MIKE KREIDLER
STATE INSURANCE COMMISSIONER

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 below
DATED this 27th day of July 2006 at Tumwater, Washington.
Signed: Wendy Galloway

STATE OF WASHINGTON

OFFICE OF INSURANCE COMMISSIONER
HEARINGS UNIT

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In the Matter of:	)	
	)	NO. G05-51
DME/OP PURCHASING GROUP, INC.	)	
	)	**AMENDED FINAL FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER ON HEARING**
Applicant for a Risk Purchasing Group.	)	
	)	
	)	

TO: Derek J. Shafer, Attorney
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Topeka, Kansas 66603

COPY TO: Mike Kreidler, Insurance Commissioner
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James T. Odiorne, Deputy Commissioner, Company Supervision
Carol Sureau, Deputy Commissioner, Legal Affairs
Charles Brown, Sr. Staff Attorney, Legal Affairs
Marshall McGinnis, Company Licensing Manager
Kristofer Graap, Insurance Policy & Compliance Analyst
P.O. Box 40255
Olympia, Washington 98504-0255

The purpose of this Amended Findings of Facts, Conclusions of Law and Final Order on Hearing is solely to correct the typographical error on page four, as shown below. Other than that one correction, the original Findings of Facts, Conclusions of Law and Final Order on Hearing entered on May 12, 2006, remains effective in its entirety as of date of entry.

Pursuant to RCW 34.04.090, 34.04.120, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance Commissioner for the state of Washington (OIC) on November 18, 2005. By request of the parties, posthearing briefs were allowed to be filed thereafter: DME/OP Purchasing Group,

Inc. (DME/OP) filed its posthearing brief, entitled Applicant's Hearing Brief, on January 20, 2006, and the OIC's posthearing brief, entitled Reply Brief, was filed on January 25, 2006. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The OIC was represented by OIC Sr. Staff Attorney Charles Brown. DME/OP was represented by Derek J. Shafer, Esq. of Topeka, Kansas. Mr. Brown appeared in person and Mr. Shafer, by request, appeared by telephone.

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the OIC's denial of DME/OP's application to become registered as a liability insurance purchasing group ("purchasing group"), which is evidenced in the OIC's July 11, 2005 letter to Compliance & Filing Solutions, should be upheld, set aside or modified. Said action denies DME/OP's application based upon authority cited therein. DME/OP requested this hearing to contest the OIC's denial.

FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied, including, for good cause shown, RCW 34.05.461(8).

2. DME/OP is a for profit corporation domiciled in Kansas, incorporated on May 21, 2004. Its sole shareholder is Supermarket Insurance Agency, Inc., another Kansas corporation. Neither DME/OP, the corporation, or Supermarket Insurance Agency, Inc., the sole shareholder, are themselves engaged in the business of manufacturing and/or distributing durable medical equipment and/or orthotic/prosthetic devices. The Articles of Incorporation of DME/OP, which indicate the nature of the corporation's business or purposes is *to purchase liability insurance on a group basis for its group members and for all other purposes...permitted by the Kansas Corporation Code.* DME/OP is a vehicle to allow entities with common interests – i.e. manufacturers and distributors of durable medical equipment or orthotic/prosthetic devices – to purchase liability insurance on a group basis specifically to cover their liability which might arise from these activities.

3. The members of DME/OP consist of individuals and entities engaged in the business of manufacturing and/or distributing durable medical equipment, as well as orthotic/prosthetic devices. (DME/OP are initials for Durable Medical Equipment/Orthotic Prosthetic.) These members of DME/OP are all engaged in businesses or activities related to retailing, manufacturing and/or distributing durable medical equipment and orthotic/prosthetic devices; because of their common business, they all share similar liability for these businesses or activities. One of the purposes of DME/OP, and as stated in its Articles of Incorporation quoted above, is to be a vehicle to allow entities with common interests – i.e. manufacturers and distributors of durable medical equipment or orthotic/prosthetic devices – to purchase liability insurance on a group basis. This liability insurance is specifically to cover liability involved in the members' activities in manufacturing or distributing durable medical equipment and/or orthotic/prosthetic devices.

4. Since being registered as a purchasing group in its domiciliary state of Kansas on or about July 12, 2004, DME/OP has applied for registration in 43 additional states including Washington State. [Ex. 23.] As of the date of the hearing herein, DME/OP has been registered as a purchasing group in 41 of the 43 other states to which is has applied. The two remaining states of the 43 states are Pennsylvania and Washington State. It is undisputed that in Pennsylvania, DME/OP did not qualify because Pennsylvania has a specific statute which prohibits insurance entity involvement in purchasing groups.

