

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

Docket No. 19-0251

ALIERA HEALTHCARE INC.,

Respondent.

OIC’S REPLY IN SUPPORT OF
OIC’S MOTION FOR SUMMARY
JUDGMENT AND IN
OPPOSITION TO ALIERA’S
MOTION FOR SUMMARY
JUDGMENT

I. RELIEF REQUESTED

The Washington State Office of the Insurance Commissioner (“OIC” or “Insurance Commissioner”) submits this Reply in support of OIC’s motion for summary judgment and in opposition to Alieria Healthcare Inc. (“Alieria”)’s motion for summary judgment. The undisputed facts and applicable authorities demonstrate that Alieria transacted insurance on behalf of Trinity HealthShare, Inc. (“Trinity”), violating the Insurance Code, and authorizing the OIC to take enforcement action against Alieria. Those same facts and authorities make clear that the exemption from insurance regulation for health care sharing ministries (“HCSMs”) does not apply to Trinity. Therefore, the OIC is entitled to judgment as a matter of law. The OIC respectfully requests that the Presiding Officer grant OIC’s motion for summary judgment, deny Alieria’s motion for summary judgment, and issue a final order upholding the OIC’s Cease and Desist Order (“Order”) in this matter.

This motion is based on all documents in the record in this case and, in particular, the Declaration of Tyler Robbins in Support of OIC’s Motion for Summary Judgment (“Robbins Declaration”) and exhibits thereto, OIC’s Motion for Summary Judgment (“OIC Motion”), and OIC’s Response to Alieria’s Motion for Summary Judgment (“OIC Response”), each previously filed in this matter and incorporated herein by reference to avoid unnecessary repetition. Unless

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specifically identified otherwise, all references to Exhibits refer to Exhibits to the Robbins Declaration, previously filed in this matter.

II. FACTS

The undisputed material facts of this matter are set forth in full within OIC’s Motion, OIC’s Response, Robbins Declaration, and exhibits thereto, all of which are incorporated in this response by reference. They will not be further repeated here, except as useful to rebut Alier’s argument.

III. LEGAL STANDARD

In administrative adjudications, summary judgment procedure is governed by WAC 10-08-135. The rule provides: “A motion for summary judgment may be granted and an order issued 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).

The burden is on the moving party to demonstrate there is no genuine issue of material fact and, as a matter of law, summary judgment is proper. *Jacobsen*, 89 Wn.2d at 108. If the moving party satisfies its burden, then the nonmoving party must present evidence demonstrating material facts are in dispute. *Atherton Condo. Ass’n v. Blume Dev. Co.*, 115 Wn.2d 506, 516 (1990). The nonmoving party “may not rely merely upon allegations or self-serving statements, but must set forth specific facts showing there is a genuine issue for trial.” *Newton Ins. Agency & Brokerage v. Caledonian Ins. Grp.*, 114 Wn. App. 151, 157 (2002); *LaPlante*, 85 Wn.2d at 158. Factual issues may be decided on summary judgment “when reasonable minds could reach but one conclusion from the evidence presented.” *Van Dinter v. City of Kennewick*, 121 Wn.2d 38, 47 (1993).

IV. ARGUMENT AND AUTHORITY

The applicable law and undisputed facts make it clear that Alier transacted insurance within the meaning of RCW 48.01.040 when it marketed and sold Trinity’s HCSM products to Washington consumers. Trinity, in turn, cannot qualify as a HCSM, in particular because neither it nor any specific predecessor was in existence on or before December 31, 1999, nor continuously sharing medical expenses since that time. As a result, the OIC was authorized to issue the Order

1 to Cease and Desist in response to Alieria’s many violations of the Insurance Code, such as RCW
2 48.17.060 (selling, soliciting or negotiating insurance in Washington State without a license);
3 RCW 48.15.020(2)(a) (representing Trinity, an unauthorized insurer); RCW 48.44.015(1) (acting
4 as a healthcare service contractor without first being registered); RCW 48.155.020(1) (operating
5 as a discount plan organization without license); RCW 48.30.040 (deceptive and misleading
6 representations and advertisements); and WAC 284-50-050 and WAC 284-50-060 (overall
7 impression of advertisement must be “sufficiently complete and clear to avoid deception or the
8 capacity or tendency to mislead or deceive”). The facts that give rise to these violations are
9 beyond reasonable dispute, and thus OIC’s motion for summary judgment should be granted and
10 OIC’s Order upheld as a matter of law.

