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MAY 8 2004

OFFICE OF
INSURANCE REGULATION

Docketed by

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OFFICE OF INSURANCE REGULATION

KEVIN M. McCARTY
DIRECTOR

IN THE MATTER OF:

CASE No.: 68502-03-CO

MUTUAL BENEFITS CORPORATION

EMERGENCY CEASE AND DESIST ORDER
SUSPENDING THE LICENSE OF MUTUAL BENEFITS CORPORATION

TO:

MUTUAL BENEFITS CORPORATION

Peter Lombardi, President
200 E. Broward Blvd., Floor 10
Ft. Lauderdale, Florida 33301

and its registered agent pursuant to 626.9912(5)(e),

Chief Financial Officer
200 E. Gaines Street
Tallahassee, Florida 32399-0000

YOU ARE HEREBY NOTIFIED that pursuant to the Florida Insurance Code, including Sections 624.307 and 626.9922, Florida Statutes, the State of Florida, Office of Insurance Regulation (hereinafter referred to as the "OFFICE") has conducted an examination of the business and affairs of MUTUAL BENEFITS CORPORATION (hereinafter "MBC").

As a result of its examination, the OFFICE, finds that:

1. This Emergency Cease and Desist Order is an immediate final order, issued pursuant to Section 626.9927(2), Florida Statutes, because the facts as stated herein

demonstrate that there is immediate danger to the public health, safety and welfare, including personal monetary losses.

2. Additionally, MBC has been the subject of administrative and court proceedings filed by several states and their agencies, including recent actions by the states of Vermont, Ohio, Pennsylvania, and Arizona, for securities violations and making material misrepresentations to investors or purchasers of viatical settlements demonstrating a continuing pattern of conduct and activity by MBC that must be stopped in order to prevent further harm to the public. See attached Exhibits A, B, C, and D.

3. MBC is currently a defendant in litigation proceedings in state and federal courts in Florida wherein purchasers, viators or beneficiaries allege breach of contract, violations of Florida and federal securities law, negligent misrepresentation and violation of Florida's Deceptive and Unfair Trade Practices Act.

4. The OFFICE licenses and regulates viatical settlement providers and regulates viatical settlement purchase agreements and viatical settlement transactions pursuant to the Viatical Settlement Act, (Sections 626.991 – 626.99295, Florida Statutes).

5. MBC was granted a license by the Department of Insurance (now the Office of Insurance Regulation) on May 13, 1997, to act as a viatical settlement provider pursuant to the provisions of Chapter 626, Part X, Florida Statutes.

6. MBC has raised approximately \$595 million dollars from purchasers in Florida and nationwide by selling discounted life insurance policies in and from Florida, known as viatical settlements, from January 1, 1999 through March 31, 2003.

7. As a viatical settlement provider, MBC purchases the beneficial interests in life insurance policies of individuals (hereafter "viators") usually having a very short life expectancy because of a serious illness and then sells the beneficial interests in the policies to purchasers, who are investing in these life insurance policies.

8. In a typical viatical transaction, the viator sells his life insurance policy to a viatical settlement provider such as MBC at a discount from the face value of the policy. MBC then sells whole or fractional interests in the life insurance policy to purchasers at a markup that is more than the price MBC paid the viator but less than the policy's face value. From the funds that the purchaser paid to be the new beneficiary or one of several new beneficiaries on the policy, MBC will pay itself, the agents, brokers, trustees, escrow agents, and others.

9. Additionally, from the funds that the purchasers paid to buy the beneficial interests in the policy, MBC promises to set aside money for the payment of future premiums on the policy in an amount that will cover at least the life expectancy of the viator.

10. MBC executed contracts, titled Viatical Settlement Purchase Agreements, with purchasers who bought the beneficial interests in the policies sold by MBC.

11. The OFFICE conducted an examination of the viatical business activities of the licensee, MBC, pursuant to Section 626.9922, Florida Statutes, commencing on June 4, 2003 and ending in February 2004. The scope period of the examination included activity and business from the year 1999 through September 2003. See examiner Jan Davis's affidavit, attached as **Exhibit E**.

