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

5 *In the Matter of*

6 **ALIERA HEALTHCARE INC.,**

7 Respondent.

Docket No. 19-0251

OIC'S MOTION FOR SUMMARY  
JUDGMENT

8  
9  
10 **I. RELIEF REQUESTED**

11 The Washington State Office of the Insurance Commissioner ("OIC" or "Insurance  
12 Commissioner") submits this motion requesting entry of an order, finding there is no genuine  
13 issue of material fact and the Insurance Commissioner is entitled to summary judgment in this  
14 matter. The OIC respectfully requests that the Presiding Officer uphold the OIC's Cease and  
Desist Order ("Order") in this matter.

15 This motion is based on all documents in the record in this case and, in particular, the  
16 Declaration of Tyler Robbins in Support of OIC's Motion for Summary Judgment ("Robbins  
17 Declaration") and exhibits thereto.

18 **II. ISSUES**

- 19 1. Did Alieria violate RCW 48.17.060 by selling, soliciting or negotiating insurance in  
20 Washington State without a license?  
21 2. Did Alieria represent an unauthorized insurer in violation of RCW 48.15.020(2)(a)?  
22 3. Is Trinity a valid health care sharing ministry?  
23 4. Did Alieria violate RCW 48.44.015(1) by acting as a healthcare service contractor  
24 without first being registered with the Insurance Commissioner?  
25 5. Did Alieria operate as a discount plan organization without first obtaining a license in  
26 violation of RCW 48.155.020(1)?  
6. Did Alieria 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, in violation of RCW 48.30.040?

7. Did Alieria violate Washington disability insurance advertising regulations in WAC 284-50-050 and WAC 284-50-060?

### III. FACTS

Alieria Healthcare Inc. (“Alieria” or “the Company”) is a nonresident corporation domiciled in Delaware and incorporated on December 18, 2015. (Ex. 9, p. 130.) Alieria is not licensed to sell, solicit, or negotiate insurance in the state of Washington. (Ex. 15.) However, Alieria is licensed as an insurance producer in approximately thirty other states. *Id.* Alieria is also not registered as a health care service contractor or licensed as a discount plan organization in the state of Washington. *Id.*

Trinity HealthShare, Inc. (“Trinity”) is a nonresident corporation domiciled in Delaware. (Ex. 31.) Trinity first incorporated in the state of Delaware on June 27, 2018. *Id.* Trinity represents itself as a health care sharing ministry (“HCSM”) as defined by 26 U.S.C. § 5000A and incorporated by reference under RCW 48.43.009. (*See, e.g.* Ex. 18 and Ex. 14). Trinity does not hold a certificate of authority in the state of Washington. (Ex. 4, p. 1.)

The Insurance Commissioner opened an investigation into Alieria after receiving an email from an insurer regarding Alieria’s marketing practices. (Ex. 2, p. 2.) In the course of the Insurance Commissioner’s investigation, it determined: “(1) The allegation that Trinity does not meet the statutory definition of a HCSM under RCW and Federal statute is substantiated. Trinity is therefore acting as an unauthorized insurer, in violation of RCW 48.05.030; (2) The allegation that Alieria’s various advertisements on behalf of Trinity are deceptive and have the capacity and tendency to mislead or deceive consumers to believe they are purchasing insurance rather than a HCSM membership, in violation of RCW 48.30.040, WAC 284-50-050 and 284-50-060, is substantiated.” *Id.*

Alieria played an active role in forming Trinity. (Ex. 2, p. 6.) Alieria entered into an agreement with Trinity that gave Alieria exclusive marketing rights. (Ex. 32.) The Management and Administration Agreement recognized that Trinity was starting from scratch and had no members. *Id.* As part of the agreement, Alieria offered Trinity’s HCSM program as a component of Alieria’s new and existing healthcare products and it administered the program. *Id.*

1 Trinity's HCSM products mirrored disability insurance products. (*See* Ex. 20.) The  
2 AlierCare Individual brochure for consumers prominently promotes and promises Telemedicine,  
3 Preventative & Primary Care, Labs & Diagnostics, and Urgent Care services under its plan. *Id.* at  
4 1. For example, the brochure states that “[s]ervices within the scope of the nearest Urgent Care  
5 facility, including x-rays, are eligible for treatment.” *Id.* Also, it states that “[m]ost labs ordered  
6 by Primary Care Physicians (PCP) or Urgent Care facilities **are included in the monthly**  
7 **membership.**” *Id.* (emphasis added). Further, the literature promises that “[o]ur U.S. Board-  
8 certified family practitioners, pediatricians, and internists diagnose, treat, and write prescriptions  
9 when necessary and are available 24/7/365 from anywhere in the world.” *Id.* These statements  
10 are indistinguishable from ordinary disability insurance. (Robbins Decl., p. 3.) The brochure  
11 further provides a detailed explanation of plan benefits, divided into Bronze, Silver, and Gold  
12 tiers, with network and non-network cost sharing amounts, which mirrors the form and function  
13 of an ACA-compliant insurance product. (Ex. 20, p. 8-10.)

14 The AlierCare Member Guides, which explain plan benefits to members, contain similar  
15 language that mirrors authorized insurance plans. (Ex. 21.) Under the heading, Plan Services and  
16 Membership, AlierCare explained that “the plans cover medical services recommended by the  
17 USPSTF and outlined in the ACA for preventive care.” *Id.* at 5. “There is zero out of pocket  
18 expense and zero obligation to reach the Member Shared Responsibility Amount (MSRA) for any  
19 scheduled preventive care service.” *Id.* Other promises included: “With an AlierCare Bronze,  
20 Silver, or Gold plan, members are eligible to receive chronic care management from their primary  
21 care physician for conditions such as diabetes, asthma, blood pressure, cardiac conditions, etc.”;  
22 “Labs at in-network facilities are included”; “The AlierCare Bronze, Silver, or Gold prescription  
23 savings program delivers significant discounts for a variety of drugs (depending on prescription),  
24 saving members an average of 55% on prescription drug purchases” and “After \$1,500 of  
25 prescription drug expenditures through Rx Valet, members are eligible for a percentage of  
26 reimbursement for preferred and mail order drugs.” (Robbins Decl., p. 3-4; Ex. 21, p. 5).

27 AlierCare at times explicitly described its products as “insurance.” In a communication to  
28 Washington brokers that was provided to the OIC, AlierCare announced that “AlierCare takes great pride  
29 in being one of the most broker-friendly health insurance providers in the industry.” (Ex. 16, p.  
30 2.) However, AlierCare lacks any insurance producer license in Washington, though it does have  
31 licensure in other states. (Ex. 15, p. 1.)

