# STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS SECURITIES DIVISION

IN THE MATTER OF DETERMINING Whether there has been a violation of the Securities Act of the State of Washington by:

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Carl M. Ogren Ogren & Associates, Inc. Reliance Financial Group, Inc. Paragon Capital Group, Inc.; SDO -35- 02 S-02-242-02-FO-02

ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FINAL ORDER CEASE AND DESIST AS TO RESPONDENTS RELIANCE FINANCIAL GROUP, INC. AND PARAGON CAPITAL GROUP, INC.

Case No. 99-02-041 S-02-242

Respondents

THE STATE OF WASHINGTON TO: Reliance Financial Group, Inc.

Paragon Capital Group, Inc.

On May 2, 2000, the Securities Administrator of the State of Washington issued Statement of Charges and Notice of Intention to Enter Order to Cease and Desist, SDO-47-00, hereinafter referred to as the Statement of Charges to Carl Ogren, Ogren & Associates, Inc.; Reliance Financial Group, Inc.; and Paragon Capital Group, Inc.

The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing (, hereinafter referred to as "Notice of Opportunity for Hearing") and an Application for Adjudicative Hearing (, hereinafter referred to as "Application for Hearing") thereon, was served on Reliance Financial Group, Inc. on or before May 23, 2000. The Notice of Opportunity for Hearing advised Reliance Financial Group, Inc. that it had twenty days from the date of receipt of the notice to file a written application for an administrative hearing on the Statement of Charges. Reliance Financial Group, Inc., by its president, Donald I. Goldstein, returned a completed application for hearing, dated June 5,

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26 27 2000, stating that it did not request a hearing in the matter. The application was accompanied by a letter from Reliance Financial Group, Inc.'s legal counsel stating that Reliance Financial Group, Inc. had voluntarily ceased marketing viatical settlements on the secondary market in Washington.

Paragon Capital Group, Inc. was served with the Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing (, hereinafter referred to as "Notice of Opportunity for Hearing") and an Application for Adjudicative Hearing (, hereinafter referred to as "Application for Hearing") thereon, on or before July 10, 2000. Paragon Capital Group, Inc., by its president Donald I. Goldstein, returned a completed application for hearing, dated July 10, 2000, stating that it did not request a hearing in the matter. The application was accompanied by a letter from Paragon Capital Group, Inc.'s legal counsel stating that Paragon Capital Group, Inc. had voluntarily ceased processing files with respect to secondary market viatical settlements in Washington

As Reliance Financial Group, Inc. and Paragon Capital Group, Inc. each waived its right to an administrative hearing on the Statement of Charges; the Securities Administrator therefore will adopt as final the findings of fact and conclusions of law as set forth in the Statement of Charges.

The Securities Administrator makes the following findings of fact and conclusions of law:

### I. RESPONDENTS

1. Carl M. Ogren ("Ogren") is an insurance salesman who is licensed to sell life and health insurance in the state of Washington. Ogren conducts business through his company, Ogren & Associates, Inc.

Ogren & Associates, Inc. is a Washington corporation with its principal place of business located at
 405 North Main Street in Colfax, Washington. Ogren & Associates, Inc. is owned and controlled by Carl Ogren.

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4. Paragon Capital Group, Inc. (formerly American Benefits Group, Inc.) is a business entity located in the state of Florida. Paragon markets the viatical settlement investments created by Reliance.

## II. RELIANCE PROGRAM

1. The Reliance Financial Group is a viatical settlement company. It creates investment products known as "viatical settlements" by purchasing insurance policies which cover the lives of terminally ill people, dividing them into separate pieces, and reselling the pieces to individual investors. Among the investments offered by Reliance is a product known as the "Reliance Program."

2. Reliance purchases each insurance policy from its owner at a discount to the policy's face value. The amount of the discount is negotiated between the parties and provides the source of funds used to pay the company, its sales agents, and the individual investors.

3. Reliance and its agents perform all services necessary to create the viatical settlement on behalf of investors. First, they locate terminally ill individuals ("viators") who are covered by policies of life insurance. Reliance then determines whether each viator and insurance policy meet precise medical and legal conditions ("underwriting criteria") established by the company for participation in a viatical settlement. The full set of these underwriting criteria is not disclosed to investors. Instead, investors must rely upon the company to use its judgment and discretion to create a viatical settlement that is suitable for investment purposes.

