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 all parties listed

Dated this 26th day of July 2005.

at Olympia, Washington.

Signed: Nancy Helay

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER

Phone: (360) 725-7000

FILED

2005 SEP 12 P 12: 07

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

In the Matter of EVOLUTION SERVICES, INC., An Unauthorized Entity, 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	)	No. D 05-364 ORDER TO CEASE AND DESIST

Pursuant to RCW 48.02.080 and RCW 48.15.023, the Insurance Commissioner orders the entities and the individuals named above and their officers, directors, trustees, agents, employees and affiliates ("Respondents") to immediately cease and desist from:

A. Engaging in or transacting the unauthorized 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 insurance agent or insurance company in seeking, soliciting, pursuing, and/or obtaining any unauthorized insurance business in the state of Washington;

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

D. Soliciting Washington residents by e-mail, facsimile (fax), telephone, mail, or any other means to induce them to purchase any form of insurance product; and from

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

THIS ORDER IS BASED ON THE FOLLOWING:

1. Respondent Evolution Services, Inc. ("ESI") is a Utah corporation, headquartered in South Jordan, Utah, which sells, maintains, administers, and operates an employee benefit plan that includes self-funded health and dental insurance and other insurance.

2. Respondents Stanton L. Call and William J. Miller are officers of ESI.

3. Respondent Barbara Miller is ESI's Director of Member Services and handles insurance coordination for ESI and the multiple employers who have purchased ESI's benefits package and their employees who are covered by ESI's self-funded insurance.

4. Respondents Jesse C. Rivera and Lisa A. Coleman are insurance agents licensed in Washington who have sold ESI self funded health and dental insurance to Washington employers.

5. Respondents David Emerson Lee, M.D., Kenneth K. Kaiser, Chris Komarzec, and John C. Rivera are unlicensed individuals who have participated in the solicitation, procurement, and placement in Washington of the insurance underwritten by ESI.

6. Respondents have issued and underwritten insurance and transacted insurance in the State of Washington affecting subjects located wholly or in part in Washington and to be performed in Washington, including a plan or policy of coverage for health and dental insurance covering Washington residents employed by multiple Washington employers.

7. Respondents have not been granted a certificate of authority to act as an insurer or self-funded multiple employer welfare arrangement in Washington nor are any of the Respondents other than Jesse C. Rivera and Lisa A. Coleman licensed as insurance agents or brokers in this state. Respondents have not submitted to OIC any appropriate certificate, license, or other document issued by another agency of this state, any subdivision thereof, or the federal government permitting or qualifying Respondents to provide such coverage in this state. Respondents also have not registered with the OIC as risk retention or risk purchasing agents, nor have they transacted this insurance through a licensed surplus lines broker in this state.

8. Respondents ESI and Call have alleged exemption from state regulation and premium taxation as a "single employer" employee welfare benefit plan. They contend that the member employers of the plan are under the "common control" of ESI by virtue of stock option agreements ESI obtains from those employers. ESI has promised and represented to the purchasers that these stock option agreements will never be utilized and are included merely for the purpose of avoiding state insurance laws. These purported stock option agreements are supported by no consideration, have no economic substance or legitimate business purpose, and are sham transactions designed solely to avoid state insurance laws. ESI has nonetheless represented to the purchasers that by virtue of the stock option agreement, the insurance it is selling is being legally offered and is exempt from state laws. These representations are false, deceptive and misleading, in that the above-described plan of insurance constitutes a multiple employer welfare arrangement (MEWA) as defined by 29 U.S.C. 1002(40), the plan is not exempt from state insurance regulation under ERISA, and Respondents were not authorized to issue such insurance under Washington's Insurance Code. These false and misleading

representations were intended to induce Washington residents to purchase the insurance product sold by the Respondents.

9. Licensees Jesse C. Rivera and Lisa A. Coleman knew that ESI was not authorized to transact insurance or health coverage in this state and did not conduct business through a licensed surplus lines broker.

10. Respondents' above-described conduct violates RCW 48.05.030, Certificate of authority required; RCW 48.125.020, Certificate of authority required; RCW 48.15.020, Solicitation by an unauthorized insurer prohibited-Personal liability; RCW 48.17.060, License required; RCW 48.30.040, False information and advertising; RCW 48.14.0210, Premium and prepayments tax; and RCW 48.17.067, Determining whether authorization exists - Burden on solicitor, agent, or broker.

IT IS FURTHER ORDERED that Respondents, within forty-five (45) days of receipt of this Order, furnish the OIC with a complete listing, to include contact information, of all Washington residents and businesses who have purchased any insurance or insurance-related product from Respondents, and that Respondents report to the OIC all premiums received by Respondents for insurance covering Washington risks.

IT IS FURTHER ORDERED pursuant to RCW 48.15.020 that Respondents notify ESI's Washington customers of this Cease and Desist Order and replace any insurance improperly placed in this state with a policy issued by an authorized insurer upon demand of any insured under any such policy.

This Order shall not prevent Respondents from fulfilling the terms of contracts formed prior to the effective date of this Order pursuant to RCW 48.15.020(2)(b).

Any violation of the terms of this Order by Respondents, their officers, directors, agents, or affiliates, will render the violator(s) subject to the full penalties authorized by RCW 48.02.080, RCW 48.15.023, and other applicable Code sections.

Respondents have the right to demand a hearing pursuant to chapters 48.04 and 34.05 RCW. This Order shall remain in effect subject to the further order of the commissioner.

THIS ORDER IS EFFECTIVE IMMEDIATELY and is entered at Tumwater, Washington, this 26th day of July, 2005.

MIKE KREIDLER
Insurance Commissioner

By: Charles D. Brown

Charles D. Brown, Senior Staff Attorney
Legal Affairs Division
Office of Insurance Commissioner
State of Washington