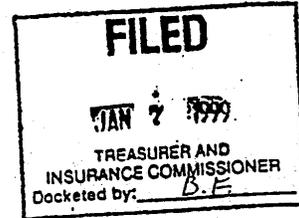




THE TREASURER OF THE STATE OF FLORIDA  
DEPARTMENT OF INSURANCE



BILL NELSON

IN THE MATTER OF:

JUSTUS VIATICAL GROUP,  
SCOTT F. STEPHAN and  
STEPHEN J. BENDFELT

CASE NO: 26924-98-C

IMMEDIATE FINAL ORDER

TO: Scott F. Stephan, President  
Justus Viatical Group  
440 East Sample Rd, Ste. 201  
Pompano Beach, FL 33064

Scott F. Stephan, President  
Justus Viatical Group  
400 Boston Post Road, Ste. 208  
Sudbury, MA 01776

Stephen J. Bendfelt, Vice President  
Justus Viatical Group  
440 East Sample Rd, Ste. 201  
Pompano Beach, FL 33064

Stephen J. Bendfelt, Vice President  
Justus Viatical Group  
400 Boston Post Road, Ste. 208  
Sudbury, MA 01776

YOU ARE HEREBY NOTIFIED that pursuant to the provisions of the Florida Insurance Code, the Treasurer and Insurance Commissioner for the State of Florida, hereby makes the following findings:

**GENERAL FINDINGS**

1. The Treasurer and Insurance Commissioner, as head of the Department of Insurance (hereinafter, the "DEPARTMENT") has jurisdiction over the subject matter and of the parties herein.

2. JUSTUS VIATICAL GROUP (hereinafter, "JUSTUS") is a non-licensed foreign viatical settlement group and subject to the jurisdiction and regulation of the DEPARTMENT.

3. A viatical settlement is a transaction which involves the buying and selling of life insurance benefits, held by a terminally ill individual, for a percentage of the policy's face value. The terminally ill individual, owning all interest in, rights and title to his or her life insurance policy sells the beneficiary rights of the policy for a portion of its face value. In return, the purchaser of these beneficiary rights becomes the owner and/or irrevocable beneficiary of the life insurance policy and is entitled to the full benefits of the policy. Because of the potential for fraudulent activity, the fiduciary nature of the transactions and the great public interest, viatical providers are subject to regulation and control by the Legislature, which includes the power to license. The continued presence of an unlicensed entity operating without the oversight of the DEPARTMENT poses a grave threat of irreparable financial harm to insurers, investors

and an immediate serious danger to the public safety and welfare of the people of this state.

4. A viatical settlement broker is "a person who, for valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator resident in this state and one or more viatical settlement providers". [Section 626.9911(4), Florida Statutes]

5. A viatical settlement provider is "a person who, in this state or from this state, enters into a viatical settlement contract with a viator". [Section 626.9911(6), Florida Statutes]

6. A viator is "a natural person who has a catastrophic or life-threatening illness or condition and who has the right to assign, transfer, sell, devise, or bequeath the benefits of his or her life insurance policy". [Section 626.9911(7), Florida Statutes]

7. A viatical settlement provider is required to confirm that the viator or person selling the life insurance policy is in fact suffering from a catastrophic or life threatening illness or condition. [Section 626.9924(1), Florida Statutes]

8. Pursuant to Chapter 626, Florida Statutes, Scott F. Stephans is currently licensed in this state as a life agent and is subject to the jurisdiction and regulation of the DEPARTMENT.

9. At all times pertinent to the findings of this Immediate Final Order, Scott F. Stephans was and is currently the President of JUSTUS VIATICAL GROUP.

10. Pursuant to Chapter 626, Florida Statutes, Stephen J. Bendfelt is currently licensed in this state as a life agent and is subject to the jurisdiction and regulation of the DEPARTMENT.

11. At all times pertinent to the findings of this Immediate Final Order, Stephen J. Bendfelt was and is currently the vice-president of JUSTUS VIATICAL GROUP.

