DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES

BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

In the Matter of: **MICHAEL D. MANSFIELD, MANSFIELD TRUST, MANSFIELD CORPORATION and MANSFIELD VIATICAL MANAGEMENT,** **Respondents.**	))))))))	**No. S-03-0046** **FINAL ORDER TO CEASE AND DESIST, ORDER DENYING USE OF EXEMPTIONS AND ORDER IMPOSING CIVIL PENALTY ENTERED BY DEFAULT**

On December 1, 2003, the Director of the Department of Consumer and Business Services for the State of Oregon (hereafter "the Director"), acting by and pursuant to the authority of the Oregon Securities Law, Oregon Revised Statutes ("ORS") Chapter 59, and other applicable authority, issued Administrative Order No. S-03-0046 to **CEASE AND DESIST, DENYING EXEMPTIONS, ASSESSING CIVIL PENALTIES AND NOTICE OF RIGHT TO HEARING** ("the Proposed Order") against Respondents **MICHAEL D. MANSFIELD, MANSFIELD TRUST, MANSFIELD CORPORATION** and **MANSFIELD VIATICAL MANAGEMENT.**

On October 28, 2003, Respondent **MICHAEL D. MANSFIELD** was duly served with a true copy of the Proposed Order by certified United States Mail (Item #7000 1670 0010 4289 5196), postage prepaid, addressed to Michael D. Mansfield, Law Offices of Michael D. Mansfield, 63 E. 11400 S, Suite 144; Sandy, Utah 84070. On November 10, 2003, the United States Post Office delivered this mailing, which was signed for by a person at that business address.

On November 25, 2003, Respondents **MANSFIELD TRUST, MANSFIELD CORPORATION** and **MANSFIELD VIATICAL MANAGEMENT** were duly served with a true copy of the Proposed Order by certified United States Mail (Item #7000 1670 0010 4289 4403), postage prepaid, addressed to Chapter 7 Trustee R. Kimball

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Mosier at the following last known address: Parsons, Kinghorn Harris, P.C., 111 East Broadway, 11th Floor, Salt Lake City, Utah 84111. On December 1, 2003, the United States Post Office delivered this mailing, which was signed for by a person at that business address.

Respondents **MICHAEL D. MANSFIELD, MANSFIELD TRUST, MANSFIELD CORPORATION** and **MANSFIELD VIATICAL MANAGEMENT** have not made a written request for a contested case hearing in this matter and time to do so has expired.

NOW THEREFORE, after consideration of the Investigation Report and accompanying exhibits submitted in this matter by Patrick A. Fitzgerald, Securities Enforcement Officer, the Director hereby issues the following Findings of Fact, Conclusions of Law, and Final Order.

FINDINGS OF FACT

The Director **FINDS** that:

1. Michael D. Mansfield ("Michael Mansfield") is an attorney formerly residing and practicing law in California and now residing and practicing in Utah.

2. From approximately February through August 1998, Michael Mansfield acted as trustee and manager of Mansfield Trust, a California business trust. The sole purpose of Mansfield Trust was to purchase, fund and/or monitor and administer viatical settlements. From approximately August 1998 through May 2001, Michael Mansfield was president of Mansfield Viatical Management, Inc., a California corporation, the sole business of which was to act as manager and/or trustee of the Mansfield Trust. From approximately May 2001 to the present, Michael Mansfield has been president of Mansfield Corporation, a Utah corporation, the sole business of which is to act as manager and/or trustee of Mansfield Trust.

3. Mansfield Trust and Mansfield Corporation had agreements or

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understandings with Viaticals of America ("VOA") and two other companies that were in the business of soliciting funds from individuals and entities interested in investing in viatical settlements. A number of related persons and entities did business under the VOA name or some variation of that name including: Viaticals of America, Inc., Viaticals of America L.L.C., Inland Empire Network Financial and Insurance Services, Inc., IE Network Financial and Insurance Services, Inc., Barbara Ann Everett, Paul Everett and Michael Maddox.

4. On July 27, 1998, Mansfield Trust was a party and a signatory to a Funding Agreement by and among (i) ViatiCare Financial Services, L.L.C., ViatiCare Capital, L.P., and V.C. Management Corp (collectively "ViatiCare"), (ii) Michael Mansfield as trustee of Mansfield Trust, (iii) Michael Mansfield, individually, as guarantor of the performance of Mansfield Trust, and (iv) National City Bank of Minneapolis ("National City Bank" or "NCB"), as custodian/escrow agent for ViatiCare and Mansfield Trust. In addition to financing all viatical settlements purchased after June 1998, Mansfield Trust also funded ViatiCare's purchase of viatical settlements from its affiliate, Viaticare Capital, L.P.

