if at all. The filing of requisite financial information in a timely manner is a basic requirement to maintain a certificate of authority to operate as an HMO in Michigan. Without this required information, OFIS cannot confirm Ultimed's actual financial condition or whether the Company is complying with all statutory requirements. Among the required documents that Ultimed has failed to file (in addition to those required by the Order of Supervision) are:

- a. Ultimed's June 30, 2005 Quarterly Statement;
- b. Formal responses to OFIS' letters of inquiry dated June 7, 2005, March 22, 2005, December 1, 2004, October 12, 2004, September 8, 2004, June 10, 2004, and February 9, 2004;
- c. Ultimed's 2004 Annual Audited Financial Statements, which were due on June 1, 2005; and
- d. Ultimed's 2004 Actuarial Opinion, which was due on March 1, 2005.

In the absence of the latter two documents, OFIS does not have any 3<sup>rd</sup> party confirmation that the financial information presented in Ultimed's 2004 annual statement is reasonable and accurate. The Company's failure to file a required independent certification of the adequacy of its claim reserves as of December 31, 2004 further brings into question whether these reserves have been reported at an adequate level.

**D. Bases for Rehabilitation**

9. Ultimed currently meets the statutory conditions for Rehabilitation based upon the following grounds:

- a. MCL 500.8112(a) – As previously determined by the Commissioner in the Order of Supervision, and based upon the additional findings of the Commissioner set forth above, Ultimed is in such financial condition as to render the continuance of its business hazardous to its policyholders, creditors, and/or the public.
- b. MCL 500.8112(i) – Within the previous four (4) years, Ultimed has willfully violated a valid order of the Commissioner entered under Section 8109 of the Insurance Code, MCL 500.8109, to wit, the May 3, 2004 Order of Supervision.
- c. MCL 500.8112(k) – Ultimed has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the Commissioner, has failed to give immediately an adequate explanation.
- d. MCL 500.8112(m) – Ultimed has been found, after an examination by OFIS, to be in a condition that no longer meets the requirements for incorporation and authorization as a health maintenance organization in Michigan.

**E. Requirements to Avoid Filing of the Rehabilitation Petition**

10. Barring Ultimed's full and complete compliance with each of the following terms and conditions, including but not limited to the time for performing same, OFIS will file a Rehabilitation Petition in the form and manner described in Paragraphs 11 through 19, *infra*:

- a. On or before October 25, 2005, Ultimed shall secure a cash infusion of unrestricted capital in the amount of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00)(the "Initial Cash Infusion"). Simultaneously with Ultimed's receipt of the Initial Cash Infusion, Ultimed shall provide to the Commissioner adequate documentation evidencing both the source of the Initial Cash Infusion and that the Initial Cash Infusion was in fact received by Ultimed.
- b. On or before November 10, 2005, Ultimed shall secure an additional cash infusion of unrestricted capital in the amount of Two Million and 00/100 Dollars (\$2,000,000.00)(the "Additional Cash Infusion"). Simultaneously with Ultimed's receipt of the Additional Cash Infusion, Ultimed shall provide to the Commissioner adequate documentation evidencing both the source of the Additional Cash Infusion and that the Additional Cash Infusion was in fact received by Ultimed.
- c. Ultimed shall immediately retain an independent actuary approved by the (whose consent shall not be unreasonably withheld) Commissioner <sup>B</sup> to review the adequacy of its claim reserves reported as of <sup>(CLK)</sup> September 30, 2005. Upon completion of the foregoing review, the independent actuary shall prepare a report summarizing its findings (the "Independent Actuary Report"), a copy of which shall be provided to the Commissioner. The Independent Actuary Report shall be provided to the Commissioner within thirty

(30) days after the date of entry of the Consent Order of Transition to Rehabilitation.

