

**DECLARATION OF MAILING**

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to parties - *Swenson Brown*  
DATED this *18th* day of *December 2006* at Tumwater, Washington.

Signed: *W. Halloway*

**FILED**

DEC 14 2006

Hearings Unit, OIC  
Patricia D. Petersen  
Chief Hearing Officer

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF WASHINGTON

In the matter of:

NO. D05-364

EVOLUTION SERVICES, INC.,

**STIPULATION AND ORDER**

and

WILLIAM J. MILLER, STANTON L. CALL,  
WILLIAM R. OWENS, BARBARA MILLER,  
JOHN C. RIVERA, JESSE C. RIVERA, LISA A.  
COLEMAN, DAVID EMERSON LEE, M.D.,  
KENNETH KAISER, SR., and CHRIS  
KOMARZEC, Individual Respondents.

**STIPULATION**

Pursuant to RCW 34.05.060 and WAC 10.08.230(2) (b), Evolution Services, Inc., William J. Miller, William R. Owens, John C. Rivera, and Office of the Insurance Commissioner stipulate and agree as follows in resolution of this matter

1. On July 26, 2005, the Washington State Insurance Commissioner issued Order to Cease and Desist No. D 05-364 ordering Evolution Services, Inc., William J. Miller, Stanton L. Call, William R. Owens, Barbara Miller, John C. Rivera, Jesse C. Rivera, Lisa A. Coleman, David E. Lee, M.D., Kenneth Kaiser, Sr., and Chris Komarzec to cease the unauthorized transaction of insurance and the unauthorized sale of health insurance policies to small employers in the State of Washington.

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1           2.       Pursuant to RCW 48.04.010, Respondents objected to the OIC's order and  
2 requested an administrative hearing, claiming that by virtue of purchase option agreements  
3 from the Washington businesses that enrolled in Evolution Services, Inc.'s ("ESI") self  
4 funded benefit plan, the businesses were part of a controlled group of companies and that the  
5 health coverage provided by ESI to Washington businesses is exempt from state insurance  
6 code requirements under ERISA as a single employer self funded employee benefit plan. ESI  
7 was not authorized to transact the business of insurance in Washington. Regardless of the  
8 purchase option agreements upon which ESI relied in claiming exemption from the  
9 Washington Insurance Code, the OIC maintains that ESI was required to register to transact  
10 the business of insurance in Washington.

11           3.       By notice dated January 18, 2006, the OIC sought to impose a civil penalty on  
12 Respondent Evolution Services, Inc. ("ESI") pursuant to RCW 48.15.023(5)(a)(ii) for illegally  
13 transacting the business of insurance in Washington and a civil penalty upon ESI's Chief  
14 Executive Officer, William Miller, pursuant to RCW 48.15.020(3) for illegally representing  
15 an unauthorized insurer and making contracts of insurance in Washington on behalf of an  
16 unauthorized insurer without complying with the provisions of RCW Chapter 48.15.

17           4.       While the above-referenced adjudicative proceeding was pending, the OIC  
18 received a consumer complaint from an employee of one of the Washington businesses that  
19 had become affiliated with ESI. The complaint regarded ESI's medical benefits and the non-  
20 duplication of benefits provision in ESI's contract. The matter related to birth of the  
21 employee's son for which ESI's coverage was secondary. If the coordination of benefits  
22 provision in ESI's contract with the husband's employer had been treated as insurance and  
23 had been applied in accordance with the Washington Insurance Code and Washington  
24 coordination of benefit regulations rather than the non-duplication of benefits language in  
25 ESI's benefits booklet, the OIC and ESI agree that \$6,126.41 in benefits should have been  
26 paid by ESI on this claim.

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1           5.       Since entry of Order to Cease and Desist No. D 05-364, Respondents have not  
2 enrolled any new Washington businesses in the health plan offered by ESI. Respondents  
3 agree that they will not do so in the future.

4           6.       Within 90 days of the date of the entry of the subjoined Order, ESI agrees to  
5 terminate or non renew the health coverage it currently provides to Washington employers  
6 and to make available to those employers alternative health coverage from a carrier that is  
7 authorized to transact such business in Washington.

8           7.       Within 30 days of the date of the entry of the subjoined Order, ESI agrees to  
9 pay to the consumer whose benefit claim is described in Paragraph 4 the entire remaining  
10 amount of the \$6,126.41 claim.

11          8.       Within 120 days of the date of the entry of the subjoined Order, ESI and  
12 William Miller agree to pay a civil penalty of \$20,000 to the OIC.

13          9.       The parties do not desire to affect ESI's right or ability to purchase  
14 Washington businesses, own either a portion or the entirety of Washington businesses, or start  
15 a Washington business.