5. Pursuant to the Funding Agreement, Mansfield Trust agreed to make funds available to ViatiCare for the purchase by ViatiCare of viatical settlements. The mechanism for this "funding" required ViatiCare to deliver to Mansfield Trust a funding request for any viatical settlement which it desired Mansfield Trust to fund. Such funding requests were required to include (i) a financial summary of the viatical settlement transaction, (ii) medical information identifying the insured viator's estimated life expectancy, and (iii) policy information and a premium summary. Mansfield Trust then would have one business day from its receipt of the funding request to approve or reject the funding request. Mansfield Trust's approval of a funding request would constitute a binding commitment to provide funding up to the

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maximum amount requested by ViatiCare. Simultaneous with the approval of a funding request, Mansfield Trust also was required to authorize and direct National City Bank to block, in favor of ViatiCare, an amount of funds deposited in its "NCB Trust Short Term Funds Agent Account" equal to the funding commitment amount required by the funding request.

6. Pursuant to this arrangement, the Mansfield entities provided or loaned funds to ViatiCare to purchase many viatical settlements and policies. Pursuant to the funding agreement, the viatical settlements and life insurance policies purchased by ViatiCare through this arrangement were to be owned by or assigned to "NCB as agent for ViatiCare" and all beneficial designations under such purchased policies were to be "NCB as agent for ViatiCare." ViatiCare gave Mansfield Trust an irrevocable lien against each policy funded. NCB was directed to pay Mansfield Trust one hundred percent of the net death benefits paid by the insurer.

7. The funds the Mansfield entities provided or loaned to ViatiCare for the purchase of viatical settlements were from commingled funds provided to Mansfield Trust by the companies, including VOA, which ultimately originated from the investors.

8. In July 1998, one VOA principal, Michael Maddox, sued the other, Barbara Everett (his co-habitant), alleging misappropriation of $500,000. Michael Mansfield knew about this. He recovered $244,202.80 from Barbara Everett in August of 1998, and sued Barbara Everett and her daughter-in-law, Paula Everett, for $600,000 in November of 1998, all the while touting to investors the safety and security of their money. Michael Mansfield has reportedly stated that he believed approximately $4,000,000 in investor funds was ultimately diverted from his trust account.

9. VOA and the other companies, through ViatiCare, provided money to

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Mansfield Trust to purchase or "fund" the purchase of viatical settlements. Mansfield Trust apparently also had an agreement with VOA to "match" individual investors to particular viatical settlements or insurance policies that were owned by Mansfield Trust or in which Mansfield Trust had obtained an interest. Mansfield Trust agreed to monitor and service the viatical settlements and policies it purchased or funded. On maturity of a particular viatical settlement or policy—at the death of the insured—Mansfield Trust paid the investors "matched" with the viatical settlement or policy an exact pre-agreed sum that was equal to the amount that VOA had promised to pay the investor upon such an event.

10. Investors (called "funders" by VOA and the Mansfield entities) were solicited by agents of VOA or one of the other companies. Investors entered into one or more "loan" transactions with VOA. The money loaned by the investor was to be used to purchase a viatical settlement. The investors had no contractual privity with Mansfield Trust, Mansfield Corporation or Mansfield Viatical Management. In the investor's agreement with VOA, the investor would designate a particular viatical settlement life expectancy or life expectancies in which he or she would prefer his or her loaned funds to be invested. This designation governed the specific rate of return that the investor was promised by VOA.

11. VOA promised to pay the investor a sum certain, calculated as the amount of the investor's loan times a multiplier corresponding to the designated life expectancy, upon the maturity of the policy or policies to which the investor would later be matched. VOA also agreed to "match" the investor with a viatical settlement or policy under which the estimated life expectancy of the insured would correspond with the preferred life expectancy designated by the investor. Investors advanced the funds to VOA either by payment directly to the company or by check payable to an account controlled by one of the Mansfield entities.