12. As a result of this comprehensive examination, the OFFICE found that MBC has: engaged in fraudulent or dishonest practices, or otherwise has been shown to be untrustworthy or

incompetent to act as a viatical settlement provider in violation of Section 626.9914(1)(b), Florida Statutes, by not escrowing sufficient funds to pay for future premiums; issued viatical settlement contracts that have not been approved pursuant to the Viatical Settlement Act in violation of Section 626.9914(1)(e), Florida Statutes; failed to honor contractual obligations in violation of Section 626.9914(1)(f), Florida Statutes; used unlicensed agents and at least six unlicensed brokers in violation of Section 626.992, Florida Statutes; failed to disclose all life expectancy certifications to purchasers in violation of Section 626.99236, Florida Statutes; failed to report cases of fraud in violation of Section 626.989(6), Florida Statutes, and instead dealt in the fraudulently obtained policies in violation of 626.99275(1)(a), Florida Statutes; and failed to make required disclosures to purchasers in violation of Section 626.99235, Florida Statutes. See examiner Jan Davis's affidavit, attached as **Exhibit E**.

13. MBC's Viatical Settlement Purchase Agreement with purchasers states that "future premiums, for a minimum of the life expectancy of the viator, or longer at Mutual Benefits Corp.'s discretion", shall be escrowed at the time of closing. See attached **Exhibit F**.

14. The OFFICE has found that MBC has failed to set aside or escrow the amount of money to cover premiums for a minimum of life expectancy, in violation of its contractual agreements with at least 1,299 purchasers on 61 policies purchased. The face value of these 61 policies is approximately \$79 million. See examiner Jan Davis's affidavit, attached as **Exhibit E**.

15. During the examination of MBC, the OFFICE requested the independent certified public accounting firm of Buttner, Hammock & Company (hereafter "BHC") to review MBC's financial data and to prepare cash flow projections to determine any potential cash flow

shortages or under funding in the premium escrow accounts as of September 30, 2003. This was done to determine the risk for policies to lapse because of lack of funds to pay the premiums. The BHC report is attached as **Exhibit G**.

16. The cash flow analysis conducted by BHC indicates that the premium escrow account, known as Money Market I (MMI), the escrow account for approximately 6,364 policies, is **currently deficient** and that by September 2004 will be deficient approximately \$3,436,261 for the amount of premium reserves that should have been set aside. BHC's analysis indicates that 5,439 active policies are carrying a zero or negative escrow balance as of September 30, 2003. This represents 74% (5,439/7,368) of all active policies. See the BHC report, attached as **Exhibit G**.

17. During the examination of MBC, the OFFICE found that as of April 30, 2003, a total of approximately \$3.6 million that had been set aside to pay premiums for specific MMI policies were used to pay premiums on other MMI policies that had no remaining premium escrow balance. Additionally MBC transferred in excess of \$4 million from the premium escrow account referred to as MMII to the MMI premium escrow account to pay premiums on policies in the MMI account. See examiner Jan Davis's affidavit, attached as **Exhibit E**.

18. The OFFICE has found that MBC has failed to make required disclosures to viatical settlement purchasers, regarding life expectancy certifications in violation of Sections 626.99236(1)(a), and 626.99275 (1)(b)(2), Florida Statutes.

19. Florida Statutes require that the purchaser be provided with copies of all life expectancy certifications on each viator whose policy they are investing in, no later than five days prior to the closing of the transaction.

20. The OFFICE's examination revealed that:

- Fifteen Florida purchasers had not received all life expectancy certifications obtained, by MBC, for the viators on which purchaser funds were placed.
- Twenty-four additional life expectancy certifications were noted in the viator and purchaser files which had not been disclosed to the OFFICE when requested by the examiners.

21. MBC also buys Federal Employee Group Life Insurance (FEGLI) policies from viators. These policies frequently provide for future increases in death benefits that, when added to the original policy face amount, increases the total death benefit payable under the policy. The OFFICE has found that when MBC added new purchasers on the increases in the policy's face value, the new purchasers are not informed of all existing life expectancy certifications.

22. By not providing the purchasers with all of the life expectancy certifications obtained with the initial viatication of the policies, MBC omitted information that was material to the purchaser's decision to accept the placement on the policy.