- d. On or before October 27, 2005, Ultimed shall reduce by forty percent (40%) the total dollar amount of its unpaid claims liability. In accomplishing this reduction of its unpaid claims liability, Ultimed shall process and pay claims in reverse chronological order, beginning with claims bearing the oldest dates of service and dates of receipt. Notwithstanding the foregoing, Ultimed shall give immediate priority to the processing and payment of any claim for which Ultimed receives notice, from OFIS, a policyholder, or otherwise, that nonpayment of the claim has resulted in the corresponding policyholder's referral to a collection service.
- e. On or before November 14, 2005, Ultimed shall eliminate any remaining unpaid claims backlog and shall be current in the processing and payment of claims. In accomplishing this further reduction, Ultimed shall continue to process and pay claims in reverse chronological order, beginning with claims bearing the oldest dates of service and dates of receipt. For purposes of this paragraph, "current" is defined as a period of not more than forty-five (45) days after the date that Ultimed received a claim.
- f. Ultimed shall immediately suspend its solicitation and/or acceptance of any new business until such time as it receives written approval from the Commissioner that it may resume such activities.
- g. On or before November 11, 2005, Ultimed shall secure any amounts claimed as business assets relating to the recovery of federal income taxes. Alternatively, Ultimed may, on or before November 11, 2005, provide the Commissioner with

an opinion from an independent qualified tax professional approved by the Commissioner indicating that these amounts are reasonable and will be collected by Ultimed within one (1) year.

- h. If upon further examination the Commissioner determines: (i) that an additional cash infusion of unrestricted capital is necessary to place Ultimed in such condition as to no longer be hazardous financially to its policyholders, creditors, and/or the public; and (ii) the amount of the cash infusion of unrestricted capital necessary to abate this hazardous condition (collectively, the “Contingent Cash Infusion Amount”), the Commissioner shall notify Ultimed of this determination and, within thirty (30) days after receiving such notice, Ultimed shall secure the Contingent Cash Infusion Amount. Simultaneously with Ultimed’s receipt of the Contingent Cash Infusion Amount, Ultimed shall provide to the Commissioner adequate documentation evidencing both the source of the Contingent Cash Infusion Amount and that the Contingent Cash Infusion Amount was in fact received by Ultimed.
- i. On or before November 15, 2005, Ultimed shall file each of the following documents or responses with OFIS:
  - (i) 2<sup>nd</sup> Quarter 2005 Statutory Financial Statements;
  - (ii) 3<sup>rd</sup> Quarter 2005 Statutory Financial Statements;
  - (iii) 2004 Personal Financial Statements of Ultimed’s ultimate controlling party; and

- (iv) Full and complete written responses to OFIS' inquiries dated June 7, 2005, March 22, 2005, December 1, 2004, October 12, 2004, September 8, 2004, June 10, 2004, and February 9, 2004.
- j. On or before December 1, 2005, Ultimed shall file any remaining outstanding documents with OFIS, including but not limited to: (i) Ultimed's 2004 Annual Audited Financial Statements; and (ii) Ultimed's 2004 Actuarial Opinion.

**F. Filing of the Rehabilitation Petition.**

11. In the event that Ultimed fails to fully comply with any of the terms and conditions set forth in Paragraph 10(a) through (j), including but not limited to the time for performing same, Ultimed hereby authorizes OFIS to immediately place the Company into Rehabilitation pursuant to Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159.

12. Ultimed further authorizes OFIS to attach an executed copy of this Stipulation for Entry of a Consent Order of Transition to Rehabilitation (the "Stipulation") and Consent Order of Transition to Rehabilitation (the "Consent Order") to OFIS' Petition for Entry of an Order of Rehabilitation and Injunctive Relief (the "Rehabilitation Petition") to be filed by OFIS in the Ingham County Circuit Court in connection with obtaining the Order of Rehabilitation and Injunctive Relief (the "Rehabilitation Order") required by MCL 500.8112. The signed Stipulation and Consent Order shall constitute Ultimed's consent to the granting of the Rehabilitation Petition and the entry by the Ingham County Circuit Court of the Rehabilitation Order.

13. The terms, conditions, and relief sought by the Rehabilitation Petition and the Rehabilitation Order shall be within the sole and complete discretion of the Commissioner.