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12. The companies, in turn, provided the funds to the Mansfield entities to be used to purchase or fund viatical settlements, purchase policies and fund policy premiums. The funds received by the Mansfield entities initially were deposited and commingled in various short-term fund accounts maintained at National City Bank or M&A Marshall & Ilsley Bank ("M&A Bank").

13. Sometimes when the Mansfield entities funded the purchase of a particular viatical settlement by ViatiCare, the funding transaction included the transfer of funds from the short term accounts to one or more premium reserve accounts ("the premium reserve accounts") maintained at National City Bank or M&A Bank. All funds set aside as premium reserves, irrespective of the viatical settlement or policy to which they were originally related, were commingled in the premium reserve accounts. All funds received by the Mansfield entities were commingled in and lost their identity in the short-term accounts and/or the premium reserve accounts. No investor's funds were segregated.

14. The commingled funds indiscriminately were used to fund viatical settlements and fund policy premiums, irrespective of (i) which company had provided the funds to the Mansfield entities, (ii) what preferred life expectancy the particular investor whose funds were being used had designated, and (iii) whether the investors whose funds were used would be "matched" with the particular policy.

15. As premium reserves became depleted, the Mansfield entities borrowed funds against or took cash out of certain policies that had accrued value, and used those funds to pay the premiums due on other policies. In some instances, this resulted in a loss or reduction to the death benefits payable under the depleted policy. Additionally, in some instances, some of the death benefits payable on account of matured policies were used to pay premiums due on other policies or to purchase new viatical settlements.

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16. Because of the extensive commingling of funds, and because of the Mansfield entities' indiscriminate use of the commingled funds for multiple purposes, the funds loaned or provided by individual investors cannot be traced to any particular viatical settlement, policy, or policy premium payment.

17. Investors were arbitrarily "matched" with particular viatical settlements or policies as determined solely by the companies or Mansfield Trust. In this regard, investors were "matched" with policies purchased with funds originating from other companies and from other investors.

18. As a result of this arbitrary process, certain viatical settlements or policies were "overfunded," that is; they were "matched" with investors whose aggregate promised actual return exceeded the face amount of the policy. On the other hand, other viatical settlements or policies were "underfunded," that is "matched" with investors whose aggregate promised actual return was less than the face amount of the policy. Most if not all of the policies were either overfunded or underfunded.

19. Investors never obtained and perfected an enforceable security interest in either the viatical settlement or policy to which they were "matched," or in any other viatical settlement or policy.

20. Many investors were "matched" with policies that had expired, or that had been sold by the Mansfield Trust.

21. In March 1998, Irvin Lanier ("Lanier") of Portland, Oregon invested $31,500 in a 48-month viatical settlement investment through his insurance agent George Satter ("Satter") of Boise, Idaho. Lanier was assigned an interest in Viator 7272.

22. Lanier was supposed to receive a return on his investment of 64 percent. In 2002, with the viator having outlived the life expectancy projection and

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VOA having filed for bankruptcy protection, Michael Mansfield wrote to Lanier requesting funds for additional premium payments. It was also apparent that the policy in which Lanier had an interest was for two people, husband and wife, and that both husband and wife had to die before the policy matured. Lanier was never told that the policy was for two people and the documentation from Mansfield Trust names the insured as both a single individual and a couple.

23. Lanier, who is in his mid 80's and nearly destitute, was unable to make any additional payments to protect his investment. A legal aid attorney is working to prevent foreclosure on Lanier's home.

24. On or about December 22, 1998, Colleen Warner ("Warner") of Portland, Oregon invested $25,000 in a 12-month viatical settlement investment through Edward W. Cook of Newport Beach, California. She was assigned an interest in a policy of Viator 930A with Aurora National Life Insurance Company. In 2001, she paid one year's additional premium of approximately $800, but has since refused to pay additional premium charges.

25. In December 1998, Richard P. Sturman ("Sturman") of Brookings, Oregon was contacted by VOA. Sturman had inquired about purchasing a viatical settlement investment after his son purchased one earlier in 1998. His son asked his VOA representative to contact Sturman. A promotional packet was sent to Sturman, who was thereafter contacted by Jaime Dulude of Dulude & Carmouche, a VOA salesperson based in Ontario, California. On or about February 9, 1999, Sturman invested $10,000. He was assigned account number 30481 and told that he had an interest in a policy identified as Viator 867. On February 27, 1999, Sturman invested an additional $10,000. He was assigned an account number of 30482 and was informed that he held an interest in a William Penn Insurance Company policy identified as Viator 7963b. He was told that the policies would mature in 12 months.

