

STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF THE

VIATICARE FINANCIAL SERVICES, L.L.C.

AS OF

DECEMBER 31, 2000

DATE OF REPORT:

AUGUST 31, 2001

EXAMINER:

MARK A. MCLEOD

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

August 31, 2001

Honorable Gregory V. Serio
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 21766, dated August 14, 2001 and annexed hereto, an examination has been made into the condition and affairs of ViatiCare Financial Services, L.L.C., hereinafter referred to as "the Company," at its home office located at 601 Carlson Parkway, Suite 900, Minnetonka, Minnesota 55305.

Wherever "Department" appears in this report, it refers to the State of New York Insurance Department.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The Company was incorporated as a limited liability corporation under the laws of Delaware and commenced business on June 26, 1995, and was issued a viatical settlement license by the Superintendent on April 30, 1996. However, the Company did not renew its viatical settlement license in New York in 2001. The Company no longer purchases viatical settlements in New York, although the Company still has viatical settlements on its books that have not matured.

The Company violated Section 7804(a) of the New York Insurance Law by using forms not filed with and approved by the Superintendent. (See item 5B of this report)

2. SCOPE OF EXAMINATION

This is the first examination of the Company and covers the period from the date of licensure until December 31, 2000. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2000 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a review of policy forms, advertising, corporate structure, agent compensation filings, broker licensing, and treatment of viators. The examiner utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the aforementioned items.

This report on examination is confined to comments on matters which involve departure from laws, regulations or rules, or which require explanation or description.

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a limited liability corporation under the laws of Delaware and commenced business on June 26, 1995. The Company was issued a viatical settlement license by the Superintendent on April 30, 1996.

B. Holding Company

The Company is a wholly owned subsidiary of VC Management Corp., a Delaware corporation. The Company also owns 98% of ViatiCare Capital, L.P., another viatical settlement company.

C. Management

The Company's limited liability agreement provides that the Company's board of directors shall consist of five members. Meetings of the board are held at least four times a year.

The five board members and their principal business affiliation, as of December 31, 2000, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Joel Carlson Eagan, MN	Owner and Partner Carlson, Denney & Co., Ltd.	1997
Paul J. Moe Delano, MN	Chief Executive Officer ViatiCare Financial Services, L.L.C.	1995
Suzanne B. Moe Delano, MN	Senior Vice President Sales and Marketing ViatiCare Financial Services, L.L.C.	1995
Overton B. Parrish, Jr. Chicago, IL	President and Chairman Phoenix Health Care, Inc. and Female Health Company	1995
Michael L. Snow Wayzata, MN	Attorney Maslon, Edelman, Borman & Brand	2000

The examiner's review of the minutes of the meetings of the board of directors indicated that each director attended all meetings.

The following is a listing of the principal officers of the Company as of December 31, 2000:

<u>Name</u>	<u>Title</u>
Paul J. Moe	Chief Executive Officer
Kenneth M. Klein	President
Paula W. Theisen	General Counsel
Keith R. Luecke	Secretary and Treasurer
Scott Grossfeld	Vice President
Suzanne B. Moe	Senior Vice President - Sales and Marketing

D. Territory and Plan of Operation

During the examination period, the Company was authorized to purchase life insurance policies as defined in Section 7801(a) of the New York Insurance Law.

As of December 31, 2000, the Company was licensed as a viatical settlement company in the states of New York, California, North Carolina, North Dakota, and Texas. In addition, the Company was licensed as a viatical settlement broker in the states of New York, Connecticut, Florida, Minnesota, North Carolina, Oklahoma, Oregon, Virginia, Washington and Vermont. It also transacts such business nationwide in jurisdictions where no license is required. In 2001, the Company did not renew its viatical settlement company license in New York or its viatical settlement broker license in Vermont.

The Company acquires its business through independent viatical settlement brokers and direct contact with viators. In addition, it purchases viatical settlements from other viatical settlement companies.

In 1998, the Company contracted with Michael D. Mansfield, Trustee of the Mansfield Trust, to finance the Company's viatical settlements. In addition to financing all viatical settlements purchased after June 1998, Mansfield Trust also funded the Company's purchase of viatical settlements from its affiliate, Viaticare Capital, L.P., including all of Viaticare Capital, L.P.'s New York viatical settlements.

E. Significant Operating Results

Indicated below is significant information concerning the operations of the Company during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding. The amounts shown include adjustments due to reclassifications recommended by the external auditors.

