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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation
of the Securities Act of Washington by:

RICHARD J. FOSTER, MG INSURANCE
SERVICES, VIATICAL CAPITAL, INC,
VIATICAL MARKETING, INC., VIATICAL
FUNDING, LLC-III, and VIATICAL FUNDING,
LLC-GI-V,

Respondents.

SDO - 32 - 99

ENTRY OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND FINAL ORDER
TO CEASE AND DESIST AS TO RICHARD J.
FOSTER AND MG INSURANCE SERVICES

Case No. 98-02-64

THE STATE OF WASHINGTON TO: RICHARD J. FOSTER
11908 NE 35th Cir
Vancouver, WA 98682-7765

MG INSURANCE SERVICES
3807 SW Hall Blvd.
Beaverton, OR 97075-0567

On January 5, 1999, the Securities Administrator of the State of Washington issued Statement of Charges and Notice of Intention to Enter Order to Cease and Desist SDO-105-98 hereinafter referred to as "Statement of Charges."

The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing (hereinafter referred to as "Notice of Opportunity for Hearing") and an Application for Adjudicative Hearing (hereinafter referred to as "Application for Hearing") thereon, were served via certified mail on Richard J. Foster ("Foster") on January 16, 1999, and on MG Insurance Services on January 15, 1999. The Notice of Opportunity for Hearing advised Foster and MG Insurance Services that they each had twenty days from the date they received the notice to file a written application for an administrative hearing on the Statement of Charges.

ENTRY OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND FINAL ORDER
TO CEASE AND DESIST AS TO RICHARD J.
FOSTER AND MG INSURANCE SERVICES

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 Foster and MG Insurance Services failed to request an administrative hearing within twenty days of their receipt
2 of the Statement of Charges and Notice of Opportunity for Hearing, either on the Application for Hearing provided or
3 otherwise.

4 The Securities Administrator therefore will adopt as final the findings of fact and conclusions of law as set forth
5 in the Statement of Charges as to Foster and MG Insurance Services.

6 The Securities Administrator makes the following findings of fact and conclusions of law:

7 **FINDINGS OF FACT**

8 **I. RESPONDENTS**

9 1. **RICHARD J. FOSTER** (“Foster”) is employed by MG Insurance Services as an Insurance Agent.
10 Foster offers and sells insurance policies as well as investment products for MG Insurance Services.

11 2. **MG INSURANCE SERVICES** is an insurance company located in Beaverton, Oregon. MG
12 Insurance Services offers and sells interests in Viatical Funding, LLC’s on behalf of Viatical Capital, Inc. and
13 Viatical Marketing, Inc.

14 3. **VIATICAL CAPITAL, INC.** (“VCI”) and **VIATICAL MARKETING, INC.** (“VMI”) are Florida
15 corporations with their principal place of business at 1605 Main Street, Suite 1109, Sarasota, Florida 34236.
16 VCI and VMI organize and form Viatical Funding Limited Liability Companies which are organized for the
17 purpose of purchasing life insurance policies at various discounts from terminally ill policyholders (i.e., viatical
18 settlements).

19 4. **VIATICAL FUNDING, LLC-III** and **VIATICAL FUNDING, LLC-GI-V** are Nevada Limited
20 Liability Companies with their principal place of business located at 310 S. Carson Street, Carson City, Nevada
21 89701.

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II. NATURE OF OFFERING

In May 1997, Respondents acting in concert, on behalf of one another, and acting through their agent Foster, offered a Washington resident an opportunity to invest in an instrument that would produce an unspecified quarterly income for the investor for a period of three years. Foster told the Washington resident that the principal investment could not be withdrawn until after three years, but disclosed no other information about the investment. The Washington resident invested \$15,000 on or about May 23, 1997. As per Foster's instructions, the Washington resident issued a personal check in the amount of \$15,000 made payable to VCI. Subsequently, the Washington resident received a Membership Certificate certifying that she was a member of Viatical Funding, LLC-III.