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26. On November 23, 1999, investors received a letter signed by Michael Mansfield and Jarel D. Miner for Mansfield Corporation in which the authors promised to pay additional premiums on policies "in the event that the viator in which you have an interest lives beyond the estimated life expectancy."

27. On January 29, 2002, Michael Mansfield sent a letter to investor Sturman informing him that the premium reserve for one of Sturman's two policies was exhausted and that if money was not raised to pay the premium for Viator 7963B, the policy would be canceled thereby rendering Sturman's investment worthless. The letter requested that Sturman either provide a check for additional premium or return the "Instructions" which Michael Mansfield mailed to Sturman. The Instructions were designed to act as a waiver of rights in any share of the policy proceeds for any investor who was unwilling or unable to pay additional premiums.

28. On or about May 17, 2002, Mansfield Corporation filed a voluntary petition for bankruptcy protection under chapter 11 of the US bankruptcy code. On or about October 30, 2002, Mansfield Trust filed a voluntary petition for bankruptcy protection under chapter 11. On or about January 13, 2003, Mansfield Viatical Management, Inc. filed a voluntary petition for bankruptcy relief under chapter 7 of the bankruptcy code. R. Kimball Mosier ("Mosier" or "Bankruptcy Trustee") of Salt Lake City, Utah was appointed bankruptcy trustee for the Mansfield entities.

29. A few viatical settlements or policies funded by the Mansfield entities matured before the filing of bankruptcy by Mansfield entities. In some instances, the investors matched with those matured policies were paid some or all of the actual return originally promised to them by the companies. In other instances, the Mansfield entities retained some or all of the death benefits received from such policies, and used the moneys to fund premiums due on other policies or to fund the purchase of additional viatical settlements.

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30. No person or entity was ever issued a share or beneficial interest in the Mansfield Trust, and no person or entity was ever designated a beneficiary of the Mansfield Trust.

31. Michael Mansfield mismanaged his affairs to such a degree that further efforts to keep in force all of the life insurance policies owned by the debtors were impracticable. Michael Mansfield purchased policies of inferior quality, paid excessive consideration and fees to acquire the policies, negligently selected life expectancies for the insureds, retained inadequate premium reserves for the policies, and converted investor funds to his own use.

32. The Division has no record of a registration filing for the viatical settlement interests sold by VOA and/or Mansfield Trust.

CONCLUSIONS OF LAW

The Director **CONCLUDES** that:

1. Respondents Michael Mansfield and the Mansfield entities violated ORS 59.055 by offering and selling unregistered securities in Oregon.

2. Respondents Michael Mansfield and the Mansfield entities violated ORS 59.135 by engaging in fraud in connection with the sale of securities.

FINAL ORDER

NOW, THEREFORE, THE DIRECTOR ORDERS:

The Director, pursuant to ORS 59.245, hereby **ORDERS** that Respondents Michael Mansfield and the Mansfield entities shall **CEASE and DESIST** from:

1. Selling securities without a license in violation of Oregon Securities Laws;

2. Selling unregistered securities in the State of Oregon in violation of Oregon Securities laws; and

3. Violating any provision of the Oregon Securities Laws, including ORS

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Chapter 59 and OAR Chapter 441.

The Director, pursuant to ORS 59.995, **HEREBY ORDERS** the following **CIVIL PENALTIES:**

4. Respondents Michael Mansfield and the Mansfield entities, and any business entity owned, operated or under the control of Michael Mansfield, shall be denied the use of any securities licensing or registration exemptions contained in the Oregon Securities Laws, including ORS Chapter 59 and ORS Chapter 441.

5. Respondents Michael Mansfield and the Mansfield entities, jointly and severally, shall pay a monetary penalty of $120,000 calculated as follows:

a. $20,000 for each of 3 violations of ORS 59.055 (sale of unregistered securities), for a subtotal of $60,000; and

b. $20,000 for each of 3 violations of ORS 59.135 (2) (engaging in fraud in connection with the sale of securities), for a subtotal of $60,000;

IT IS SO ORDERED.

Dated this 16th day of August, 2004 at Salem, Oregon, NUNC PRO TUNC October 28, 2003.

David Tatman for
CORY STREISINGER, DIRECTOR
DEPARTMENT OF CONSUMER & BUSINESS SERVICES

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