1 Alieria’s contracts with other entities refer to the products it markets as health plans, which  
2 are defined at RCW 48.43.005(29) and regulated by the OIC. *See, e.g.* Chapter 48.43 RCW,  
3 Chapter 284-43 WAC. For example, under Alieria’s Provider Network Services Agreement,  
4 “Covered Services means those medical, hospital and other health care services provided to  
5 Members that are payable under the terms of a Plan.” (Ex. 38, p. 2.) Further, as defined therein,  
6 “Plan means a fully-insured health benefits plan, self-insured health benefits plan, or other health  
7 benefits plan.” *Id.* Additionally, “Member means a person eligible and entitled to received health  
8 benefits under a Plan.” *Id.*

9 The memberships offered by Trinity and sold by Alieria operated as insurance products.  
10 (Robbins Decl., p. 4.) In order to become a member, consumers completed an application that  
11 detailed their medical history, and along with the application, submitted a payment. (Ex. 34.)  
12 Members paid a monthly sharing amount to access plan benefits, signing an agreement to do so  
13 and paying an initial fee. (Ex. 21, p. 16; *see also* Ex. 20 and 34). Upon purchase of a product,  
14 members received an ID card that appears and functions identical to an insurance plan ID card.  
15 (Ex. 34, p. 8; Ex. 21, p. 10-14). The plan benefits included payment, in whole or in part, for the  
16 provision of health care services received by members. Members became eligible to receive said  
17 benefits upon the occurrence of certain defined events, and would submit a claim to Alieria upon  
18 occurrence of such events of bodily injury, sickness, or other health-related matters. (Ex. 21, p.  
19 5, 10-14; Ex. 20, p. 1, 8-10).

20 In the course of marketing these HCSMs, Alieria made several misrepresentations  
21 regarding the health insurance products that it was offering. Alieria’s promotions left the  
22 impression upon the consumer that they were purchasing an affordable insurance product that  
23 offered ACA protections. In a communication to Washington brokers, Alieria announced:

24 “As of September 1, 2018, **Alieria Healthcare’s Group Insurance** and Individual  
25 Alternative plans will be available for sale through all licensed distribution and  
26 future partnering agencies in the state of Washington. ... the opportunities are  
significant for Alieria Healthcare in the **Group Insurance** market ... Whether  
you’re a business looking for **affordable ACA-compliant plans**, or an individual  
looking for ACA alternatives, Alieria Healthcare puts the power of choice back in  
your hands.”

(Ex. 16, p. 2.) (emphasis added). In this communication, Alieria further stated, “Alieria takes great  
pride in being one of the most broker-friendly health insurance providers in the industry.” *Id.* In  
2018, Alieria launched a digital advertising campaign that promoted their products as the

1 “Healthcare Coverage You Deserve at an Affordable Cost.” (Ex. 33, p. 3.) On Facebook, it  
2 encourages consumers to apply – “Missed Open Enrollment? You Can Still Apply With Alieria.”  
3 *Id.* at 4. Alieria’s plan literature mirrors that of ACA-compliant plans, offering Bronze, Silver, or  
4 Gold tiers. (Ex. 20, p. 8-10.) Member guides offer “medical services ... outlined in the ACA for  
5 preventive care,” Ex. 21, p. 5, and members receive an illustrated comparison of “cost-sharing”  
6 requirements between “network” and “non-network” care. (Ex. 20, p. 8-10.)

7 Further, Alieria’s consumer advertisements and member guides include common insurance  
8 terms that deceive consumers into believing they are purchasing healthcare insurance. For  
9 example, product offerings include Catastrophic, Standard, Interim, and Comprehensive plans.  
10 (Ex. 20.) Member guides defined terms include Usual, Customary and Reasonable (UCR)  
11 charges. (Ex. 21, p. 21.) Alieria’s use of insurance producers to sell its products aided in the  
12 impression upon consumers that they were buying regular insurance. (*See* Ex. 5, p. 1; Ex. 7, p. 1;  
13 Ex. 8, p. 1).

14 Alieria’s brochures did not make the nature of HCSMs clear, often failing to refer to a  
15 required Statement of Faith. (*See* Ex. 20; *see also* Ex. 33). And at least one consumer does not  
16 recall being asked to sign one. (*See* Ex. 10, p. 2) (“Alieria and the agent never said I had to agree  
17 to religious or ethical caveats in order to buy the plan. It would have been hilarious if they had,  
18 because I am a pagan.”).

19 Consumers’ understanding of the products they purchased from Alieria reflect Alieria’s  
20 misleading solicitation. Consumers thought they were buying regular health insurance that was  
21 affordable. Randy Overturf needed health insurance and believed he was buying an insurance  
22 plan from an insurance producer. (Ex. 5, p. 1.) The producer recommended Alieria, because he  
23 was unemployed at the time and needed the cheapest coverage he could get. *Id.* Gail Volkert also  
24 thought she was purchasing insurance for the lowest price. (Ex. 6, p. 1-2.) Lori Grentz bought  
25 Alieria “because of the price.” (Ex. 7, p. 1.) She believed that Alieria would cover some portion of  
26 her medical bills. *Id.* at 2. She purchased a plan wherein, Alieria would pay 70% and she was  
responsible for the remaining 30%. *Id.* After a surgery, Alieria denied her bill on the account that  
she was living an “unhealthy lifestyle.” *Id.* at 6.

Alieria solicits and sells plans to Washington consumers that are built on an extensive  
network of preferred providers that further mislead consumers into thinking they are purchasing  
regular health insurance. Alieria maintains contracts with third-party providers in order to provide

1 its members with access to health care services. (See Ex. 35 (FirstCall); Ex. 37 (Rx Valet); Ex.  
2 38 (First Health); Ex. 39 (Multiplan, Inc). Alera collected a portion of member payments for  
3 these services. (See Ex. 32, p. 14-16). With Rx-Valet, Alera entered into a contract, so it could  
4 offer its customers prescriptions at a discounted rate. (Ex. 21, p. 5). (The . . . prescription savings  
5 program delivers significant discounts for a variety of drugs (depending on prescription), saving  
6 members an average of 55% on prescription drug purchases.”). The RX Valet contract included  
7 a price reduction in the aggregate. (Ex. 37, p. 6).

8 Trinity was the subject of a separate but related enforcement action, wherein OIC  
9 determined that Trinity does not meet the legal definition of a HCSM and is therefore acting as  
10 an unauthorized insurer in the state of Washington. (See Ex. 2, p. 2-3). In a response to OIC’s  
11 investigation, Trinity admitted that “Trinity's predecessor church association does not have a rigid  
12 corporate form.” (Ex. 18, p. 3). That matter ultimately settled on December 30, 2019, under  
13 Consent Order Levying A Fine No. 19-0375. (See Ex. 4). As part of this Consent Order, Trinity  
14 agreed to stop offering its healthcare plans in the state of Washington, wind down its business in  
15 Washington within one year, and pay a fine. *Id.* at 5-6. Trinity also agreed that the Insurance  
16 Commissioner “had cause to believe” that Trinity was not a valid HCSM and was transacting  
17 unauthorized insurance. *Id.* at 4.