12. On or about March 25, 1998, JUSTUS applied to the DEPARTMENT for a license to operate in the state of Florida as a viatical settlement provider. After careful review of the biographical affidavits, investigative reports and on-site investigations, the DEPARTMENT denied JUSTUS' application for licensure based in part on the facts listed below.

**ENGAGING IN THE BUSINESS OF VIATICATING POLICIES WITHOUT  
A LICENSE**

13. It is determined that JUSTUS, Stephen Bendfelt and Scott Stephan have violated Section 626.9912(1), Florida Statutes, which provides in pertinent part: "A person may not perform the functions of a viatical settlement provider as defined in this act or enter into or solicit a viatical settlement contract without first having obtained a license from the DEPARTMENT".

14. Pursuant to Section 624.10, Florida Statutes, the term "transact" with respect to the Insurance Code includes solicitation or inducement, preliminary negotiations, effectuation of a contract of insurance; and transaction of matters subsequent to effectuation of a contract of insurance and arising out of it.

15. "No person is permitted to transact insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, without complying with the applicable provisions of the Insurance Code". [Section 624.11(1), Florida Statutes];

16. During the above-referenced investigation, the DEPARTMENT discovered that JUSTUS was conducting business in this state without a valid certificate of authority as a viatical settlement provider and continues to viaticate policies in violation of the Florida Insurance Code.

17. Pursuant to an on-site examination conducted by the DEPARTMENT on October 19-21, 1998, the DEPARTMENT determined that JUSTUS had viaticated policies for Florida residents without a valid certificate of authority as a viatical settlement provider. JUSTICE provided the DEPARTMENT with a signed affidavit admitting to viaticating policies for Florida residents prior to being properly licensed.

18. In 1997, JUSTUS completed documentation and funding for the viaticating of four life insurance policies on the life of Christopher Sabatino, a Florida resident. JUSTICE claims that this transaction was done in error as JUSTUS believed that Mr. Sabatino lived in Ohio. However, JUSTUS' files included a copy of Mr. Sabatino's Florida driver's license, which showed him to be a resident of Bal Harbor, Florida. All offers to enter into a viatical settlement agreement made by JUSTUS to Mr. Sabatino were delivered to his Florida address and subsequently signed by him. The payments for the policies viaticated by JUSTUS were sent to the Hollywood branch of First Union Bank of

Florida. Thus, JUSTUS either knew or should have known that it was illegally viaticating contracts to Florida residents without a license.

19. In 1998, funding was completed for the viaticating of a non-assignable group life policy held by Thomas Monack, a Florida resident. According to JUSTUS, it had been working with Mr. Monack prior to the viatical statutes coming into effect in 1996, but had difficulty getting information which delayed the viaticating of the policy. However, DEPARTMENT examiners discovered an E-mail from Mr. Monack to JUSTUS dated January 29, 1998, responding to a JUSTUS magazine advertisement. In this E-mail, Mr. Monack requests information on the viaticating of a non-assignable group life policy. All documents and correspondence for the viaticating of the policy contain Mr. Monack's Oakland Park, Florida address. Moreover, the group life policy dated January 1, 1997, lists the group as a West Palm Beach television station. Thus, JUSTUS either knew or should have known that it was illegally viaticating contracts to Florida residents without a license.

20. During the on-site examination, Department examiners discovered documentation showing that all closings for the viatical contracts since late 1997, which includes payment to the viator, had taken place from the Pompano Beach office of JUSTUS' escrow agent.

21. JUSTUS routinely used letterhead from its Sudbury, Massachusetts office on its correspondence. However, JUSTUS' overnight mail and airborne express labels indicate that application packages, bids and settlement checks, as well as other documents sent to viators in other states, originated from the Pompano Beach, Florida

office of JUSTUS, not the Massachusetts office. Thus, JUSTUS either knew or should have known that it was illegally viaticating contracts from Florida and to Florida residents without a license.