14. Ultimed hereby expressly waives its right to contest, and agrees that it will not contest, the grounds, terms, conditions, or relief sought by the Rehabilitation Petition and/or the Rehabilitation Order. Ultimed also expressly waives any right that it may otherwise have, pursuant to the Administrative Procedures Act of 1969, MCL 24.201 – 24.328, to: (a) receive notice of opportunity to show compliance; (b) participate in an informal meeting for the purpose of showing compliance; and/or (c) request a hearing in a contested case relative to the terms of the Consent Order.

15. Ultimed's Board of Directors has approved this Stipulation and the entry of the Consent Order set forth below under the terms and conditions set forth in this Stipulation.

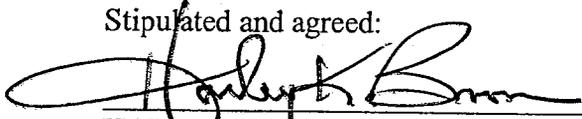
16. Ultimed's Board of Directors has authorized Harley K. Brown, its Chief Executive Officer, to enter into this Stipulation and consent to the entry of the Consent Order as set forth in this Stipulation and Consent Order.

17. A copy of Ultimed's Board of Directors' Resolution confirming Paragraphs 15 and 16 of this Stipulation will be provided to OFIS together with a copy of the executed Stipulation.

18. In consideration of Ultimed's execution of this Stipulation, OFIS agrees to forego filing the Rehabilitation Petition until such time as Ultimed fails to fully comply with any of terms and conditions set forth in Paragraph 10(a) through (j), *supra*. Upon such non-compliance, OFIS may immediately file the Rehabilitation Petition without prior notice to Ultimed.

19. Ultimed acknowledges and agrees that it has read and understands this Stipulation, and that it has had the opportunity to consult with legal counsel of its choosing prior to its execution.

Stipulated and agreed:



HARLEY K. BROWN  
Chief Executive Officer  
Ultimed HMO of Michigan, Inc.

Dated: Oct. 14<sup>th</sup> 2005



CHRISTOPHER L. KERR (P57131)  
Assistant Attorney General  
Department of Attorney General,  
Insurance & Banking Division  
Attorneys for the Commissioner of the  
Office of Financial and Insurance Services

Dated: October 18, 2005

**CONSENT RESOLUTION OF THE BOARD OF  
DIRECTORS OF ULTIMED HMO OF MICHIGAN, INC.**

I, Harley K. Brown, DO HEREBY CERTIFY:

That I am the President/CEO of Ultimed HMO of Michigan, Inc. ("Ultimed").

At a regular meeting of the Board of Directors of Ultimed duly called and held on the 11<sup>th</sup> day of October 2005, at which a quorum of the Directors were present,

It was, upon motion duly made and seconded:

**RESOLVED**, that this Board of Directors approves the Stipulation for Entry of a Consent Order of Transition to Rehabilitation (the "Stipulation") and the entry of the Consent Order of Transition to Rehabilitation (the "Consent Order") pursuant to the terms and conditions set forth in the Stipulation, and;

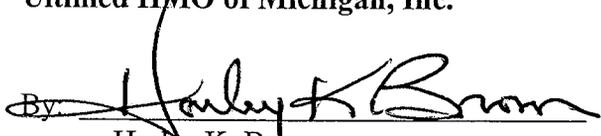
**FURTHER RESOLVED**, that Harley K. Brown, President and Chief Executive Officer of Ultimed, be and is hereby authorized to enter into the Stipulation and consent to the entry of the Consent Order as set forth in the Stipulation and Consent Order.

**I DO FURTHER CERTIFY** that Harley K. Brown is the duly elected President of the Corporation, and

**I DO FURTHER CERTIFY** that the above resolution has not been altered, amended, repealed or rescinded.

Ultimed HMO of Michigan, Inc.

Date: October 14, 2005

By:   
Harley K. Brown,  
Its: President/CEO