18 As a result of the investigative findings in this case, OIC issued the Order to Cease and  
19 Desist, No. 19-0251 (“Order”). Alera timely appealed the Order, resulting in the present  
20 proceeding. Now, the OIC moves for summary judgment, upholding the lawful and appropriate  
21 issuance of the Order against Alera, which sold and solicited unauthorized insurance and  
22 represented Trinity, an unauthorized insurer.

#### 23 **IV. LEGAL STANDARD**

24 In administrative adjudications, summary judgment procedure is governed by WAC 10-  
25 08-135. The rule provides: “A motion for summary judgment may be granted and an order issued  
26 if the written record shows that there is no genuine issue as to any material fact and that the moving  
party is entitled to judgment as a matter of law.” WAC 10-08-135. Summary judgment is designed  
to do away with unnecessary trials where there is no genuine issue of material fact. *LaPlante v.*  
*State*, 85 Wn.2d 154, 158 (1975); *see also Jacobsen v. State*, 89 Wn.2d 104, 108 (1977) (“A  
‘material fact’ is one upon which the outcome of the litigation depends.”) (citations omitted).

1 The burden is on the moving party to demonstrate there is no genuine issue of material fact and,  
2 as a matter of law, summary judgment is proper. *Jacobsen*, 89 Wn.2d at 108. A tribunal must  
3 consider the material evidence and all reasonable inferences thereon most favorably for the  
4 nonmoving party; if reasonable people might reach different conclusions, the motion should be  
5 denied. *Id.* at 108-09.

6 If the moving party satisfies its burden, then the nonmoving party must present evidence  
7 demonstrating material facts are in dispute. *Atherton Condo. Ass'n v. Blume Dev. Co.*, 115 Wn.2d  
8 506, 516 (1990). The nonmoving party “may not rely merely upon allegations or self-serving  
9 statements, but must set forth specific facts showing there is a genuine issue for trial.” *Newton Ins.*  
10 *Agency & Brokerage v. Caledonian Ins. Grp.*, 114 Wn. App. 151, 157 (2002); *LaPlante*, 85 Wn.2d  
11 at 158. Factual issues may be decided on summary judgment “when reasonable minds could reach  
12 but one conclusion from the evidence presented.” *Van Dinter v. City of Kennewick*, 121 Wn.2d 38,  
13 47 (1993).

#### 14 **V. ARGUMENT AND AUTHORITY**

15 The OIC’s Order is amply justified and should be upheld. In this motion, OIC provides  
16 undisputed evidence that Alieria engaged in a myriad of conduct that violates the Insurance Code,  
17 Title 48 RCW: (1) Alieria violated RCW 48.17.060 by selling, soliciting or negotiating insurance  
18 in Washington state without a license; (2) Alieria represented Trinity, an unauthorized insurer that  
19 does not meet the criteria of a HCSM, in violation of RCW 48.15.020(2)(a); (3) Alieria violated  
20 RCW 48.44.015(1) by acting as a healthcare service contractor without first being registered with  
21 the Insurance Commissioner; (4) Alieria operated as a discount plan organization without first  
22 obtaining a license in violation of RCW 48.155.020(1); (5) Alieria made deceptive and misleading  
23 representations and advertisements in violation of RCW 48.30.040; and (6) Alieria violated  
24 Washington disability insurance advertising regulations WAC 284-50-050 and WAC 284-50-  
25 060. Further, Alieria’s claim to be a marketer and administrator for a health care sharing ministry,  
26 and thus benefit from the statutory safe harbor from insurance regulation under RCW 48.43.009,  
necessarily requires that Trinity be a valid HCSM. However, Trinity plainly does not meet the  
requirements of a HCSM under RCW 48.43.009, which incorporates by reference the definition  
found at 26 U.S.C. § 5000A. In its Consent Order, Trinity also agreed that the Insurance  
Commissioner “had cause to believe” that Trinity was not a valid HCSM and was transacting

1 unauthorized insurance. (Ex. 18, p. 4.) Reasonable minds cannot differ on these undisputed facts  
2 as applied to the plain language of the relevant statutory provisions. Accordingly, the OIC is  
3 entitled to judgment as a matter of law, and summary judgment should be granted in the OIC's  
4 favor.

#### 5 **A. Overview of OIC's Regulation of Unauthorized Insurers**

6 The Insurance Code, Title 48 RCW, vests the authority to regulate all insurance  
7 transactions in this state in the Insurance Commissioner. The Insurance Commissioner acts to  
8 protect the public interest. RCW 48.01.030 provides:

9 The business of insurance is one affected by the public interest, requiring that all  
10 persons be actuated by good faith, abstain from deception, and practice honesty and  
11 equity in all insurance matters. Upon the insurer, the insured, their providers and  
12 their representatives rests the duty of preserving inviolate the integrity of insurance.

13 The Insurance Commissioner must also execute his duties and enforce the provisions of  
14 the Insurance Code. *See* RCW 48.02.060(2). "All insurance and insurance transactions in this state,  
15 or affecting subjects located wholly or in part or to be performed within this state, and all persons  
16 having to do therewith, are governed by this code." RCW 48.01.020.

17 To protect the public in insurance matters, "the legislature created the office of Insurance  
18 Commissioner and conferred upon that office the duty of enforcing the provisions of the code."  
19 *Ins. Co. of N Am. v. Kueckelhan*, 70 Wn.2d 822, 831, 425 (1967). To fulfill its mandate, the  
20 Insurance Code vests the Insurance Commissioner with broad authority. *Nat'l Fed'n of Retired*  
21 *Persons, Inc. v. Ins'r Comm'r*, 120 Wn.2d 101, 109 (1992). The Insurance Commissioner "has the  
22 authority expressly conferred upon him by or reasonably implied from the provisions of the  
23 [Insurance Code]." *See* RCW 48.02.060(1); *Nat'l Fed'n of Retired Persons*, 120 Wn.2d at 109.

24 Unauthorized insurance strikes at the heart of insurance regulation. The Insurance Code  
25 prohibits an insurer that is not authorized by the Insurance Commissioner from soliciting insurance  
26 business or transacting insurance business in Washington. *See* RCW 48.05.030(1) (stating "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 commissioner."); RCW 48.15.020(1)  
(stating "An insurer that is not authorized by the [Insurance Commissioner] may not solicit  
insurance business in this state or transact insurance business in this state..."). The Insurance  
Commissioner has the duty to protect consumers and the public from being harmed by companies



1 who are not properly authorized by the Insurance Commissioner to transact insurance in  
2 Washington. For this type of misconduct, Legislators provided the Insurance Commissioner with  
3 cease and desist authority, RCW 48.02.080(3)(a) and RCW 48.15.023(5)(a)(i), broad fining  
4 authority of up to \$25,000 per violation, RCW 48.15.023(5)(a)(ii), and designated such knowing  
5 misconduct as a felony, RCW 48.15.023(3).