**SALE OF FRAUDULENTLY OBTAINED LIFE INSURANCE POLICIES THROUGH THE "CLEANSHEETING" OF POLICIES BY OFFICERS OF JUSTUS**

22. "Cleansheeting" is a fraudulent sales practice wherein a potential insured, alone or in conjunction with a third party, fails to disclose existing medical problems on an application for insurance. This illegal practice causes insurers to enter into contracts they would not normally write if they were properly informed of all the circumstances surrounding an application, because the risk of loss has been misrepresented to them. This fraudulent practice contributes to the rising cost of insurance premiums, as insurance companies pass on losses sustained as a result of the above-described fraud to consumers through increased premiums.

23. Pursuant to Florida Statutes a person engages in an unfair or deceptive trade practice when a person is "knowingly making a false or fraudulent written or oral statement or representation on, or relative to, an application or negotiation for an insurance policy for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual". [Section 626.9541(1)(k), Florida Statutes].

24. It is grounds for compulsory refusal of an agent's license to engage in the "willful misrepresentation of any insurance policy or annuity contract or willful deception with regard to any such policy or contract, done either in person or by any form of

dissemination of information or advertising" [Section 626.611(5), Florida Statutes] or to have shown a "demonstrated lack of fitness or trustworthiness to engage in the business of insurance". [Section 626.611(7), Florida Statutes].

25. "No person shall misrepresent the nature of the return or the duration of time to obtain the return of any investment related to one or more viatical settlements sold by a viatical settlement provider or related provider trust. [Part XI, Disclosure to Investors; misrepresentation, Section 626.99235(1), Florida Statutes (1998)].

26. This illegal practice also poses a substantial threat to the solvency of insurance companies as it does not permit insurers to make an accurate assessment of expected losses and to maintain adequate reserves.

27. On or about September 17, 1997, JUSTUS made an offer to Marvin Counts to viaticate an existing life insurance policy issued by Colombian Mutual Life Insurance Company, written by an agent in Brooklyn, New York, with an effective date of September 1, 1997.

28. On or about September, 18, 1997, JUSTUS received a letter from Dr. Kevin M. Bayuk, certifying that Mr. Counts was terminally ill. In addition, on or about September, 25, 1997, JUSTUS received a mortality profile from American Viatical Services confirming that Mr. Counts suffered from a terminal illness and providing a current prognosis for his mortality.

29. The purchase agreement to viaticate the policy was signed on September 18, 1997 and Mr. Counts received the first of two payments on November 21, 1997.

30. On or about November 11, 1997, Stephen Bendfelt submitted an application to F&G Life Insurance Company for a policy insuring the life of Marvin Counts. In said application, Stephen Bendfelt misrepresented to the insurer that Mr. Counts required no medical exam and further misrepresented that Mr. Counts suffered from no life-threatening illness.

31. Steven Bendfelt knew or should have known that Marvin Counts suffered from a terminal illness. Approximately six weeks prior to the application for this policy, Steven Bendfelt and JUSTUS had viaticated a policy for Mr. Counts and had in their possession information that showed Mr. Counts suffered from a terminal illness. More specifically, Steven Bendfelt and JUSTUS had a September 18, 1997 letter as well as a September 25, 1997 mortality profile (both referenced above) that certified Mr. Counts was suffering from a terminal illness.

32. On or about January 22, 1998, Scott Stephan made an offer to purchase the pending F&G policy from Mr. Counts.

33. On or about January 24, 1998, the offer was accepted by Mr. Counts, giving JUSTUS the authority to viaticate the policy and market it to potential investors.

34. On or about January 28, 1998, the F&G policy was sold to an investment group out of Sarasota, Florida, seven days before the policy was issued by F&G and approximately four months after JUSTUS knew or should have known about Mr. Counts' terminal illness.

35. On or about February 4, 1998, the F&G policy was officially issued to Mr. Counts in the normal course of business. Mr. Counts signed the application for

insurance on the F&G policy on Feb. 11, 1998, approximately two (2) weeks after the policy had been sold.