23. The OFFICE has found that from the inception of MBC in 1994 to September 30, 2003, 96.4% of MBC's policies were assigned a life expectancy of 6 to 36 months and that 90% of the active policies are already beyond MBC's assigned life expectancy as of September 30, 2003. See **Exhibit G.**

24. The life expectancy analysis indicates that the life expectancies assigned by MBC have been regularly exceeded. Thousands of MBC's policies were sold based on the life expectancy analysis of viators conducted by Dr. Clark C. Mitchell. See attached example **Exhibit H.**

25. In 2001, Dr. Clark C. Mitchell, the physician retained by MBC to provide life expectancy certifications on viators that would be provided to purchasers, was charged by the Florida Office of Statewide Prosecution on several counts of fraud related to Dr. Mitchell's alleged fabrication of the life expectancy certifications. See **Exhibit I**. The Arizona Corporation Commission's investigation of MBC alleged that Dr. Mitchell lied about consulting with the physicians of at least two viators as had been communicated to Arizona investors or purchasers. See **Exhibit D**, page 13.

26. The thousands of policies that were purchased and assigned a dubious life expectancy of months or a few years are part of the group of current MBC policies that are now beyond life expectancy and out of premium escrow funds.

27. MBC's failure to set aside the amount of funds for future premiums as required by MBC's agreement with purchasers and its failure to provide purchasers with all of the life expectancy certifications, and with accurate life expectancy certifications, have resulted in escrow accounts that are deficient for the payment of future premiums, thereby increasing the risk of lapse of the MBC policies.

28. Without any regard for the premium escrow deficiency problems, MBC has increasingly paid out what it termed consulting fees for the period from January 1, 1999 to November 13, 2003, in the amount of \$43 million. Millions of dollars were paid out to companies run by siblings of the vice-president, Steven Steiner, and other close affiliates. Only four (4) written consulting contracts were presented to the OFFICE's examiner to explain the consulting fees. Other consulting fee payments in the millions of dollars (see the **BHC Report**,

pages 9 – 11 and BHC Exhibit 7) were paid out without regard to any particular formula and absent any contract in writing. Significant payments include the following:

<u>Entity</u>	<u>Related party</u>	<u>Amount paid</u>
Kensington Management, Inc	Joel Steiner	6,356,686
Rainy Consulting Group	Les Steiner	9,069,539
Camden Consulting Group	Henry Fecker	7,486,875
PJL Consulting, Inc.	Peter Lombardi	8,254,075
Twin Groves Investments	Les Steiner	1,200,000
SKS Consulting	Steven Steiner	2,250,000
		<u>\$34,617,175</u>

29. The OFFICE found that MBC used unlicensed sales agents and brokers in violation of Section 626.992, Florida Statutes, the Viatical Settlement Act. See examiner Jan Davis's affidavit, attached as **Exhibit E**.

30. The OFFICE found that MBC used and paid commissions to 3 sales agents who were not licensed as required. In addition, payments were made to 44 entities for which MBC failed to identify the person(s) holding valid licenses as life agents.

31. The OFFICE found that MBC also used at least six (6) unlicensed brokers for the transactions at issue during this examination.

32. MBC has failed to use forms and contracts approved by the OFFICE as required by Section 626.9921, Florida Statutes. The OFFICE found that MBC did not use the viatical settlement contracts as the OFFICE approved them. In the 82 sampled transactions: nine (11%) contained revisions which were not approved prior to their use; ten (12%) were on "Agreement for Purchase of Life Insurance Policy" forms for which no evidence of approval was provided and the remaining 63 (75%) were on forms similar to, but not identical to, the forms approved by

the OFFICE, as they contained minor variations. See examiner Jan Davis's affidavit, attached as **Exhibit E**.

33. During the examination scope period of 1999 - 2003, MBC did not use the viatical settlement contract forms as the OFFICE approved them and failed to file the variations of the forms MBC actually used with the OFFICE as required by law.

34. The examination of MBC by the OFFICE also revealed that MBC has been dealing in fraudulently obtained policies in violation of Sections 626.989(6) and 626.99275(1)(a), Florida Statutes.

35. During the examination, the OFFICE found sixteen (16) policies where the files on hand contained medical records or other data, which showed that MBC knew or should have known the policies were obtained, from the insurance company, by means of a false, deceptive, or misleading application for the life insurance policy. MBC bought and sold these policies and failed to report to the Division of Insurance Fraud, information concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the policy's issuer. See examiner Jan Davis's affidavit, attached as **Exhibit E**.