16          10.      The parties agree that this Stipulation and Order are intended to fully resolve  
17 the issues arising out of the OIC's entry of Order to Cease and Desist No. D 05-364,  
18 Respondents' Demand for Hearing, and the OIC's Notice of Intent to Impose Civil Penalties  
19 upon Evolution Services, Inc. and William Miller. Respondents understand, however, that this  
20 Stipulation and Order does not foreclose disciplinary action against the Washington insurance  
21 license of any Washington insurance agent who marketed or participated in the marketing of  
22 ESI's health coverage to Washington residents regardless of whether or not such licensee is  
23 named as a respondent in these proceedings.

24          11.      The parties further stipulate and agree that the subjoined Order may be entered  
25 forthwith and without further notice.  
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Signed this 14<sup>th</sup> day of December, 2006.

Ryan, Swanson & Cleveland

Office of the Insurance Commissioner



Gulliver Swenson, WSBA #35974  
Attorneys for Respondents

Charles D. Brown  
OIC Staff Attorney

Counsel for the Office of the Insurance  
Commissioner

**ORDER**

This matter having come on before the undersigned Chief Hearing Officer of the State of Washington Office of Insurance Commissioner pursuant to the foregoing Stipulation, and the Chief Hearing Officer having reviewed said Stipulation and deeming herself fully advised in the premises, NOW THEREFORE,

IT IS HEREBY ORDERED pursuant to RCW 48.17.530 and the foregoing Stipulation as follows:

1. ESI shall discontinue providing health coverage to its Washington customers no later than 90 days from the date of this Order and shall make available to those employers within such 90 day period alternative health coverage from a carrier authorized to transact such business in Washington.

2. ESI shall be permanently enjoined from:

a. Engaging in or transacting the business of insurance in the State of Washington, including the collection or attempted collection of premium monies and the advertising of insurance and insurance related products;

b. Seeking, soliciting, pursuing, and/or obtaining any insurance business in the State of Washington and from participating, directly or indirectly, in any act of an

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1 insurance agent or insurance company in seeking, soliciting, pursuing, and/or obtaining any  
2 unauthorized insurance business in the State of Washington;

3 c. Soliciting Washington residents to sell or purchase any plan or policy  
4 of coverage for any form of insurance;

5 d. Soliciting Washington residents by email, facsimile, telephone, mail, or  
6 any other means to induce them to purchase any form of insurance product; and

7 e. Offering to Washington residents a plan or policy or coverage of any  
8 form of insurance without submitting to examination by the Insurance Commissioner to  
9 determine the organization and solvency of the person or the entity offering such insurance,  
10 and to determine whether or not such person or entity complies with the applicable provisions  
11 of the Insurance Code.

12 3. ESI is ordered to administer medical benefits claims of Washington enrollees  
13 in accordance with Washington law until ESI's health benefits are non renewed or canceled,  
14 and within 30 days of the date of entry of this Order, ESI is ordered to readminister the  
15 medical benefits claim of the consumer described in Paragraphs 4 and 7 of the foregoing  
16 stipulation in accordance with Washington law governing coordination of benefits and the  
17 parties' stipulation.

18 4. Within 120 days of the date of entry of this Order, ESI and William Miller are  
19 ordered to pay a civil penalty of \$20,000 to the OIC for which payment ESI and William  
20 Miller shall be jointly and severally liable.

21 5. This Order is without prejudice to ESI's right and ability to purchase  
22 Washington businesses, own an interest in Washington businesses or start Washington  
23 businesses.

24 6. This Order is without prejudice to the right of the Office of the Insurance  
25 Commissioner to take appropriate disciplinary action against the insurance license of any  
26 Washington insurance agent or licensee, including any Respondent herein who holds a

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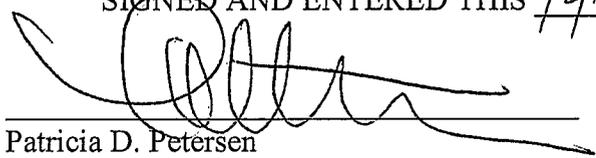
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1 Washington insurance license, resulting from such licensee's involvement in the transactions  
2 which are the subject of Order to Cease and Desist No. 05-364.

3 7. This Order applies only to the Office of the Insurance Commissioner and not to  
4 any other state regulatory agency. The Chief Hearing Officer of the Office of the Insurance  
5 Commissioner has continuing authority to enforce this Stipulation and Order and to resolve  
6 disputes arising therefrom.

7 8. It is hereby ordered pursuant to RCW 48.17.530 and 48.17.560 that OIC  
8 Docket Number D 05-364 is hereby closed and dismissed as settled.

9 SIGNED AND ENTERED THIS 14<sup>th</sup> day of December, 2006.

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12 Patricia D. Petersen  
13 Chief Hearing Officer  
14 Office of Insurance Commissioner  
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