5. As to Washington State, on or about April 1, 2005, DME/OP, the corporation, applied to the OIC for registration as a purchasing group. DME/OP, the corporation, was the applicant.

6. The OIC denied DME/OP's application. In its denial, the OIC acknowledges that it does not object to the legal form of DME/OP i.e., a corporation. The OIC acknowledges that the members of the group are manufacturers and distributors of durable medical equipment and supplies, orthotics and prosthetics. However, the OIC advised that because DME/OP, the corporation, is

the ~~application~~ applicant for registration then it must meet the definition of a purchasing group. *[S]ince* [although the OIC acknowledges that the members of DME/OP are manufacturers or distributors of medical equipment] *the shareholder of the corporation (the purchasing group) is an insurance company and such dealers and distributors of medical equipment are not in a related, similar, or common business, trade, product, services, premises, or operations, then the purchasing group, the corporation, does not meet the definition of a purchasing group.* [Ex. 11.] Subsequently, the OIC again denied DME/OP's application, again advising that DME/OP *fails to meet the federal and state definition of a purchasing group under the LRRA of 1986* and quoting the applicable state regulations. [Ex. 1.]

7. Although there do not appear to be any factual issues present in this proceeding, the undersigned makes the following credibility findings:

Kristofer Graap, Insurance Policy and Compliance Analyst with the OIC, appeared as the sole witness on behalf of the OIC. Mr. Graap presented his testimony in a conscientious, credible and unbiased manner, although his answers were not entirely clear as to the specific applicability of the relevant statutes to the fact situation presented.

John V. Spain, an industry representative, appeared as the sole witness on behalf of DME/OP. Mr. Spain presented his testimony in a clear, detailed and credible manner with no apparent biases.

CONCLUSIONS OF LAW

1. The OIC has denied the application of DME/OP for registration as a purchasing group on the basis that DME/OP *does not meet the federal and state definition of a purchasing group under the LRRA of 1986*, advising that a purchasing group means any group which *(c) Is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;....*

2. RCW 48.92.020(10), as cited by the OIC in its denial or DME/OP's application for registration as a purchasing group, provides:

> *(10) "Purchasing group" means any group which:*
> *(a) Has as one of its purposes the purchase of liability insurance on a group basis;*
> *(b) Purchases the insurance only for its group members and only to cover their similar or related liability exposure, as described in (c) of this subsection;*
> *(c) Is composed of members whose businesses or activities are similar or related*

> *with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and*
> *(d) Is domiciled in any state.*

Based upon the Findings of Facts found herein, DME/OP has as one of its purposes the purchase of liability insurance on a group basis (Finding of Fact No. 2]. DME/OP purchases the insurance only to cover their similar or related liability exposure (activities involved in the manufacture or distribution of durable medical equipment, prosthetics/orthotics). [Finding of Fact No. 3.] DME/OP is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations (the manufacture or distribution of durable medical equipment, prosthetics/orthotics). [Findings of Fact No. 3.] DME/OP is domiciled in Kansas. [Finding of Fact No. 2.] As such, DME/OP meets the definition of "purchasing group" under applicable statute. The OIC has not presented a persuasive argument that, not only must DME/OP's members have similar or related businesses or activities with respect to the liability to which they are exposed, but the shareholder of DME/OP must also share these same or similar businesses or activities along with the members: the shareholder of the corporate applicant is not a member of DME/OP, it is the owner of DME/OP and therefore is to be distinguished from the requirement of commonality which the applicable statutes cited above apply to the members of the purchasing group.

3. Based upon the above Findings of Fact and Conclusion of Law, it is hereby concluded that DME/OP, the corporate applicant for registration as a purchasing group, meets the definition of a purchasing group under RCW 48.92.020(10) and therefore, this being the OIC's only argument for denial of its application, the OIC's denial is set aside and DME/OP shall be granted registration as a purchasing group.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that the OIC has shown no valid basis for denial or DME/OP's registration as a purchasing group,

IT IS HEREBY ORDERED that DME/OP's application for registration as a purchasing group should be granted,

This Order is entered pursuant to RCW 34.05, Title 48 RCW and specifically RCW 48.04.010 and RCW 48.92.020, and regulations applicable thereto.

This Order is entered at Tumwater, Washington, this 26th day of July, 2006.

PATRICIA D. PETERSEN
PRESIDING OFFICER