6 From a policy standpoint, these statutory penalties are stiff and warranted because  
7 unauthorized insurers cause substantial harm to consumers and the insurance industry, relative to  
8 other Insurance Code violations. Among many requirements, unauthorized insurers do not comply  
9 with the Insurance Code’s rate and form filing requirements, capital and surplus requirements, and  
10 prohibitions on unfair trade practices. Unauthorized insurers also avoid paying premium taxes,  
11 another important requirement of Washington insurers. Moreover, insurers that avoid regulation  
12 have an unfair advantage over insurers that comply with the Insurance Code and regulations.

13 **B. Alieria violated RCW 48.17.060 by selling, soliciting or negotiating insurance in  
14 Washington State without a license.**

15 1. The Alieria-Trinity products constitute unauthorized insurance.

16 The Insurance Commissioner has cause to find that Trinity insured members in  
17 Washington State, and that Alieria marketed, solicited, sold, and otherwise transacted such  
18 insurance products to Washington consumers. “Insurance is a contract whereby one undertakes  
19 to indemnify another or pay a specified amount upon determinable contingencies.” RCW  
20 48.01.040. As to the existence of an insurance contract, it is irrelevant that a contract asserts that  
21 it is not one of insurance. *McCarty v. King County Medical Serv. Corp.*, 26 Wn.2d 660, 684  
22 (1946) (citations omitted). “No one can change the nature of insurance business by declaring in  
23 the contract that it is not insurance.” *Id.*, at 684. Instead, courts must examine “[t]he real character  
24 of this promise, or of the act to be performed, cannot be concealed or changed by the use or  
25 absence of words in the contract itself; and it is wholly immaterial that on its face this contract  
26 does not expressly purport to be one of insurance, and that this word nowhere appears in it.” *Id.*  
(quotation omitted); *see also Commonwealth v. Reinhold*, 325 S.W.3d 272, 277-78 (Kentucky  
2010) (holding that an HCSM’s application created an insurance contract despite disclaimers);  
*Rowden v. Am. Evangelical Assoc.*, 2007 Mont. Dist. LEXIS 7 at \*11 (“What is said by a putative  
insurer as to whether it is transacting insurance is irrelevant.”); *Id.* (“It is not what Defendant and  
its [HCSM] programs say, but what Defendant and its programs do that determines whether or

not insurance is involved.”) (quoting *Bosch v. Christian Care Medi-Share* (Civ. 04-492, S.D. 2006)). Specifically, the nature of the contract, and “the examination of its contents,” aside from the terms used or omitted, determine whether a contract is one of insurance. *McCarty*, 26 Wn.2d at 684. A review of the promises made and the acts performed by Alieria and Trinity demonstrates that these entities are transacting insurance.

Here, despite the disclaimers contained throughout its informational brochure and medical guidelines, Trinity, through Alieria, offered Washington consumers coverage for determinable events. *See* RCW 48.01.040. Trinity’s products mirrored disability insurance products (as defined by RCW 48.11.030) because it undertook to indemnify a consumer or pay a specified amount upon a determinable contingency of bodily injury, sickness or other health-related matters. (*See* Ex. 20). Therefore, Trinity acted as an unauthorized insurer in Washington as defined by RCW 48.01.050.

The AlieriaCare Individual brochure for consumers is an instructive example. *Id.* at 1. This brochure prominently promotes and promises Telemedicine, Preventative & Primary Care, Labs & Diagnostics, and Urgent Care services without qualification or caveat anywhere on the same page. *Id.* For example, the brochure states that “[s]ervices within the scope of the nearest Urgent Care facility, including x-rays, are eligible for treatment.” *Id.* Also, it states that “[m]ost labs ordered by Primary Care Physicians (PCP) or Urgent Care facilities **are included in the monthly membership.**” *Id.* (emphasis added). The brochure further provides a detailed explanation of plan benefits, divided into Bronze, Silver, and Gold tiers, with network and non-network cost sharing amounts, which mirrors the form and function of an ACA-compliant insurance product. *Id.* at 8-10. For example, for the “Gold” plan, Alieria offered in-network primary care for \$20, specialty care for \$75, urgent care for \$75, and emergency room services for \$150. *Id.* at 10.

The Alieria Member Guides, which explain plan benefits to members, contain similar language that mirrors authorized insurance plans. (Ex. 21). Under the heading, Plan Services and Membership, Alieria explained that “the plans cover medical services recommended by the USPSTF and outlined in the ACA for preventive care.” *Id.* at 5. “There is zero out of pocket expense and zero obligation to reach the Member Shared Responsibility Amount (MSRA) for any scheduled preventive care service.” *Id.* Other promises included: “With an AlieriaCare Bronze, Silver, or Gold plan, members are eligible to receive chronic care management from their primary care physician for conditions such as diabetes, asthma, blood pressure, cardiac conditions, etc.”;

1 “Labs at in-network facilities are included”; “The AlierCare Bronze, Silver, or Gold prescription  
2 savings program delivers significant discounts for a variety of drugs (depending on prescription),  
3 saving members an average of 55% on prescription drug purchases” and “After \$1,500 of  
4 prescription drug expenditures through Rx Valet, members are eligible for a percentage of  
5 reimbursement for preferred and mail order drugs.” (Robbins Decl., p. 3-4; Ex. 21, p. 5).

6 Alieria at times explicitly described its products as “insurance.” In a communication to  
7 Washington brokers that was provided to the OIC, Alieria announced that “Alieria takes great pride  
8 in being one of the most broker-friendly health insurance providers in the industry.” (Ex. 16, p.  
9 2.) However, Alieria lacks any insurance producer license in Washington, though it does have  
10 licensure in other states. (Ex. 15, p. 1.) In the same communication, Alieria stated that:

11 “As of September 1, 2018, **Alieria Healthcare’s Group Insurance** and Individual  
12 Alternative plans will be available for sale through all licensed distribution and  
13 future partnering agencies in the state of Washington. ... the opportunities are  
14 significant for Alieria Healthcare in the **Group Insurance** market ... Whether  
15 you’re a business looking for **affordable ACA-compliant plans**, or an individual  
16 looking for ACA alternatives, Alieria Healthcare puts the power of choice back in  
17 your hands.”

18 (Ex. 16, p. 2) (emphasis added).

19 Alieria’s contracts with other entities refer to the products it markets as health plans, which  
20 are defined at RCW 48.43.005 and regulated by the OIC. For example, under Alieria’s Provider  
21 Network Services Agreement, “Covered Services means those medical, hospital and other health  
22 care services provided to Members that are payable under the terms of a Plan.” (Ex. 38, p. 2.)  
23 Further, as defined therein,

24 “Plan means a fully-insured health benefits plan, self-insured health benefits plan,  
25 or other health benefits plan, program, or policy administered, offered, insured or  
26 sponsored by an employer, union or other organization for which Entity serves as  
a third party administrator and through which Members receive access to the  
Network and Covered Services under a Program.”

