



State of Washington
Office of the Insurance Commissioner
Hearings Unit
PO Box 40255
Olympia WA 98504-0255
5000 Capitol Boulevard
Tumwater, WA 98501
(360) 725-7002 FAX (360) 664-2782
HearingsU@oic.wa.gov

Demand for Hearing

Please type or print in ink. Attach a copy of the Order or correspondence in dispute and all documents supporting your demand. This Demand for Hearing can be mailed, faxed, hand-delivered or emailed to the Hearings Unit at the address above. For OIC Demands, please provide contact information for all other interested parties and their representatives.

1 Requesting Party (required information)

Name/Business Name Trinity Healthshare, Inc.		OIC Case/Order No. Order No 19-0252
Street Address 5901 Peachtree Dunwoody Rd., Suite C-160		City, State, Zip Atlanta, Georgia 30328
Telephone Number 844-803-8051	Fax Number 404-459-5734	
Contact Person William H. Thead III	Telephone Number 844-803-8051	Email Address rthead@trinityhealthshare.org

2 Authorized Representative/Attorney for Requesting Party

Last Name Bauer	First S. Derek	M.I.
Business Name Baker & Hostetler LLP		
Street Address 1170 Peachtree Street, Suite 2400		City, State, Zip Atlanta, Georgia 30309
Telephone Number 404-459-0050	Fax Number 404-459-5734	Email Address dbauer@bakerlaw.com

3 Subject Matter of Demand for Hearing

- Revocation or Denial of License
 Revocation or Denial Certificate of Authority or Registration
 Cease and Desist Order
 Imposition of Fine/Consent Order
 Other _____

4 Additional Parties/Representatives (for more parties and/or representatives, please attach additional pages)

Last Name Menk	First Jacqueline	M.I. T
Business Name Baker & Hostetler LLP		
Street Address 1170 Peachtree Street, Suite 2400		City, State, Zip Atlanta, Georgia 30309
Telephone Number 404-467-9776	Fax Number 404-459-5734	Email Address jmenk@bakerlaw.com

5 Issues and Arguments

- a. **Issues** – Briefly describe each issue or area of dispute that you wish us to consider. Attach additional pages if necessary.

See attached.

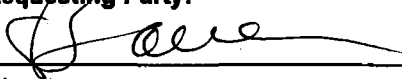
b. **Arguments** – Explain why each issue or area of dispute listed above should be decided in your favor. Attach additional pages if necessary. To the extent known, cite applicable rules, statutes, or cases in support of your arguments. Enclose copies of documents concerning your arguments including documents the Department previously requested from you that you have not yet provided.

See attached.

6 Signature

Either the Requesting Party or the Attorney/Representative can sign this Demand for Hearing. However, if the Representative is submitting the Demand, contact information for the Requesting Party must be provided under Section 1 above and the Attorney/Representative's contact information must be provided in Section 2.

Requesting Party:



Signature

S. Derek Bauer

Name (please print or type)

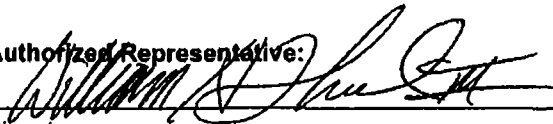
8/8/19

Date

Partner

Title

Authorized Representative:



Signature

William H. Thead III

Name (please print or type)

8/8/19

Date

Chairman

Title

August 9, 2019

Baker&Hostetler LLP

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**VIA EMAIL (HEARINGSU@OIC.WA.GOV) AND
FIRST CLASS MAIL**

State of Washington
Office of the Insurance Commissioner
Hearings Unit
PO Box 40255
Olympia WA 98504-0255
5000 Capitol Boulevard
Tumwater, WA 98501

Re: Demand for Hearing on Order No. 19-0252

To Whom It May Concern:

We represent Trinity Healthshare, Inc. (“Trinity”) in the above referenced matter. We write to formally demand a hearing before an administrative law judge (“ALJ”), pursuant to RCW 48.04.010 *et seq.*, to challenge the Office of Insurance Commissioner’s (“OIC”) Order for Trinity to Cease and Desist of May 13, 2019 (“Order”). A copy of the Order is attached.

In the Order, the OIC directs Trinity to immediately cease and desist from:

- A. Engaging in or transacting the unauthorized business of insurance in the state of Washington;
- B. Seeking, pursuing and obtaining any insurance business in the state of Washington;
- C. Soliciting Washington residents to sell any insurance issued or to be issued by an unauthorized insurer;
- D. Soliciting Washington residents to purchase an insurance contract.

The Order, however, permits Trinity to continue to facilitate sharing among Washington residents who enrolled in a Trinity healthcare sharing plan prior to the effective date of the Order.

Trinity generally challenges the Order on the legal basis that Trinity does not engage in the conduct that the Order purports to proscribe; Trinity does not engage in the insurance business or transact insurance in Washington; Trinity does not seek, pursue, or obtain insurance business in Washington; Trinity does not solicit Washington residents to sell any insurance; and Trinity does not solicit Washington residents to induce them to purchase any insurance.