36. For example, the files at MBC on a policy purchased by MBC, from a Florida viator, on April 28, 1999, contained an insurance application dated February 26, 1997. On that application the viator was asked whether or not the viator had tested positive for exposure to the HIV infection or been diagnosed as having "AIDS" Related Complex or AIDS. The viator marked "No". However, there was a physician's questionnaire in MBC's file that stated the viator was first diagnosed with AIDS in 1992. This was prior to the insurance application date. MBC knew or should have known that the viator provided false information in the application

for insurance and MBC failed to notify the Division of Insurance Fraud as required by Section 626.989(6) Florida Statutes.

37. MBC has mislead purchasers with advertisements stating that the returns are "Fixed, Total Returns" without disclosing that the return can be affected by premium costs if the policy does not mature within the projected life expectancy period, nor does the advertising or viatical settlement purchase agreement disclose to the purchaser the extent of liability that the purchaser may incur in premium costs. No disclosures are made by MBC to purchasers or prospective purchasers that 90% of the policies that are currently active are beyond life expectancy. See examiner Jan Davis's affidavit, attached as **Exhibit E**.

38. A purchaser's return is dependent on the accuracy of the life expectancy certifications on the viator, however MBC has failed to provide all of the life expectancy certifications it had obtained on viators to the purchasers of its policies.

39. MBC advertises to its prospective purchasers that funds are held in an interest bearing account but no mention is made to prospective purchasers that the interest earned on their funds is retained by MBC or the trustee for payment of premiums on policies that are already beyond the assigned life expectancy.

40. Additionally no disclosure is made to prospective purchasers, prior to entering into the Viatical Settlement Purchase Agreement, that any unused premiums and accumulated interest on a purchased policy will be used for the payment of other people's policies that are deficient in funds because the policy is beyond life expectancy. MBC has mislead purchasers and has failed to make material disclosures to purchasers regarding its viatical settlement product

in violation of the Viatical Settlement Act, sections 626.99235 and 626.99275 (1)(b)(2), Florida Statutes. See examiner Jan Davis's affidavit, attached as **Exhibit E**.

41. Based on the foregoing the OFFICE finds that MBC has: engaged in fraudulent or dishonest practices, or otherwise has been shown to be untrustworthy or incompetent to act as a viatical settlement provider in violation of Section 626.9914(1)(b), Florida Statutes by not escrowing sufficient funds to pay for future premiums; issued viatical settlement contracts that have not been approved pursuant to the Viatical Settlement Act in violation of Section 626.9914(1)(e), Florida Statutes; failed to honor contractual obligations in violation of Section 626.9914(1)(f), Florida Statutes; used unlicensed agents and at least six unlicensed brokers in violation of Section 626.992, Florida Statutes; failed to disclose all life expectancy certifications to purchasers in violation of Section 626.99236, Florida Statutes; failed to report cases of fraud in violation of Section 626.989(6), Florida Statutes and instead dealt in the fraudulently obtained policies in violation of 626.99275(1)(a), Florida Statutes; and failed to make required disclosures to purchasers in violation of Section 626.99235, Florida Statutes.

42. Without this immediate action millions of dollars in purchaser funds placed on the life insurance policies, with a now deficient escrow account for payment of premiums, are in jeopardy and additional purchasers will be defrauded, and current purchasers will be lulled into further investment of life insurance policies that are illiquid in nature.

43. The violations by MBC of the Viatical Settlement Act described herein, present an immediate danger to the public health, safety or welfare of Florida residents. The particularized harm resulting from MBC's business activities, as described herein include:

A. The potential inability MBC to meet its financial obligations to purchasers to whom and to which it has sold policies, caused in whole or in part by failing to escrow the amount of money as promised to the investor or purchaser and by using funds from other premium escrow accounts to pay for deficient premium escrow accounts.

B. The sale of policies on forms or contracts that have not been approved by the Office of Insurance Regulation and which therefore do not contain the safeguards and disclosures for the benefit of the public that have been determined by the Legislature to be necessary and that are required by the Florida Insurance Code.