36. On or about March 12, 1998 the initial premium payment was paid by JUSTUS' escrow agent in the amount of \$196.50 to F&G. Mr. Counts made no payments toward the F&G life insurance policy, as the policy was sold prior to the first payment becoming due. All dealings with F&G were made through the officers of JUSTUS.

37. JUSTUS, Stephen J. Bendfelt and Scott Stephan knew or should have known that Mr. Counts suffered from a terminal illness due to JUSTUS' previous business dealing with Mr. Counts. JUSTUS had documentation in its possession that showed Mr. Counts suffered from a life-threatening illness, which was the reason for entering into the initial viatical settlement on September 18, 1997. Included in this documentation was a mortality profile which confirmed Mr. Counts' terminal illness. JUSTUS thus misrepresented material facts about the health of a potential life insurance policy purchaser to F&G. This blatant misrepresentation of material facts to the insurance company places an undue burden on such insurance companies and creates a potential solvency hazard for these insurers, as they can not properly calculate expected losses and proper reserves based upon the false information they have received.

38. Life insurance companies have a two year period in which to contest a policy it believes was issued under fraudulent circumstances. When investors are unknowingly sold viaticated life insurance policies that have been cleansheeted or

otherwise fraudulently entered into, they are unable to make informed decisions about the potential return and risk of loss surrounding the investment. If in fact a viator dies within the contestability period and the fraudulent contract is discovered by the insurance company, the insurer is only required to pay out the premiums paid into the policy. The failure to disclose essential facts about the investment would create a high risk of loss for Florida investors.

39. On or about September 25, 1997, JUSTUS made an offer to Barry Jenkins to viaticate an existing life insurance policy that had been issued by Colombian Mutual Life Insurance Company, written by an agent in Brooklyn, New York with an effective date of September 1, 1997.

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40. On or about October 15, 1997, JUSTUS received a mortality profile from American Viatical Services confirming that Mr. Jenkins suffered from a terminal illness and providing a current prognosis for mortality.

41. The purchase agreement to viaticate that policy was signed on September 29, 1997.

42. On a date between September 25, 1998 and January 30, 1997, Stephen Bendfelt submitted an application to F&G Life Insurance, on the life of Barry Jenkins. In said application, Stephen Bendfelt misrepresented to the insurer that Mr. Jenkins required no medical exam and mischaracterized Mr. Jenkins as being of good health and not suffering from a life-threatening illness.

43. The F&G policy was issued on January 28, 1998, pending signature for the applicant and payment of the premium. On or about February 2, 1998, Scott Stephen made an offer to purchase the recently issued F&G policy from Mr. Jenkins.

44. On or about February 3, 1998, the offer was accepted and the purchase agreement executed by Mr. Jenkins, giving JUSTUS the authority to viaticate the policy and market to investors.

45. The viator, Mr. Jenkins, did not sign the insurance application with F&G until February 11, 1998, 14 days after the effective date of the policy.

46. On or about August 20, 1998, the F&G policy was sold to an investment group out of Sarasota, Florida.

47. JUSTUS and Stephen J. Bendfelt knew or should have known that Mr. Jenkins suffered from a terminal illness due to JUSTUS' previous business dealing with Mr. Jenkins. JUSTUS had documentation in its possession that showed Mr. Jenkins suffered from a life-threatening illness, which was the reason for entering into the initial viatical settlement on September 29, 1997. Included in this documentation was a mortality profile which confirmed Mr. Jenkins' terminal illness. JUSTUS thus misrepresented material facts about the health of a potential life insurance policy purchaser to F&G. This blatant misrepresentation of material facts to the insurance company places an undue burden on such insurance companies and creates a potential solvency hazard for these insurers as they can not properly calculate expected losses and proper reserves based up on the false information they have received.