*Id.* Additionally, “Member means a person eligible and entitled to received health benefits under  
a Plan.” *Id.*

Courts have found persuasive that HCSMs act, appear, and function as insurance  
companies. *See Reinhold*, 325 S.W.3d at 277-78. In practice, the memberships offered by Trinity  
and sold by Alieria operated as insurance products. The literature promises “Our U.S. board-  
certified family practitioners, pediatricians, and internists diagnose, treat, and write prescriptions

1 when necessary and are available 24/7/365 from anywhere in the world.” (Ex. 20, p. 1.) In order  
2 to become a member, consumers completed an application that detailed their medical history, and  
3 along with the application, submitted a payment. (Ex. 34.) Members paid a monthly sharing  
4 amount to obtain access to plan benefits, signing an agreement to do so and paying an initial fee.  
5 (Ex. 21, p. 16; see Ex. 20 and 34). Upon purchase of a product, members received an ID card that  
6 appears and functions like an insurance plan ID card. (Ex. 34, p. 8; Ex. 21, p. 10-13). The plan  
7 benefits included payment, in whole or in part, for the provision of health care services received  
8 by members. Members became eligible to receive said benefits upon the occurrence of certain  
9 defined events, and would submit a claim to Alera upon occurrence of such events of bodily  
10 injury, sickness or other health-related matters. (Ex. 21, p. 5, 10-14; Ex. 20, p. 1, 8-10). These  
11 elements for the consumer mirror those taken with an insurance company, and create a reasonable  
12 expectation by a consumer that Trinity operates as an insurance company and covers their medical  
13 expenses.

14 The substance of the promises and business models transacted by Alera and Trinity,  
15 which meet the definition of insurance found at RCW 48.01.040, outweigh any disclaimers found  
16 in the materials. RCW 48.01.040; *see McCarty*, 26 Wn.2d at 684; *see also Reinhold*, 325 S.W.3d  
17 at 277-78. As such, the Presiding Officer should analyze this case based on the character of the  
18 promise contained in Alera’s promotional materials and Trinity’s membership guidelines, which  
19 was to provide payment or indemnity coverage upon the occurrence of specified health  
20 conditions. The OIC respectfully requests that this tribunal find that the OIC had cause to issue  
21 the Order, and grant summary judgment to the OIC.

22 2. Alera solicited Trinity’s unauthorized insurance products.

23 Alera acted as an unlicensed insurance producer by soliciting insurance in Washington  
24 without a license, in violation of RCW 48.17.060(1), which provides that a person “shall not sell,  
25 solicit, or negotiate insurance in this state for any line or lines of insurance unless the person is  
26 licensed for that line of authority in accordance with this chapter.” Alera acknowledged it acted  
as a marketer for Trinity (Ex. 22, § 8) and provided a copy of its agreement with Trinity (Ex. 32),  
which outlined its responsibilities for that marketing. As a result, OIC has ample evidence of  
Alera soliciting Trinity’s unauthorized insurance products, including:

- Alieria’s website contains plan literature that is accessible to consumers, that encourages consumers to buy healthcare plans from Trinity. (*See* Ex. 2, p. 16) (pulling brochures, Ex. 9, p. 166-194, from Alieria’s website).
- In 2018, Alieria launched a digital advertising campaign that promoted their products, including Trinity, as the “Healthcare Coverage You Deserve at an Affordable Cost.” (Ex. 33, p. 3). On Facebook, it encourages consumers to apply – “Missed Open Enrollment? You Can Still Apply With Alieria.” *Id.* at 4.
- An Alieria executive, Chase Moses (“Moses”), made an appearance on a television show to encourage consumers to buy Trinity HCSM products through Alieria and demonstrated to the television audience how easy it was to purchase insurance from the Alieria website. (Ex. 30.)
- Materials from Alieria’s agent training portal, including audio recordings of Alieria agent training videos, as well as documents regarding Alieria training, educated prospective agents on the products so they could market them to consumers on Alieria’s behalf. (Ex. 9, p. 157, and Ex. 23-27).

These materials and Chase’s appearance meet the definition of “solicit” by (1) attempting to sell insurance products; and (2) asking or urging consumers to apply for a particular kind of insurance (healthcare plans) from a particular insurer (Trinity). *See* RCW 48.17.010(14). As a result, Alieria was in violation of RCW 48.17.060(1), and OIC should be granted summary judgment on this issue.

**C. Alieria represented an unauthorized insurer in violation of RCW 48.15.020(2)(a).**

In the same way, Alieria’s transaction of unauthorized insurance products on behalf of Trinity violates RCW 48.15.020(2)(a), which provides that a “person may not, in this state, represent an unauthorized insurer except as provided in this chapter.” It is indisputable that Alieria did not act as a duly authorized surplus line broker (which requires a license from the OIC) or otherwise comply with Chapter 48.15 RCW. (*See* Ex. 9, p. 4.) As Trinity transacts insurance but lacks any authorization from the Insurance Commissioner, it is an unauthorized insurer. (Ex. 4, p. 4.) Alieria represented Trinity in its solicitation, sale, and administration of these unauthorized insurance products, pursuant to the Management Agreement between Alieria and Trinity, explicitly acting on behalf of Trinity. (Ex. 32). Further, Alieria’s sale and solicitation of Trinity

1 products constituted representation of Trinity, an unauthorized insurer. As a result, Alera violated  
2 RCW 48.15.020(2)(a), and OIC is entitled to summary judgment on this additional issue.

3 **D. Trinity is not a valid health care sharing ministry.**

4 Alera transacted business on behalf an alleged HCSM that does not meet the basic  
5 requirements of a valid HCSM. The Insurance Code provides a carve-out from regulation for  
6 HCSMs that meet the criteria as provided by Federal law. Under RCW 48.43.009, “Health care  
7 sharing ministries are not . . . insurers as defined in RCW 48.01.050. . . . ‘[H]ealth care sharing  
8 ministry’ has the same meaning as in 26 U.S.C. § 5000A.” This federal statute, enacted as part of  
9 the Affordable Care Act, provided religious exemptions to the individual mandate for members  
10 of HCSMs. *See Liberty Univ., Inc. v. Lew*, 733 F.3d 72, 84 (4th Cir. 2013). In order to qualify for  
11 this exemption, individuals had to be members of HCSMs, *Id.*, which must meet the following  
12 criteria:

13 [T]he term ‘health care sharing ministry’ means an organization—

14 (I) which is described in section 501(c)(3) and is exempt from taxation  
15 under section 501(a),

16 (II) members of which share a common set of ethical or religious beliefs  
17 and share medical expenses among members in accordance with those beliefs and  
18 without regard to the State in which a member resides or is employed,

(III) members of which retain membership even after they develop a  
19 medical condition,

(IV) which (or a predecessor of which) has been in existence at all times  
20 since December 31, 1999, and medical expenses of its members have been shared  
21 continuously and without interruption since at least December 31, 1999, and

(V) which conducts an annual audit which is performed by an independent  
22 certified public accounting firm in accordance with generally accepted accounting  
23 principles and which is made available to the public upon request.