Trinity is not engaged in the business of insurance and does not transact insurance in the State of Washington. Pursuant to RCW 48.01.050, an “insurer” includes people engaged in the business of making contracts of insurance. “Insurance,” as codified in Washington statute and interpreted by the Washington Supreme Court, requires both risk-shifting and risk-distributing. *See* RCW 48.01.040 (“Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.”). Trinity’s operations do not constitute insurance because Trinity does not promise to pay members anything or undertake any obligation to pay members. Additionally, Trinity is not a “health carrier” or “carrier” as defined in RCW 48.43.005. There is no reciprocal or interinsurance exchange between Trinity and its members. Rather, Trinity acts as a neutral clearinghouse between members and helps facilitate sharing of contributions from one member to another.

Trinity qualifies as a healthcare sharing ministry (“HCSM”) under federal and Washington law. Pursuant to RCW 48.43.009, “‘health care sharing ministry’ *has the same meaning as* in 26 U.S.C. Sec. 5000A.” (emphasis added). HCSMs that meet the federal definition are not health carriers as defined in RCW 48.43.005 or insurers as defined in RCW 48.01.050 and are exempt from regulation under Washington’s insurance code. *See* RCW 48.43.009.

Under 26 U.S.C. § 5000A(d)(2)(B)(ii), a “health care sharing ministry” is an organization:

- (I) which is described in section 501(c)(3) and is exempt from taxation under section 501(a),
- (II) members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed,
- (III) members of which retain membership even after they develop a medical condition,
- (IV) which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999, and
- (V) which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

In the Order, the OIC alleges that Trinity does not qualify as a HCSM, and is therefore subject to regulation by the OIC, because it has not been in operation and continuously sharing member health care costs since at least December 31, 1999 and because its members do not share a common set of ethical or religious beliefs. Trinity, however, meets both these requirements and

the other requirements of 26 U.S.C. § 5000A.¹ The Internal Revenue Service (“IRS”)—the federal agency that has been charged with regulating HCSMs since October 2016—approved Trinity’s status as a healthcare sharing ministry in 2018. Because the IRS has authorized Trinity to operate as a HCSM, it qualifies for the Washington exception as well.

Finally, the OIC Order, if upheld, would violate Trinity’s and its members’ constitutional rights and directly impede constitutionally-protected religious freedom rights, due process rights, and the supremacy clause.

Trinity demands a hearing before an ALJ. Trinity expressly reserves all rights including but not limited to the right to assert any and all additional defenses and/or claims under Washington and federal law, the right to challenge factual findings and legal conclusions, and the right to submit additional information and legal briefing through the hearing process.

Sincerely,



S. Derek Bauer

Attachment

cc: Frank Miller, Esq.
Joseph Guilkey, Esq.
Jacqueline Menk, Esq.

¹ The OIC does not allege that Trinity fails to meet the remaining three requirements under 26 U.S.C. § 5000A.

**STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of

TRINITY HEALTHSHARE, INC.

Unauthorized Entity.

Respondent.

Order No. 19-0252

ORDER TO CEASE AND DESIST

Pursuant to RCW 48.02.080, RCW 48.15.020, and RCW 48.15.023, the Insurance Commissioner of the state of Washington (“Insurance Commissioner”) orders the above-named Respondent, and its officers, directors, trustees, employees, agents, and affiliates to immediately cease and desist from:

- A. Engaging in or transacting the unauthorized business of insurance in the state of Washington;
- B. Seeking, pursuing and obtaining any insurance business in the state of Washington;
- C. Soliciting Washington residents to sell any insurance issued or to be issued by an unauthorized insurer;
- D. Soliciting Washington residents to purchase any insurance contract.

BASIS:

1. Trinity HealthShare, Inc. (“Trinity”) is a nonresident corporation domiciled in Delaware. Trinity represents itself as a health care sharing ministry (“HCSM”) as defined by 26 USC §5000A and incorporated by reference under RCW 48.43.009. Trinity does not hold a certificate of authority in the state of Washington.

2. To qualify as a health care sharing ministry under the Internal Revenue Service (IRS) and Washington law, a HCSM must be a 501(c)(3) organization whose members share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs. A HCSM must also have been in operation and continuously sharing member health care costs since at least December 31, 1999.

3. Washington adopts the IRS definition of HCSM under RCW 48.43.009. HCSMs that comply with the required federal provisions are not considered Washington health carriers or insurers and are exempt from regulation under Washington’s insurance code.

4. Following receipt of a complaint, the Insurance Commissioner investigated to determine whether Trinity is accurately representing itself to Washington consumers as a HCSM in compliance with state and federal law. The complaint alleged that Trinity’s corporate partner, Alieria Healthcare, Inc. (“Alieria”), is soliciting and recruiting agents to sell misleading products to Washington consumers because the co-branded marketing materials use language that may lead the average consumer to believe they are purchasing healthcare insurance rather than a HCSM membership.

5. The investigation determined that Trinity does not meet the legal definition of a HCSM and is therefore acting as an unauthorized insurer in the state of Washington.