48. Life insurance companies have a two year period in which to contest a policy it believes was issued under fraudulent circumstances. When investors are unknowingly sold viaticated life insurance policies that have been cleansheeted or otherwise fraudulently entered into, they are unable to make informed decisions about the potential return and risk of loss surrounding the investment. If in fact a viator dies within the contestability period and the fraudulent contract is discovered by the insurance company, the insurer is only required to pay out the premiums paid into the policy. The failure to disclose essential facts about the investment would create a high risk of loss for Florida investors.

49. The Insurance Commissioner finds on the basis of the above that JUSTUS, Stephen Bendfelt and Scott Stephans have engaged in fraudulent acts in violation of the following statutes: Section 626.9541(1)(k), Florida Statutes, Section 626.611(5), Florida Statutes, Section 626.611(7), Florida Statutes.

**JUSTUS VIATICATED INSURANCE POLICIES WHICH IT KNEW OR SHOULD HAVE KNOWN WERE "CLEANSHEETED"**

50. On or about January 28, 1998, JUSTUS made a partial payment to Vernon McClam from its Commercial Bank of Florida escrow account.

51. On or about February 4, 1998 a policy was issued based on an application submitted by Stephen Bendfelt to F&G Life Insurance, on the life of Vernon McClam. In said application, Stephen Bendfelt represented to the insurer that Mr. McClam required no medical exam and characterized Mr. McClam as being of good health and not suffering from a life-threatening illness.

52. On or about March 27, 1998, JUSTUS again made a partial payment to Mr. McClam from its Commercial Bank of Florida escrow account with a notation that this was a partial payment relative to the closing on a F&G policy.

53. On or about April 15, 1998, less than three months after issuance of the policy by Stephen Bendfelt, JUSTUS, through its president Scott Stephan, made an offer to Vernon McClam to viaticate the above life insurance policy.

54. In a questionnaire provided by Mr. McClam as a part of the viaticating paperwork, he acknowledged a preexisting illness with a life expectancy of 36 to 48 months.

55. On or about April 15, 1998, JUSTUS again recorded a payment to Mr. McClam from its Commercial Bank of Florida escrow account with a notation that this was a partial payment relative to the closing on a F&G policy.

56. JUSTUS, Stephen J. Bendfelt and Scott F. Stephan knew or should have known that the life insurance policy written by Stephen Bendfelt and issued on February 5, 1998 by F&G life insurance Company on the life of Mr. McClam had been fraudulently obtained. JUSTUS had documentation in its possession that showed Mr. McClam suffered from a life-threatening illness which was the reason for entering into the Viatical policy on or about April 15, 1998. JUSTUS also made a partial payment from its viatical escrow account to Mr. McClam prior to the effective date of the insurance policy with F&G Life as well as payments prior to and at closing. JUSTUS thus misrepresented material facts about the health of a potential life insurance policy purchaser to F&G. This blatant failure to notify the insurer or correct

misrepresentations of material facts to the insurance company places an undue burden on insurance companies and creates a potential solvency hazard for these insurers as they cannot properly calculate expected losses and proper reserves based up on the false information they have received. This practice contributes to the rising cost of insurance premiums, as insurance companies pass on losses sustained as a result of the above-described fraud to consumers through increased premiums.

57. Life insurance companies have a two year period in which to contest a policy it believes was issued under fraudulent circumstances. When investors are unknowingly sold viaticated life insurance policies that have been cleansheeted or otherwise fraudulently entered into, they are unable to make informed decisions about the potential return and risk of loss surrounding the investment. If in fact a viator dies within the contestability period and the fraudulent contract is discovered by the insurance company, the insurer is only required to pay out the premiums paid into the policy. The failure to disclose essential facts about the investment would create a high risk of loss for Florida investors.

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58. On or about February 4, 1998, a Transamerica Occidental life insurance policy was issued on the on the life of Steven Bond, written by an insurance agent in Santa Anna, California. On his application for the policy Mr. Bond indicated that he suffered from no terminal illness.

