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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 - 13 - 99

STATEMENT OF CHARGES AND  
NOTICE OF INTENTION TO ENTER  
ORDER TO CEASE AND DESIST

Case No. 98-02-64

THE STATE OF WASHINGTON TO: Richard J. Foster, MG Insurance Services, Viatical Capital, Inc.,  
Viatical Marketing, Inc., Viatical Funding, LLC-III, Viatical  
Funding, LLC-GI-V

**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, Richard J. Foster, MG Insurance Services, Viatical Capital, Inc., Viatical Marketing, Inc., Viatical Funding, LLC-III, and Viatical Funding, LLC-GI-V have violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 to cease and desist from such violations. The Securities Administrator finds as follows:

**TENTATIVE FINDINGS OF FACT**

**I. RESPONDENTS**

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

STATEMENT OF CHARGES AND  
NOTICE OF INTENTION TO ENTER  
ORDER TO CEASE AND DESIST

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

1 2. MG INSURANCE SERVICES is an insurance company located in Beaverton, Oregon. MG  
2 Insurance Services offers and sells interests in Viatical Funding, LLC's on behalf of Viatical Capital, Inc. and  
3 Viatical Marketing, Inc.

4 3. VIATICAL CAPITAL, INC. ("VCI") and VIATICAL MARKETING, INC. ("VMI") are Florida  
5 corporations with their principal place of business at 1605 Main Street, Suite 1109, Sarasota, Florida 34236.  
6 VCI and VMI organize and form Viatical Funding Limited Liability Companies which are organized for the  
7 purpose of purchasing life insurance policies at various discounts from terminally ill policyholders (i.e., viatical  
8 settlements).

9 4. VIATICAL FUNDING, LLC-III and VIATICAL FUNDING, LLC-GI-V are Nevada Limited  
10 Liability Companies with their principal place of business located at 310 S. Carson Street, Carson City, Nevada  
11 89701.

## 12 II. NATURE OF OFFERING

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

21 In July 1997, Foster offered a second Washington resident an opportunity to purchase an interest in a  
22 Viatical Funding, LLC that was formed for the purpose of using the LLC's pooled funds to invest in viatical  
23 settlements. Foster represented to this Washington resident that an investment of \$25,000 would produce a  
24 total of \$50,000 at the end of four years, and that the principal investment could not be withdrawn until the end

1 of the four years. This Washington resident invested \$25,000 in July 1997. Subsequently, the investor  
2 received a Membership Certificate certifying that she was a member of Viatical Funding, LLC-GI-V.

### 3 III. MISREPRESENTATIONS AND OMISSIONS

4 In connection with the offer and sale of the investment in May 1997 as described above, Foster failed to  
5 disclose the following information: the use of the investment funds; the process involved with investing in  
6 viatical settlements; the legal effect of forming a LLC; the names of the parties who were going to manage her  
7 investment; the type of business Viatical Funding, LLC's conducted; the business history, financial condition,  
8 and names of any officers of VCI, VMI, and Viatical Funding, LLC's; the amount of quarterly income the  
9 investor was suppose to receive; the sales costs and commissions; the number of voting shares the investor  
10 retained; the risks involved; and the adverse effect on an investor's rate of return if the insured terminally ill  
11 lives longer than expected. In addition, although Foster represented to the Washington resident that she would  
12 receive quarterly income from her investment, the Washington resident did not receive any quarterly income  
13 during the first three quarters following the date of her investment.

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

### 20 IV. REGISTRATION STATUS

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

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

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

CONCLUSIONS OF LAW

I.

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

II.

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

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.

**NOTICE OF INTENTION TO ORDER THE RESPONDENT TO CEASE AND DESIST**

Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that the Respondents, Richard J. Foster, MG Insurance Services, Viatical Capital, Inc., Viatical Marketing, Inc., Viatical Funding, LLC-III, Viatical Funding, LLC-GI-V, and its agents, and employees permanently cease and desist from violations of RCW 21.20.010, 21.20.040, and RCW 21.20.140.

**AUTHORITY AND PROCEDURE**

This STATEMENT OF CHARGES AND NOTICE OF INTENTION TO ENTER ORDER TO CEASE AND DESIST is entered pursuant to the provisions of RCW 21.20.390, and is subject to the provisions of ch. 34.05 RCW. The Respondents, Richard J. Foster, MG Insurance Services, Viatical Capital, Inc., Viatical Marketing, Inc., Viatical Funding, LLC-III, and Viatical Funding, LLC-GI-V may each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order.

If a Respondent does not request a hearing in accordance with the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING, the Securities Administrator will enter a final order in accordance with the Findings of Fact and Conclusions of Law and Notice of Intention to Enter Order to Cease and Desist as set forth above.

DATED this \_\_\_\_\_ day of December, 1998.

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DEBORAH R. BORTNER  
Securities Administrator

Approved by:

Presented by:

\_\_\_\_\_  
Michael E. Stevenson  
Chief of Compliance

\_\_\_\_\_  
Paul S. Ocampo  
Staff Attorney