4. Some of the Reliance underwriting criteria pertain to the financial condition of the insurance company which issued the policy. To be eligible for purchase, the company which issued the policy must have at least a 'B'

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rating by A.M. Best or a similar ratings service. The policy must also be in good standing and must permit change of ownership and beneficiary designation.

After evaluating the terminally ill person's insurance policy, Reliance employs a medical doctor to diagnose the insured's condition and to estimate his or her life expectancy. The company uses this information to establish the return which will be paid to investors — 30% for the Reliance Program and up to 56% with other investments options.

6. While Reliance searches for terminally ill people with suitable insurance policies, Paragon recruits agents to sell the viatical settlements it creates. Representatives from Paragon contact salespeople and arrange for them to begin selling Reliance products. Paragon provides the sales agents with promotional materials, application packages, and information about the Reliance viatical settlements (including the Reliance Program) available for purchase by investors.

7. Investors in the Reliance Program supply the funds required to purchase a qualified insurance policy. Their money is deposited with an escrow agent, pooled together, and delivered to the company once a sufficient amount has been raised. Reliance completes the transaction by negotiating a price, purchasing the life insurance policy, and obtaining an irrevocable assignment of interest from its owner. It also arranges with the issuing insurance company for each investor to be recorded as the irrevocable beneficiary of his or her proportional share of the policy. Ownership of the policy may, in some cases, be transferred to a trust created by the company.

8. After a policy is acquired, Reliance and its agents administer all aspects of the investment. They establish a reserve account and ensure that policy premiums are paid in a timely manner so that coverage does not lapse. Some programs require investors to provide additional funds in the event that the reserve account becomes depleted. With the Reliance Program, however, the company pays all premiums on behalf of investors regardless

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of how long the insured remains living. Reliance Program investors simply sign the viatical settlement agreement, deliver their money, and wait passively to receive their share of the insured's death benefits.

9. Reliance and its agents monitor the viator's health and location on behalf of investors. When the viator dies, the company and its agents notify investors and arrange to submit a death benefits claim on their behalf.

10. Reliance guarantees that investors in the Reliance Program will receive a 30% return on their respective investments regardless of how long the viator actually lives. This is accomplished through the issuance of repurchase certificates. If a viator does not die with the specified period of time, investors can return their viatical settlements and the company will return their principal and pay the stated return.

#### **III. SALE OF INVESTMENTS**

1. Carl Ogren began selling viatical settlements in July of 1997. He promoted the sale of these investments (including the Reliance Program) by mailing information to his insurance clients and by advertising in at least one local publication.

2. Prospective investors were told that the viatical settlements Ogren offered were among the best available because he and others had formed a group known as the "Viatical Associates" which had thoroughly researched the industry on the investors' behalf. Ogren suggested that the Viatical Associates dealt directly with several viatical settlement companies and that investors would benefit from its buying power. However, he failed to disclose exactly how Viatical Associates researched the industry or whether it had actually entered into any agreements with the viatical settlement companies. Ogren also failed to tell investors that the Viatical Associates consisted only of himself and one other insurance salesman.

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3. Persons interested in viatical settlements could meet with Ogren in his office or in their homes. Ogren typically showed potential investors a videotape and presented information about viatical settlements with a series of charts, graphs, and testimonials.

4. Ogren suggested that viatical settlements were perfect for estate planning purposes. His sales presentation included a chart showing different types of investments arranged according to their respective risk characteristics. Viatical settlements were depicted as among the safest of all possible investments and were grouped with United States treasury bonds and bank certificates of deposit.

5. Ogren stressed that viatical settlements provided a "high fixed guaranteed rate of return," that they were not speculative, and that they were not subject to market risk. Ogren also claimed that, with viatical settlements, there was never a risk to the return of investor principal.

6. Ogren guided investors in the selection of their investment. Before meeting with clients, he carefully reviewed his inventory of available viatical settlements and selected those contracts, which appeared most likely to provide the highest rate of return. Ogren used a medical encyclopedia and considered the viator's age, diagnosis, t-cell count, viral load, and other available information in making this determination. During his meetings with clients, Ogren would recommend one or more pre-selected viatical settlements for purchase. Investors often purchased the policies Ogren recommended despite his lack of medical training.