C. The adverse financial impact upon purchasers who have invested in the viaticals based on inaccurate information, lack of full disclosure, contact with unlicensed agents and brokers, and misrepresentation of an investment that is illiquid in nature. The Office of Insurance Regulation has received many complaints from consumers, some senior citizens with income or health limitations, who were told that their purchase was a safe investment, who are afraid that they have lost their money and feel that MBC failed to disclose facts prior to the purchase of the policies. See consumer complaints from Mr. Martin of South Carolina, Mr. Smith of Saint Cloud, Florida, and Ms. Rodgers of California, **Exhibits J, K, and L.**

D. The adverse impact on investors or purchasers who are expecting a "fixed return" based on the advertising of MBC of returns such as 28% over 24 months may actually receive a much lower return over a much longer time period, due to life expectancy of the viator, or may lose their principal investment altogether.

44. The issuance and enforcement of this Order is necessary to protect the public and the only way to avoid future harm. Less harsh remedies such as probation, a fine or notice of

non-compliance would be insufficient to stop the harm described in this order due to the systemic and fraudulent nature of the violations and the danger to new purchasers whose funds are being used to pay earlier purchasers' premium obligations resulting in irreparable harm to those new purchasers.

WHEREFORE, pursuant to the Florida Insurance Code and other applicable statutes, including, Section 626.99272(2), Florida Statutes, the OFFICE finds that the continued transaction of MBC's viatical provider business constitutes an immediate danger to the public welfare so as to require the issuance of this Emergency Cease and Desist Order.

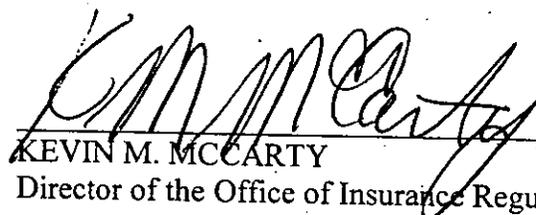
Accordingly, IT IS HEREBY ORDERED:

- A. The viatical settlement provider license of MBC is hereby **SUSPENDED**.
- B. MBC shall immediately **CEASE AND DESIST** from acting as a viatical settlement provider in and from the State of Florida.
- C. This Emergency Cease and Desist Order is effective immediately upon service of a copy of the order on MBC and remains effective for 90 days. If the OFFICE begins nonemergency cease and desist proceedings under Section 626.99272(1), the emergency cease and desist order remains effective, absent an order by an appellate court of competent jurisdiction pursuant to Section 120.68, until conclusion of proceedings under Sections 120.569 and 120.57, Florida Statutes.
- D. MBC must proceed, immediately following the service of this Order, to conclude the affairs it is transacting under its license. MBC may not solicit, negotiate, advertise, or effectuate new contracts.

- E. The OFFICE retains jurisdiction over MBC until all contracts have been fulfilled or cancelled or have expired.
- F. MBC may continue to maintain and service viaticated policies subject to the approval of the OFFICE.
- G. The issuance of this Emergency Cease and Desist Order and the procedural safeguards set forth herein are concluded to be fair under the circumstances due to the potential grave harm resulting from MBC's multiple and serious violations of the Viatical Settlement Act. As indicated in the Notice of Rights herein, MBC is afforded the opportunity to appeal this Order pursuant to Section 120.68, Florida Statutes. An Administrative Complaint will be issued following this Immediate Final Order within the time frames allowed by the statutes and applicable rules. Procedures set forth therein afford MUTUAL BENEFITS CORPORATION the opportunity to request a proceeding pursuant to Section 120.57, Florida Statutes.

DONE AND ORDERED this 3rd day of May, 2004.

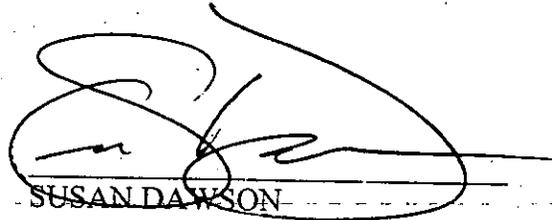




KEVIN M. MCCARTY
Director of the Office of Insurance Regulation

NOTICE OF RIGHTS

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 of the Office of Insurance Regulation, acting as the Agency Clerk, at 612 Larson Building, Tallahassee, Florida 32399-4206, and a copy of the same with the appropriate district court of appeal, within thirty (30) days of rendition of this Order.



SUSAN DAWSON

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