24 26 U.S.C. § 5000A(d)(2)(B). Trinity does not meet the second, fourth, and fifth prongs required  
25 for HCSMs. Trinity is not entitled to the safe harbor afforded to HCSMs under RCW 48.43.009,  
26 and, because the transactions at issue meet the definition of insurance found at RCW 48.01.040,  
it is therefore acting as an unauthorized insurer in Washington. Alera has in turn solicited and  
sold unauthorized insurance products in Washington, and represented the unauthorized insurer,  
Trinity, violating RCW 48.17.060(1) and RCW 48.15.020(2), respectively. As a result, the Order  
is justified, and summary judgment should be granted to the OIC.

**i. Trinity and any predecessors were not in existence at all times since December 31, 1999.**

Trinity does not meet the fourth prong of the HCSM criteria. Under the federal statute, “the organization (or a predecessor of which) must have 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.” 26 U.S.C. § 5000A(d)(2)(B)(IV).

Trinity fails to meet the definition and requirements of a HCSM, which are specifically incorporated by RCW 48.43.009. *See* 26 U.S.C. § 5000A(d)(2)(B). Trinity was formed as a domestic Delaware entity on June 27, 2018. (Ex. 9, p. 421). The Management and Administration Agreement between Trinity and Alera recognized that Trinity was starting from scratch and had no members. (Ex. 32, p. 1.) It is undisputable that the Trinity corporate entity was not an organization in existence at all times since December 31, 1999. Therefore, it is clear that Trinity failed to meet 26 U.S.C. § 5000A(d)(2)(B)(IV).

Trinity also lacks any valid predecessor entity with HCSM status. The term “predecessor” is undefined in 26 U.S.C. § 5000A(d)(2)(B). However, in relation to corporations, the terms “predecessor” and its “successor” are used when one corporation has acquired the assets of another. *See, e.g., Payne v. Saberhagen Holdings, Inc.*, 147 Wn. App. 17, 35 (2008). Further, the Federal Insurance Contributions Act uses the term “predecessor” for an employer whose property was substantially acquired. *See* 26 U.S.C. § 3121(a)(1). This statute discusses the predecessor-successor rule for employer contributions to federal insurance programs. This provision, found in the same Title of the United States Code, provides a helpful analogy to 26 U.S.C. § 5000A and may assist in its interpretation. Also, Washington’s Business and Occupation Tax statute defines “successor” as the following:

- (a) Any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer’s business, more than fifty percent of the fair market value of either the (i) tangible assets or (ii) intangible assets of the taxpayer;
- or
- (b) A surviving corporation of a statutory merger.

RCW 82.04.180(1). A successor is liable for a predecessor’s taxes. *See, e.g. Palmer v. Dep’t of Revenue*, 82 Wn. App. 367 (1996) (finding appellant taxpayer was not a successor under RCW 82.04.180 as there was no sale or conveyance and therefore, not liable for taxes). As tax-

1 exempt status is key to the definition of HCSMs, these authorities are useful by analogy to  
2 understand that Trinity cannot count an organization as a predecessor unless assets and liabilities  
3 were, at minimum, substantially acquired by Trinity.

4 Trinity appears to implicitly recognize the lack of a valid predecessor. In a response to  
5 OIC's investigation, Trinity admitted that "Trinity's predecessor church association does not have  
6 a rigid corporate form." (Ex. 18, p. 3.) However, the plain language of 26 U.S.C. §  
7 5000A(d)(2)(B) requires "an organization" – i.e., a specific legal entity – to meet its requirements.  
8 Trinity did not – and cannot – identify a predecessor organization whose assets were obtained by  
9 Trinity, as Trinity was created without assets or members by Alera in 2018. (Ex. 32.)

10 In an attempt to skirt the effect of the plain language cutoff date in 26 U.S.C. §  
11 5000A(d)(2)(B), Alera and Trinity made several meritless arguments regarding the application  
12 of the 1999 cutoff date during the OIC's investigation. The primary assertion is that the  
13 predecessor of Trinity is the "Baptist association of churches, formally in existence since the early  
14 1600's, has provided for the health care needs of association members as a predecessor of  
15 Trinity." (Ex. 18, p. 3.) However, an application of the cutoff date to the organization's religion  
16 is contrary to a plain reading of the statute, which requires the organization to be a 501(c)(3)  
17 organization and in existence since December 31, 1999. 26 U.S.C. § 5000A(d)(2)(B)(I) and (IV);  
18 *see also Liberty Univ., Inc. v. Lew*, 733 F.3d 72, 86 (4th Cir. 2013) (applying the cutoff date to  
19 the educational institution, not Christianity). Attempting to use the broad faith tradition of certain  
20 Baptist churches, which have no corporate or other legal entity connection to Trinity, renders  
21 meaningless the plain language of the statute, which requires that a specific organization meet the  
22 various elements of 26 U.S.C. § 5000A(d)(2)(B).

23 As Trinity does not meet the 1999 cutoff date, the Presiding Officer should grant OIC's  
24 Motion for Summary Judgment.

25 **ii. Trinity as an organization has not shared the medical expenses of its members  
26 continuously and without interruption since December 31, 1999.**

Trinity fails to meet the fourth prong of the HCSM criteria for a second reason: Trinity  
has not shared the medical expenses of its members continuously and without interruption since  
December 31, 1999. Trinity has only been in existence since June 27, 2018, a clearly insufficient  
amount of time. (Ex. 32.) Neither Alera nor Trinity have ever identified a specific corporate  
entity amongst any alleged predecessors that was in existence on or before December 31, 1999.



1 (See Ex. 18, p. 3.) Based on a plain reading of the statute, there must be continuity in the sharing  
2 of medical expenses. On the contrary, Alieria-Trinity members have only shared medical expenses  
3 since the inception date of the agreement between Alieria and Trinity on June 27, 2018. It is  
4 undisputed that Trinity had no members prior to the agreement. (Ex. 32.) For this additional  
5 reason, Trinity does not qualify as a HCSM and OIC should be granted summary judgment.

6 **iii. Trinity’s members do not share a common set of ethical or religious beliefs**

7 Trinity also fails to meet the second prong of the HCSM criteria, which plainly requires  
8 in relevant part that members of the HCSM organization must share “a common set of ethical or  
9 religious beliefs.” Trinity’s “Statement of Faith” to which it required all members to agree are  
10 substantially and materially different than the more generic “Faith Statements” it allowed Alieria  
11 to market to potential consumers. (*Compare* Ex. 18, p. 13 *with* Ex. 34, p. 4.) Therefore Trinity  
12 did not meet 26 U.S.C. § 5000A(d)(2)(B)(II), which requires that members of a HCSM “share a  
13 common set of ethical or religious beliefs and share medical expenses among members in  
14 accordance with those beliefs.” Trinity fails to meet the common belief criteria for the HCSM  
15 safe harbor, and therefore, the OIC should be granted summary judgment on this issue.