59. On or about February 19, 1998, Scott Stephan, President of JUSTUS, offered to viaticate that life insurance policy.

60. That purchase agreement to viaticate the policy was signed on June 5, 1998.

61. Included in JUSTUS' file is the application for life insurance which indicates that Steven Bond suffers from no terminal illness. However, in a questionnaire provided by Mr. Bond as a part of the viaticating paperwork, processed by JUSTUS, it states that he had contracted the terminal illness in 1988. In addition, JUSTUS had in its possession a mortality profile from American Viatical Services indicating that Mr. Bond was diagnosed with a terminal illness prior to 1991. JUSTUS' records indicate the mortality profile was received by JUSTUS on or about May 22, 1998 in a fax transmission from the writing agent.

62. On or about May 19, 1998, JUSTUS again offered to viaticate a life insurance policy for Mr. Bond that had been issued by Security Life Insurance Company, written by an insurance agent in Santa Anna, California. This policy had been issued only six days after the issuance of Mr. Bond's Transamerica Occidental policy. This viatical settlement was funded on or about May 27, 1998.

63. On or about June 9, 1998, JUSTICE again offered to viaticate a life insurance policy for Mr. Bond, underwritten by United Home Life on the life of Mr. Bond. This policy was issued on March 3, 1998, and the offer was accepted by Mr. Bond on or about June 12, 1998.

64. JUSTUS, Stephen Bendfelt and Scott Stephan thus viaticated life insurance policies it knew or should have known were "cleansheeted". In so doing, it

aided either the insured or other parties in misrepresenting material facts to the insurance company and/or investors.

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65. On or about February 4, 1998, a United Home life insurance policy was issued on the on the life of Vince Bennett by an agent in California. On his application for the policy, Mr. Bennett indicated that he had no terminal illness.

66. On or about February 19, 1998 , Scott Stephan, President of JUSTUS, offered to viaticate that life insurance policy.

67. Included in JUSTUS' file is the application for life insurance which indicates that Vince Bennett suffers from no terminal illness. However, in a questionnaire provided by Mr. Bennett as a part of the viaticating paperwork, he stated that he had contracted a terminal illness in 1988. In addition, JUSTUS had in its possession medical records indicating that Mr. Bennett was diagnosed with a terminal illness prior to June 23, 1997. JUSTUS was in receipt of a fax transmissions from the writing agent that included the above referenced medical records, a mortality profile and a consumer information sheet on or about February 11, 1998.

68. JUSTUS, Stephen Bendfelt and Scott Stephen thus viaticated life insurance policies they knew or should have known were fraudulently entered into or "cleansheeted". Justice either failed its statutory obligation to confirm the health status of the viator or participated in the misrepresentations to the insurance company. In doing so, they aided either the insured or other parties in misrepresenting material facts

to the insurance company and violated the trust that is placed in them to avoid engaging in fraudulent or dishonest practices.

69. It is therefore determined that JUSTUS, Stephen Bendfelt and Scott Stephan have violated or are accountable under the following provisions of the Florida Insurance Code: "engaging in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part X of this chapter, or having otherwise shown himself or herself to be a source of injury or loss to the public or detrimental to the public interest". [Section 626.621(6), Florida Statutes]. Moreover, JUSTUS and its officers have demonstrated a lack of fitness or trustworthiness to engage in the business of insurance. [Section 626.611(7), Florida Statutes].

#### AUTHORITY

70. Sections 120.569 and 120.60, Florida Statutes, authorize the DEPARTMENT to issue an Immediate Final Order when there exists an immediate danger to the public health, safety and welfare.

71. It is therefore determined that JUSTUS, Stephen Bendfelt and Scott Stephan have violated or are accountable under the following provisions of the Florida Insurance Code; Sections 624.10, 624.11(1), 626.611(5), 626.611(7), 626.621(6), 626.9541(1)(k), 626.9911(4), 626.9911(6), 626.9911(7), 626.9912(1), 626.9912(4), 626.9912(5), 626.9914(3), 626.99235(1), 626.9924(1), Florida Statutes.