Ogren told investors that there were only two risks associated with viatical settlements. First, the insurance company which issued the underlying policy could go out of business. However, the probability of this happening was extremely low because of the selection criteria utilized by the viatical settlement company. As noted above, to be included in the Reliance Program, an insurance company must have been rated 'B' or better by A.M. Best. In addition to the ratings requirements, Ogren explained that there were various government mechanisms in place to

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ensure that benefits were paid in the event that an insurance company failed. Thus, failure of the company that issued the policy posed only a very minute risk.

8. Ogren indicated that the other risk associated with investing in viatical settlements involved the viator living longer than expected. If a viator lived longer than expected, time-based rates of return would fall. However, as with failure of the issuing insurance company, Ogren assured investors that the chance of this happening was very small. He supplied a chart, which indicated that 79% of viators die within six months of their projected life expectancy. When viators who die before their projected life expectancy are taken into account, a total of 89% of all insureds would supposedly die no more than six months after their estimated time. Thus, the odds that an investor would receive a lower than expected return due to viator longevity were only about 1 in 10.

Ogren failed to disclose material information about viatical settlements, including the Reliance Program, before he sold them to investors. He did not tell investors they risked losing their principal in the event that policy premiums were not paid in a timely manner. He did not disclose that investors might lose their principal if it was determined that the insurance policy was fraudulently obtained by the viator. Ogren did not indicate that the investment would be compromised if the viatical settlement company failed to properly record investor interests with the issuing insurance company. Finally, Ogren did not disclose the method by which the viatical settlement company would track the viator's health nor did he indicate what might happen if the company was unable to determine the viator's location or date of death.

10. Ogren also failed to provide investors with important information about Reliance and Paragon Capital. He did not inform investors of the companies' respective operating histories or identify their key personnel. Ogren did not provide any information about their financial condition or their ability to continuing providing essential investment services to investors. Ogren did not explain why these companies were chosen by the Viatical Associates or what its two year investigation of the industry actually consisted of. Finally, Ogren did

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not provide investors with any factual basis to support his representations concerning the accuracy of the life expectancy projections.

11. From 1997 to 1999, Ogren sold more than \$2,000,000 worth of viatical settlement investments. Of this amount, it appears that at least \$50,000 was invested in the Reliance Program.

## IV. REGISTRATION STATUS

1. Reliance Financial Group, Inc. is not currently registered to sell its securities in the state of Washington and has not previously been so registered.

2. Paragon Capital Group, Inc. is not currently registered as a broker-dealer in the state of Washington and has not previously been so registered.

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

#### CONCLUSIONS OF LAW

1. The offer and/or sale of Reliance Program viatical settlements constitutes the offer and/or sale of a security as defined in RCW 21.20.005(10) and (12), to wit: an investment contract.

2. The offer and/or sale of said securities is in violation of RCW 21.20.140 because no registration or notification of claim of exemption for such offer and/or sale is on file with the Administrator of Securities, state of Washington.

3. Paragon Capital Group, Inc. has violated RCW 21.20.040 by offering and/or selling said securities while not registered as a broker-dealer in the state of Washington.

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4. Respondents Reliance Financial Group, Inc. and Paragon Capital Group, Inc. have each violated RCW 21.20.010 because, as described above, they failed to provide investors with information necessary to make their statements, in light of the circumstances under which they were made, not misleading.

Based upon the above Findings of Fact and Conclusions of Law it is hereby

ORDERED that respondents Reliance Financial Group, Inc. and Paragon Capital Group, Inc., their agents, and employees each cease and desist from offering and/or selling securities in any manner in violation of RCW 21.20.140, the section of the Securities Act of Washington requiring registration.

It is further ORDERED that Reliance Financial Group, Inc. and Paragon Capital Group, Inc., their agents,

and employees each cease and desist from violation of RCW 21.20.010, the anti-fraud section of the Securities Act.

It is further ORDERED that Paragon Capital Group, Inc. cease and desist from acting as a securities broker-dealer in violation of RCW 21.20.040.

This Order is entered pursuant to RCW 21.20.390 and is subject to the provisions of ch. 34.05 RCW.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

DATED this 25th day of April, 2002.

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DEBORAH R. BORTNER Securities Administrator

Presented by:

Michael E. Stevenson Chief of Compliance

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Approved By:

Suzanne E. Sarason Senior Enforcement Attorney

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