16 **iv. Trinity did not conduct annual audits that could be made available to the public**  
17 **upon request.**

18 Trinity also fails the fifth prong of the HCSM criteria. In order to qualify as an HCSM, an  
19 organization must conduct an annual audit which is performed by an independent certified public  
20 accounting firm in accordance with generally accepted accounting principles, and is made  
21 available to the public upon request. 26 U.S.C. § 5000A(d)(2)(B)(V). Trinity failed to comply  
22 with this requirement. In response to OIC’s investigation, Alieria admitted that Trinity had not  
23 undergone any financial audits. (Exhibit 22, p. 4.) Trinity fails to meet the audit criteria set for  
24 the HCSM safe harbor, and therefore, the OIC should be granted summary judgment on this issue.

25 **E. Even if the Trinity products are not insurance, Alieria violated RCW 48.44.015(1)**  
26 **by acting as a healthcare service contractor without first being registered with**  
**the Insurance Commissioner.**

The OIC believes that it is clear that the Trinity products sold and solicited by Alieria are  
insurance, as discussed above. However, even if the Presiding Officer finds otherwise, Alieria is  
still operating as an unregistered health care service contractor, and therefore subject to the OIC’s  
regulation. “A person may not in this state, by mail or otherwise, act as or hold himself or herself

1 out to be a health care service contractor, as defined in RCW 48.44.010 without first being  
2 registered with the commissioner.” RCW 48.44.015(1).

3 “ ‘Health care service contractor’ means any corporation, cooperative group, or  
4 association, which is sponsored by or otherwise intimately connected with a  
5 provider or group of providers, who or which not otherwise being engaged in the  
6 insurance business, **accepts prepayment for health care services from or for the  
7 benefit of persons or groups of persons as consideration for providing such  
8 persons with any health care services.**”

9 RCW 48.44.010(9) (emphasis added). It is undisputable that Alieria collects monies from its  
10 members (prepayment) as consideration for providing health care services for its members  
11 through its network of preferred providers. (Ex. 21, p. 16 (“Financial Participation”); *see also*  
12 Exs. 20 and 34). Alieria also referred to its “Provider Networks” in its plan materials, and is a  
13 corporation. Alieria’s HCSM plans include access to nationwide network providers through First  
14 Choice Health Network. Ex. 38. Under Alieria’s Provider Network Services Agreement, “Covered  
15 Services means those medical, hospital and other health care services provided to Members that  
16 are payable under the terms of a Plan.” (Ex. 38, p. 2.) Further, as defined therein,

17 “Plan means a fully-insured health benefits plan, self-insured health benefits plan,  
18 or other health benefits plan, program, or policy administered, offered, insured or  
19 sponsored by an employer, union or other organization for which Entity serves as  
20 a third party administrator and through which Members receive access to the  
21 Network and Covered Services under a Program.”

22 *Id.* Additionally, “Member means a person eligible and entitled to received health benefits under  
23 a Plan.” *Id.* Therefore, if Alieria is found to not have transacted insurance in Washington, it still  
24 acted as an unregistered health care service contractor, justifying the Order in this matter. OIC is  
25 entitled to summary judgment on this alternative issue.

26 **F. Alieria operated as a discount plan organization without first obtaining a license  
in violation of RCW 48.155.020(1).**

Further, Alieria has operated as a discount plan organization without obtaining the license  
required under RCW 48.155.020(1). “ ‘Discount plan organization’ means a person that, in  
**exchange for fees, dues, charges, or other consideration, provides or purports to provide  
access to discounts to its members on charges by providers for health care services.**” RCW  
48.155.010(5)(a) (emphasis added). “ ‘Discount plan organization’ also means a person or  
organization that **contracts with providers, provider networks, or other discount plan**

1 **organizations to offer discounts on health care services to its members.”** *Id.* Health carriers  
2 *authorized* by the Insurance Commissioner are exempt from this requirement, but as Alieria and  
3 Trinity both lack any authorization under Title 48 RCW, this exemption is not relevant. *See* RCW  
4 48.155.010(4)(a)(iv).

5 Alieria entered into a contract with Rx-Valet to offer its customers prescriptions at a  
6 discounted rate. (Ex. 21, p. 5) (The . . . prescription savings program delivers significant discounts  
7 for a variety of drugs (depending on prescription), saving members an average of 55% on  
8 prescription drug purchases.”). The RX Valet contract included a price reduction in the aggregate.  
9 (Ex. 37 at 6.) Members paid Alieria for access to these discounts. (*See* Ex. 34, p. 6-8.) Accordingly,  
10 under the plain language of Chapter 48.155 RCW, Alieria acted as an unauthorized discount plan  
11 organization, and the OIC is entitled to summary judgment on this issue.

12 **G. Alieria made deceptive and misleading representations and advertisements in  
13 violation of RCW 48.30.040.**

14 Alieria’s advertisements and marketing repeatedly obfuscated the true nature of its  
15 insurance products, in violation of RCW 48.30.040. This statute prohibits a producer from  
16 knowingly making, publishing or disseminating deceptive or misleading representations or  
17 advertisements in the conduct of and relative to the business of insurance, and relative to persons  
18 engaged therein. RCW 48.30.040. Alieria is a licensed insurance producer in several states,  
19 although not in Washington. (Ex. 15.) Therefore, Alieria should know what is, and what is not,  
20 insurance.

21 In the course of marketing these HCSMs, Alieria’s promotions left the impression upon  
22 the consumer that they were purchasing an affordable insurance product that offered ACA  
23 protections. In a communication to Washington brokers, Alieria announced that “Alieria takes  
24 great pride in being one of the most broker-friendly health insurance providers in the industry.”  
25 (Ex. 16, p. 2.) In the same communication, Alieria stated that:

26 “As of September 1, 2018, **Alieria Healthcare’s Group Insurance** and Individual  
Alternative plans will be available for sale through all licensed distribution and  
future partnering agencies in the state of Washington. . . . the opportunities are  
significant for Alieria Healthcare in the **Group Insurance** market . . . Whether  
you’re a business looking for **affordable ACA-compliant plans**, or an individual  
looking for ACA alternatives, Alieria Healthcare puts the power of choice back in  
your hands.”

1 *Id.* at 2 (emphasis added). In 2018, Alieria launched a digital advertising campaign that promoted  
2 their products as the “Healthcare Coverage You Deserve at an Affordable Cost.” (Ex. 33, p. 3.  
3 On Facebook, it encourages consumers to apply – “Missed Open Enrollment? You Can Still  
4 Apply With Alieria.” *Id.* at 4. Alieria’s plan literature mirrors that of ACA-compliant plans,  
5 offering Bronze, Silver, or Gold tiers. (Ex. 20, p. 8-10.) Member guides offer “medical services  
6 ... outlined in the ACA for preventive care,” (Ex. 21, p. 5), and members receive an illustrated  
7 comparison of “cost-sharing” requirements between “network” and “non-network” care. (Ex. 20,  
8 p. 8-10.)