72. JUSTUS', Stephen Bendfelt's and Scott Stephan's substantial and continuing failure to abide by the Florida Insurance Code, constitutes an immediate danger to the public health, safety and welfare.

73. Based upon the foregoing specific facts, to protect the citizens and insurers of this state from further harm, to prevent further abuses of fiduciary relationships, and to prevent further defrauding of citizens and insurance companies by JUSTUS, the Insurance Commissioner finds that JUSTUS' continued viatical activity constitutes an immediate and serious danger to public health, safety, or welfare, necessitating and justifying the Emergency Order to Cease and Desist from conducting business in the State of Florida and the Emergency Suspension of Stephen Bendfelt's and Scott Stephan's licenses to sell life insurance. The danger, more specifically, to the public who must place its trust in the honesty and competence and integrity of those persons regulated by the DEPARTMENT is that insurance rates will be raised as a result of the fraudulent practices described herein and/or insurance companies may not be able to meet their financial obligations. The danger is clear and present that this fraudulent activity may cause serious losses and damage to the insurance industry, the insurance-buying public and investors.

74. Continued operation of this unlicensed entity impedes the DEPARTMENT's ability to properly monitor the activities of JUSTUS pursuant to its legislative directive to ensure compliance with statutory requirements. The viatical industry is a relatively new one and the sensitive nature of the transactions create an atmosphere ripe for fraudulent activity including the fleecing of the terminally ill and elderly. JUSTUS' actions to date evidence a systemic pattern of fraudulent and dishonest practices and fundamental untrustworthiness to act as a viatical settlement provider. JUSTICE'S continued operation in this state thus creates a serious and immediate danger that further fraudulent and dishonest practices will occur. JUSTUS' flagrant disregard for the laws

of this state and the financial well-being of insurers and Florida citizens constitutes an immediate danger to the public health, safety and welfare.

75. To allow JUSTUS to continue such unlawful practices as have been set forth above and to allow Steven Bendfelt and Scott Stephan to engage in the activities described above places insurance companies and consumers at risk. JUSTUS' unlawful practices and the activities of Steven Bendfelt and Scott Stephan pose a tangible threat to the solvency of insurers that operate in this state. When a person's medical history is misrepresented, companies can not accurately fund their reserves or properly anticipate their expected losses, and are therefore in danger of insolvency, if they are the victim of a sufficient amount of such fraudulent activities. These activities also create a risk of harm to those citizens who choose to invest in viatical contracts. Misrepresentations as to the nature of the contract and the true circumstances underlying the transaction, deny investors the ability to make informed decisions about the potential return and risk of loss surrounding the investment.

76. The only method of preventing further and greater harm is the immediate cessation of the viatical and insurance-related transactions of JUSTUS and its officers. JUSTUS and its officers have evidenced a systematic pattern of willful disregard for the laws of the State of Florida, and a lack of fitness to engage in the viatical business or the business of insurance.

77. These fraudulent actions as outlined above are further exacerbated by the fact that JUSTUS is an unauthorized viatical settlement provider which has not satisfied the requirements authorizing it to transact insurance in Florida, including, but not limited

to, satisfying the statutory safeguards as to its financial condition, and the statutory evaluation of the background, character and integrity of those who would operate this entity in this state.

78. The citizens and insurance industry must depend upon the integrity, competence, honesty and obedience to the laws of this state governing the transaction of the business of viaticals and insurance by all those involved. In Natelson v. Department of Insurance, 454 So.2d 31 (Fla. 1st DCA 1984), the court stated that the business of insurance is "greatly affected by the public trust" and points out that "the holder of an agent's license stands in a fiduciary relationship to both the client and the insurance company." In State v. Knott, 166 So. 835 (Fla. 1936), the Florida Supreme Court found that "the business of insurance so directly affects the public that it is generally considered to be affected with a public interest, and, being so, is subject to regulation and control by the Legislature, which includes the power to license and regulate the agents through whom such business is conducted." The court further states that "It would be difficult to find a business that more vitally affects the public interest".