The following table indicates the Company's financial growth during the period under review:

	December 31, <u>1996</u>	December 31, <u>2000</u>	Increase (Decrease)
Assets	\$ <u>157,394</u>	\$ <u>41,038,741</u>	\$ <u>40,881,347</u>
Liabilities	\$ <u>3,818,819</u>	\$ <u>46,899,882</u>	\$ <u>43,081,063</u>
Capital stock	\$ 500	\$ 111,200	\$ 110,700
Paid-in capital	499,500	1,856,763	1,357,263
Warrant rights	185,059	0	(185,059)
Retained earnings	<u>(4,346,484)</u>	<u>(7,829,104)</u>	<u>(3,482,620)</u>
Total stockholders' equity	\$ <u>(3,661,425)</u>	\$ <u>(5,861,141)</u>	\$ <u>(2,199,716)</u>
Total liabilities and stockholders' equity	\$ <u>157,394</u>	\$ <u>41,038,741</u>	\$ <u>40,881,347</u>

4. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and stockholders' equity as of December 31, 2000, as contained in the Company's 2000 filed annual statement, and a condensed summary of operations for each of the years under review. The amounts in the financial statements contain amounts that have been adjusted due to reclassifications recommended by the external auditors. These statements have not been audited by the examiner and are for presentation purposes only.

A. ASSETS, LIABILITIES, CAPITAL AND STOCKHOLDERS' EQUITY AS OF DECEMBER 31, 2000

Assets

Cash	\$ 15,573
Cost of purchased insurance policies	21,945,768
Receivable from parent, subsidiaries and affiliates	830,189
Furniture and equipment	678,416
Other assets	<u>17,568,795</u>
 Total assets	 <u>\$41,038,741</u>

Liabilities, Capital and Stockholders' Equity

General expenses due or accrued	\$ 1,267,212
Liability for benefits for employees and brokers	7,000
Borrowed money	21,945,768
Other liabilities	<u>23,679,902</u>
 Total liabilities	 <u>\$46,899,882</u>
 Capital stock	 \$ 111,200
Paid-in capital	1,856,763
Retained earnings	<u>(7,829,104)</u>
 Total stockholder's equity	 <u>\$ (5,861,141)</u>
 Total liabilities, capital and stockholders' equity	 <u>\$41,038,741</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Revenues from matured or sold life insurance policies	\$ 156,751	\$ 8,500	\$ 11,319	\$ 80,649	\$ 9,945
Net investment income	9,176	6,115	37,818	23,284	5,810
Other income	<u>226,922</u>	<u>264,606</u>	<u>4,917,721</u>	<u>7,704,321</u>	<u>459,418</u>
Total income	\$ <u>392,849</u>	\$ <u>279,221</u>	\$ <u>4,966,858</u>	\$ <u>7,808,254</u>	\$ <u>475,173</u>
Interest expense	\$ 0	\$ 550,892	\$ 524,313	\$ 114,891	\$ 454,051
General expenses	<u>2,358,356</u>	<u>2,554,001</u>	<u>3,406,456</u>	<u>4,905,527</u>	<u>4,598,895</u>
Total deductions	\$ <u>2,358,356</u>	\$ <u>3,104,893</u>	\$ <u>3,930,769</u>	\$ <u>5,020,418</u>	\$ <u>5,052,946</u>
Net income (loss)	\$ <u>(1,965,507)</u>	\$ <u>(2,825,672)</u>	\$ <u>1,036,090</u>	\$ <u>2,787,836</u>	\$ <u>(4,577,773)</u>

5. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting viators to determine compliance with applicable statutes and regulations and the operating rules of the Company.

A. Advertising and Sales Activities

The examiner reviewed the Company's advertising file and its solicitation of viators. Based upon the advertising materials reviewed, no significant findings were noted.

B. Underwriting and Policy Forms

The examiner reviewed a sample of purchased life insurance policy files and the policy forms utilized.

Section 7804(a) of the New York Insurance Law states, in part:

“No viatical settlement company may use any agreement for a viatical settlement in this state unless it is in writing and has been filed with and approved by the superintendent. . . .”

The Company used the following unapproved forms in obtaining New York viatical settlements during the examination period: NY002 (7/96); NY 003 (7/96); NY005 (8/96); NY006 (8/96); MS006 (7/96); CO PUR K-1 (8/96); and various applications that were prepared by brokers and disclosure forms.

The Company violated Section 7804(a) of the New York Insurance Law by using forms not filed with and approved by the Superintendent.

C. Treatment of Viators

The examiner reviewed a sample of viator files. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

Based on the sample reviewed, no significant findings were noted.

6. SUMMARY AND CONCLUSIONS

Following is the violation contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 7804(a) of the New York Insurance Law by using forms not filed with and approved by the Superintendent.	9

Respectfully submitted,

_____/s/_____
Mark A. McLeod
Senior Insurance Examiner

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

MARK A. MCLEOD, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

_____/s/_____
Mark A. McLeod

Subscribed and sworn to before me
this _____ day of _____ 2001.

APPOINTMENT NO. 21766

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

MARK MCLEOD

as a proper person to examine into the affairs of the

VIATICARE FINANCIAL SERVICES, L.L.C.

and to make a report to me in writing of the condition of the said

COMPANY

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by name
and affixed the official Seal of the Department
at the City of New York

this 14th day of August, 2001



GREGORY V. SERIO

Superintendent of Insurance

A handwritten signature in black ink, appearing to read "Gregory V. Serio", is written over a horizontal line.

Superintendent