6. Trinity first incorporated in the state of Delaware on June 27, 2018. Approximately six weeks later, Trinity entered into a Management and Administration Agreement (“the Agreement”) with Alieria. The Agreement was effective August 13, 2018, and stated Trinity’s intent to partner with Alieria to include Trinity’s HCSM program as a component of Alieria’s new and existing healthcare products. Trinity also grants its corporate affiliate Alieria the exclusive right to develop, market, and sell its HCSM plans to individuals who agree to Trinity’s statement of faith and lifestyle requirements.

7. Trinity has been in existence less than one (1) year. Further, at the time of the Agreement with Alieria, Trinity had zero members in its HCSM and there was no predecessor organization in which Trinity’s members were sharing medical costs. Trinity, with zero members, further provided that any future enrolled members would become “customers” of Alieria, who would maintain ownership over the “membership roster.” Trinity has not “been in operation and continuously sharing member health care costs since at least December 31, 1999” as required to qualify for exemption from state insurance regulation.

8. Trinity espouses contradictory versions of the required “common set of ethical or religious beliefs” that vary based on the intended audience. If Trinity’s members do not share common beliefs – regardless of the content of such beliefs – and share medical burdens in accordance with those common beliefs, Trinity cannot represent itself as a HCSM.

9. Trinity has communicated to state and federal regulatory authorities that it holds to a Protestant expression of the Christian faith. Trinity's own bylaws obligate its members to affirm this expression of faith. However, according to its website, Trinity offers an alternative solution to health insurance and offers membership to individuals of "all faiths." In training materials to prospective agents, Trinity's statement of faith becomes simply a belief in a higher power, whether a Christian, Buddhist, or Jewish God. This statement of faith, as presented to the public, is materially different from and inconsistent with the statement of faith that Trinity has claimed to regulatory authorities, demonstrating that Trinity and its ministers do not share "a common set of ethical or religious beliefs" as required to qualify for exemption from state insurance regulation.

10. Finally, Trinity also grants Alera the contractual right to "agree upon" the required statement of beliefs. Conditioning its common set of ethical or religious beliefs on the consent of its for-profit corporate partner is contradictory to Trinity's own statements about its religious traditions.

11. RCW 48.05.030(1) states no person shall act as an insurer and no insurer shall transact insurance in this state other than as authorized by a certificate of authority issued to it by the Insurance Commissioner and then in force; except, as to such transactions as are expressly otherwise provided for in this code.

12. RCW 48.30.040 states no person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance or relative to any person engaged therein.

13. RCW 48.02.080(3) states if the Insurance Commissioner has cause to believe that any person is violating or is about to violate any provision of this code or any regulation or order of the Insurance Commissioner, he or she may: (a) issue a cease and desist order.

14. RCW 48.15.023(5)(a) states if the Insurance Commissioner has cause to believe that any person has violated the provisions of RCW 48.15.020(1), the Insurance Commissioner may: (i) issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080.

15. RCW 48.44.015(1) provides that a person may not in this state, by mail or otherwise, act as or hold himself or herself out to be a health care service contractor, as defined in RCW 48.44.010 without first being registered with the Insurance Commissioner.

16. The Respondent's actions described herein violate Insurance Code provisions that include RCW 48.05.030 (certificate of authority required), RCW 48.14.020 (failure to timely pay premium tax), RCW 48.15.020 (solicitation by unauthorized insurer prohibited), and RCW 48.30.040 (unfair practices and frauds).

IT IS FURTHER ORDERED that nothing herein shall prevent the Respondent 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 the Respondent and its officers, directors, trustees, employees, agents, and affiliates or the Respondent's failure to fulfill or perform its contracts subject to this Order will render the violator(s) subject to the full penalties authorized by RCW 48.02.080, 48.15.023, and other applicable sections of the Insurance Code of the state of Washington.

The Respondent has the right to demand a hearing in accordance with RCW 48.04.010, WAC 284-02-070, and WAC 10-08-110.

This Order shall remain in effect subject to the further order of the Insurance Commissioner.

THIS ORDER IS EFFECTIVE IMMEDIATELY AND IS ENTERED at Tumwater, Washington, this 13th day of MAY, 2019.



MIKE KREIDLER
Insurance Commissioner

By and through his designee



KIMBERLY TOCCO
Insurance Enforcement Specialist
Legal Affairs Division

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing Order to Cease and Desist on the following individual(s) in the manner listed below:

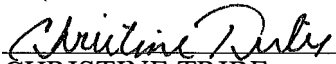
By depositing in the U.S. mail via state Consolidated Mail Service with proper postage affixed to:

Trinity Healthshare
5901 Peachtree Dunwoody Rd., Ste 160
Atlanta, GA 30328

By email and by depositing in the U.S. mail via state Consolidated Mail Service with proper postage affixed to:

J. Joseph Guilkey
BakerHostetler
200 Civic Center Drive, Ste. 1200
Colombus, OH 43215
jguilkey@bakerlaw.com

Dated this 13th day of May, 2019, in Tumwater, Washington.


CHRISTINE TRIBE
Paralegal
Legal Affairs Division