79. JUSTUS', Scott Stephan's and Stephen Bendfelt's actions constitute direct violations of that fiduciary trust referred to by the Natelson Court.

80. Current and prospective customers of JUSTUS, including viators, investors and the life insurers that have issued the policies, face the likelihood that their transactions with the Respondents will not be handled in their best interests, particularly when the Respondents are operating outside the laws regulating the business of viaticals in this State.

81. This action is the least restrictive means available to protect the public health, safety, and welfare, given the gravity and extent of the above-referenced violations, which pose a direct and immediate threat to insurers, policyholders, creditors, and the insurance-buying public. Thus, the DEPARTMENT is, by means of this remedy, taking only that regulatory action which is necessary to protect the public interest, as the Respondents have demonstrated a lack of fitness or trustworthiness to engage in the business of viaticals and insurance.

82. Further, the DEPARTMENT finds that this Immediate Final Order affords JUSTUS, Steven Bendfelt and Scott Stephan with procedural protections consistent with those required by Section 120.60(6), Florida Statutes; is sufficient under the Florida Constitution and United States Constitution; and further finds that the emergency procedures used are fair under the circumstances of this case, in light of the following procedural safeguards:

a. The DEPARTMENT has detailed in this Immediate Final Order the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare;

b. The DEPARTMENT has timely noticed and will provide the right to a post suspension hearing on the issue of whether the facts recited present an immediate threat to the public health, safety and welfare sufficient to justify the entry of this Immediate Final Order;

c. The DEPARTMENT has timely noticed JUSTUS', Steven Bendfelt's and Scott Stephan's right to appeal this Order to the appropriate District Court of Appeal;

d. Notice of this order shall be published in the first available issue of the Florida Administrative Weekly; and

e. A charging document containing the allegations referenced above and seeking final disciplinary action against JUSTUS, Steven Bendfelt and Scott Stephan shall be instituted by the DEPARTMENT within twenty (20) days of this Order.

THEREFORE, IT IS ORDERED pursuant to sections 120.569(2)(l) and 120.60(6), Florida Statutes and Rules 121.085 and 28-6.011, Florida Administrative Code that:

(a) Stephen Bendfelt's and Scott Stephan's life agent licenses and eligibility for licensure in this State are hereby immediately **SUSPENDED**. Pursuant to Section 626.641(4), Florida Statutes, Stephen Bendfelt and Scott Stephens shall not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under the Insurance Code, or directly or indirectly own, control or be employed in any manner by an insurance agent or agency while their eligibility for licensure is under suspension.

(b) JUSTUS shall cease and desist instantly from viaticating insurance policies in or from the state of Florida and Stephen Bendfelt and Scott Stephan shall

immediately cease and desist from, issuing, or soliciting any new or renewal policies of insurance in the State of Florida, effective immediately upon receipt of this order.

**NOTICE OF RIGHTS**

Respondents shall have the right to request a hearing in accordance with the provisions of Section 120.569(1), Florida Statutes. The Request for hearing must be in writing and filed with the DEPARTMENT within five (5) days of receipt of this Order, excluding weekends or holidays. If a written request for hearing is timely filed, the affected party(s) will be given an opportunity for a hearing at a convenient time in Tallahassee, Florida. The hearing will be limited to a review of the finding that the facts recited present an immediate threat to the public health, safety and welfare sufficient to justify the entry of this Immediate Final Order. Failure to file a request for a hearing within five (5) days constitutes a waiver, and no hearing will be held.

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Fla.R.App.P. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the Agency Clerk, at 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333, and a copy of the same with the appropriate district court of appeal within thirty (30) days of rendition of this Order.

DONE AND ORDERED this 7<sup>th</sup> day of January, 1999.



*Bill Nelson*

BILL NELSON  
Treasurer and  
Insurance Commissioner