9 Further, Alieria’s consumer advertisements and member guides include common insurance  
10 terms that deceive consumers into believing they are purchasing healthcare insurance. For  
11 example, product offerings include Catastrophic, Standard, Interim, and Comprehensive plans.  
12 (Ex. 20.) Member guides defined terms include Usual, Customary and Reasonable (UCR)  
13 charges. (Ex. 21, p. 21.) Alieria’s use of insurance producers to sell its products aided in the  
14 impression upon consumers that they were buying regular insurance. (*See* Ex. 5, p. 1; Ex. 7, p. 1;  
15 Ex. 8, p. 1.)

16 Alieria’s brochures did not make the nature of HCSMs clear, often failing to refer to a  
17 required Statement of Faith. (*See* Ex. 20; *see also* Ex. 33). And at least one consumer does not  
18 recall being asked to sign one. (*See* Ex. 10, p. 2) (“Alieria and the agent never said I had to agree  
19 to religious or ethical caveats in order to buy the plan. It would have been hilarious if they had,  
20 because I am a pagan”).

21 Consumers’ understanding of the products they purchased from Alieria reflect Alieria’s  
22 misleading solicitation. Randy Overturf needed health insurance and believed he was buying an  
23 insurance plan from an insurance producer. (Ex. 5, p. 1.) The producer recommended Alieria,  
24 because he was unemployed at the time and needed the cheapest coverage he could get. *Id.* Gail  
25 Volkert also thought she was purchasing insurance for the lowest price. (Ex. 6, p. 1-2.) Lori  
26 Grentz bought Alieria “because of the price.” (Ex. 7, p. 1.) She believed that Alieria would cover  
some portion of her medical bills. *Id.* at 2. She purchased a plan wherein, Alieria would pay 70%  
and she was responsible for the remaining 30%. *Id.* After a surgery, Alieria denied her bill on the  
account that she was living an “unhealthy lifestyle.” *Id.* at 6.

Alieria’s agent training videos are also misleading. Ex. 23 does not mention any religious  
elements or requirements despite being focused on Trinity HCSM products. Ex. 24 speaks about

1 “healthcare membership that provides you the minimum essential coverage required by the  
2 affordable care act,” even though genuine HCSMs are an exception to ACA requirements, not  
3 insurance that meets ACA requirements, and again fail to mention any specific religious  
4 requirements. Ex. 27 claims that Alieria’s alleged HCSM product “not only mirrors traditional  
5 insurance, but truly provide comprehensive healthcare for an individual.” *Id.* The video graphics  
6 state that the product is “comparable with traditional insurance plans” and the video further uses  
7 typical disability insurance terms such as “comprehensive coverage,” “short-term medical,” and  
8 “individual market.” *Id.* These claims are entirely inconsistent with Alieria’s position that cost-  
9 sharing is voluntary and not an insurance contract. (*See, e.g.,* Ex. 21, p. 4.) Both claims cannot be  
10 true at the same time. The effect of these advertising violations was to confuse consumers,  
11 highlighting the need for these regulations to exist and be enforced. Summary judgment should be  
12 granted to the OIC on this issue as well.

13 **H. Alieria violated Washington disability insurance advertising regulations in WAC**  
14 **284-50-050 and WAC 284-50-060.**

15 As discussed above, the Trinity products that Alieria sold and solicited are insurance  
16 products that predominantly cover health care services as defined in RCW 48.43.005(25).  
17 Accordingly, they are disability insurance products. *See* WAC 284-50-030(2). Washington  
18 regulations govern advertisements for disability insurance products. WAC 284-50-020(1); WAC  
19 284-50-030(1)-(3); *see* RCW 48.01.040 *and* RCW 48.01.050. Advertisements must be  
20 “sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or  
21 deceive,” judged by “the overall impression that the advertisement may be reasonably expected  
22 to create upon a person of average education or intelligence.” WAC 284-50-050(1).  
23 “Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases,  
24 the meaning of which is clear only by implication or by familiarity with insurance terminology,  
25 shall not be used.” WAC 284-50-050(2). No advertisement is allowed that has “the capacity,  
26 tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the  
nature or extent of any policy benefit payable, loss covered, or premium payable” or “exaggerates  
any benefits beyond the terms of the policy.” WAC 284-50-060(1)-(2).

As discussed above, Alieria’s marketing and advertisements had a tendency to mislead  
insurance consumers and the public as to the nature of its products. Even if the Presiding Officer  
disagrees that Alieria “knowingly” misled consumers about the Trinity products, despite Alieria’s

1 producer license in states other than Washington, it is clear that Alera’s advertisements both had  
2 the capacity and tendency to mislead consumers, and did in fact mislead consumers. OIC is  
3 entitled to summary judgment on this issue as well.

4 **VI. CONCLUSION**

5 Alera cannot dispute its role as a marketer for Trinity and the marketing materials it used  
6 to promote Trinity. Based on these undisputed facts, it is clear that Alera and Trinity, at  
7 minimum, transacted unauthorized insurance in the state of Washington. Further, Trinity does not  
8 qualify as a valid HCSM under RCW 48.43.009 (and 26 U.S.C. § 5000A(d)(2)(B)) for a number  
9 of reasons, but primarily because 1) neither Trinity, nor any other organization it can identify as  
10 a predecessor, has existed continuously since December 31, 1999, and 2) Trinity’s members do  
11 not share a common set of ethical or religious beliefs. The latter point is particularly true because  
12 Alera communicated a statement of faith to consumers that was highly distinct from that found  
13 in Trinity’s founding documents, and also because Alera’s marketing minimized the religious  
14 element of these allegedly religious products. Alera’s marketing further mislead and had the  
15 tendency to mislead consumers into believing they were purchasing ACA-compliant insurance  
16 products, while at the same time attempting to take advantage of the ACA exemption of HCSMs  
17 from state insurance regulation. Consumers were deceived as to the nature of the products they  
18 had purchased, and were financially harmed as a result. The uncontroverted evidence shows that  
19 Alera and Trinity violated the Insurance Code. As a result, summary judgment upholding the  
20 Order should be granted to the OIC.

21 DATED this 16th day of September, 2020.

22 /s/ Darryl E. Colman  
23 Darryl E. Colman  
24 Attorney Manager  
25 Legal Affairs Division  
26

CERTIFICATE OF MAILING

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

5           On the date given below I caused to be served the foregoing OIC’S MOTION FOR  
6 SUMMARY JUDGMENT, DECLARATION OF TYLER ROBBINS, AND SUPPORTING  
7 EXHIBITS 1 – 38 (EXHIBITS 31 – 38 ARE SUBJECT A PROTECTIVE ORFER) on the  
8 following individuals in the manner indicated:

9 10 11 12 <i>By email</i>	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 Eric Neiman, Counsel for Alieria Lewis Brisbois Bisgaard & Smith 888 SW Fifth Avenue, Suite 900 Portland, OR 97204 Eric.Neiman@lewisbrisbois.com  <i>By email and via Secure File Transfer per electronic service agreement.</i>
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13 **SIGNED** this 18<sup>th</sup> day of September, 2020 at Tumwater, Washington.

14  
15           Christine M. Tribe  
16 Christine M. Tribe  
17 Paralegal  
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