In July 1997, Foster offered a second Washington resident an opportunity to purchase an interest in a Viatical Funding, LLC that was formed for the purpose of using the LLC's pooled funds to invest in viatical settlements. Foster represented to this Washington resident that an investment of \$25,000 would produce a total of \$50,000 at the end of four years, and that the principal investment could not be withdrawn until the end of the four years. This Washington resident invested \$25,000 in July 1997. Subsequently, the investor received a Membership Certificate certifying that she was a member of Viatical Funding, LLC-GI-V.

III. MISREPRESENTATIONS AND OMISSIONS

In connection with the offer and sale of the investment in May 1997 as described above, Foster failed to disclose the following information: the use of the investment funds; the process involved with investing in viatical settlements; the legal effect of forming a LLC; the names of the parties who were going to manage her investment; the type of business Viatical Funding, LLC's conducted; the business history, financial condition, and names of any officers of VCI, VMI, and Viatical Funding, LLC's; the amount of quarterly income the investor was suppose to receive; the sales costs and commissions; the number of voting shares the investor retained; the risks involved; and the adverse effect on an investor's rate of return if the insured terminally ill

lives longer than expected. In addition, although Foster represented to the Washington resident that she would

1 receive quarterly income from her investment, the Washington resident did not receive any quarterly income
2 during the first three quarters following the date of her investment.

3 In connection with the offer and sale of the investment in July 1997, Foster failed to disclose the following
4 information: the process involved with investing in viatical settlements; the legal effect of forming a LLC; the
5 names of the parties who were going to manage her investment; the business history, financial condition, and
6 names of any officers of VCI, VMI, and Viatical Funding, LLC's; the sales costs and commissions; the number
7 of voting shares the investor retained; the risks involved; and the adverse effect on an investor's rate of return if
8 the insured terminally ill lives longer than expected.

9 IV. REGISTRATION STATUS

10 The offer and sale of the investments described in paragraphs II and III are not currently registered in the
11 State of Washington and have not previously been so registered.

12 Foster, MG Insurance Services, VCI and VMI are not currently registered as securities salespersons or
13 broker-dealers in the state of Washington and have not previously been so registered.

14 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

15 CONCLUSIONS OF LAW

16 I.

17 The offer and/or sale of interests in Viatical Funding, LLC's as described above constitutes the offer
18 and/or sale of a security as defined in RCW 21.20.005(10) and (12), to wit: an investment contract, or risk
19 capital.

20 II.

21 The offer and/or sale of the membership interests in Viatical Funding, LLC-III and Viatical Funding, LLC-
22 GI-V are in violation of RCW 21.20.140 because no registration for such offer and sale is on file with the
23 Securities Administrator of the State of Washington.

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III.

Foster, MG Insurance Services, VCI, and VMI have violated RCW 21.20.040 by offering and/or selling said securities while not registered as a securities salesperson or broker-dealer in the state of Washington.

IV.

The offer and/or sale of said securities was made in violation of RCW 21.20.010 because as set forth in paragraphs II and III of the Tentative Findings of Fact, Foster made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that Richard Foster and MG Insurance Services cease and desist from violating RCW 21.20.010, the anti-fraud section of the Securities Act.

It is further ORDERED that Richard Foster and MG Insurance Services cease and desist from violating RCW 21.20.140 by offering and/or selling unregistered and non-exempt securities.

It is further ORDERED that Richard Foster and MG Insurance Services cease and desist from violating RCW 21.20.040 by acting as a securities broker-dealer or securities salesperson without being so registered.

This Order is entered pursuant to RCW 21.20.390 and is subject to the provisions of ch. 34.05 RCW.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

DATED this 11 day of May, 1999.

DEBORAH R. BORTNER
Securities Administrator

Approved by:

Presented by:

Michael E. Stevenson
Chief of Compliance

Paul S. Ocampo
Staff Attorney

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FOSTER AND MG INSURANCE SERVICES