11 **A. Alieria is engaged in the business of insurance.**

12 Alieria undisputedly engaged in the business of insurance, subjecting itself to the OIC’s
13 jurisdiction and authority for all questions in this matter. Clear statutory provisions govern
14 insurance transactions in Washington. “All insurance and insurance transactions in this state, or
15 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. The Insurance Commissioner
17 “has the authority expressly conferred upon him by or reasonably implied from the provisions of
18 the [Insurance Code].” RCW 48.02.060(1). The Insurance Commissioner must also execute his
19 duties and enforce the provisions of the Insurance Code. *See* RCW 48.02.060(2). This is a broad
20 grant of authority that the OIC has appropriately utilized to determine that Alieria (and Trinity)
21 unlawfully transacted insurance business. *Nat’l Fed’n of Retired Persons, Inc. v. Ins’r Comm’r*,
22 120 Wn.2d 101, 109 (1992).

23 1. **The applicable definition of insurance is found exclusively in Washington law.**

24 The definition of insurance in Washington State is exclusively found in RCW 48.01.040
25 and case law applying that statute. While other authorities can at times be helpful and persuasive,
26 they cannot add or subtract terms from the plain language of the statute. “Insurance is a contract
whereby one undertakes to indemnify another or pay a specified amount upon determinable
contingencies.” RCW 48.01.040. “Specified amount” and “determinable contingency” are not
defined by statute. “In the absence of such a definition, statutory construction requires that we

1 give undefined words their common and ordinary meaning. To ascertain this meaning, we may
2 use a dictionary.” *Vance v. Dep’t of Ret. Sys.*, 114 Wn. App. 572, 577 (2002) (citations omitted).

3 In pertinent part, Merriam-Webster defines “specify” as: “to name or state explicitly or in
4 detail.”¹ Merriam-Webster defines “amount” (the noun) as:

- 5 1. a. The total number or quantity; aggregate;
- 6 b. The quantity at hand or under consideration;
- 7 2. The whole effect, significance, or import;
- 8 3. Accounting: a principal sum and interest on it.²

9 Merriam-Webster defines “determinable” as “capable of being determined, definitely
10 ascertained, or decided upon.”³ Merriam-Webster defines “contingency” in pertinent part:

- 11 1. A contingent event or condition: such as
- 12 a. An event (such as an emergency) that may but is not certain to occur;
- 13 b. Something liable to happen as an adjunct to or result of something else.⁴

14 These dictionary definitions, as applied to RCW 48.01.040, make it clear that Alera has
15 transacted insurance and thus is subject to OIC’s jurisdiction, as discussed more fully in OIC’s
16 Motion.

17 2. Alera’s Trinity products were insurance.

18 Here, the undisputed evidence demonstrates that Alera’s HCSM products from Trinity
19 were insurance under the plain language of the insurance code. *See also Commonwealth v.*
20 *Reinhold*, 325 S.W.3d 272, 277-78 (Kentucky 2010) (holding that a HCSM’s application created
21 an insurance contract despite disclaimers). In practice, the memberships offered by Trinity and
22 sold by Alera operated as insurance products. In order to become a member, consumers
23 completed an application that detailed their medical history, and along with the application,
24 submitted a payment. (Ex. 34.) Members paid a monthly sharing amount to obtain access to plan
25 benefits, signing an agreement to do so, and paying an initial fee. (Ex. 21, p. 16; see Ex. 20 and
26

¹ “Specify.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <http://www.merriam-webster.com/dictionary/specify>. Accessed 8 Oct. 2020.

² “Amount.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/amount>. Accessed 8 Oct. 2020.

³ “Determinable.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/determinable>. Accessed 8 Oct. 2020.

⁴ “Contingency.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/contingency>. Accessed 8 Oct. 2020.

34). Upon purchase of a product, members received an ID card that appears and functions like an insurance plan ID card. (Ex. 34, p. 8; Ex. 21, p. 10-13). The plan benefits included payment, in whole or in part, for the provision of health care services received by members. Members became eligible to receive said benefits upon the occurrence of certain defined events, and would submit a claim to Alera upon occurrence of such events of bodily injury, sickness or other health-related matters. (Ex. 21, p. 5, 10-14; Ex. 20, p. 1, 8-10). These elements for the consumer mirror those taken with an insurance company and fall within the plain language of RCW 48.01.040.

Alera asserts that participation in the Trinity membership was voluntary on behalf of its members, and thus is not insurance. However, this misrepresents how the Trinity memberships actually work. Under this system, members are not the ultimate decision makers about whether sharing happens on a given claim. In order for members to participate, they must pay a monthly premium. (Ex. 21, p. 16; *see also* Ex. 20 and 34). This forms a contractual relationship wherein members pay for the right to have their health care expenses covered in the future upon the occurrence of some defined event. See RCW 48.01.040. Further, Alera’s own Declaration of Mr. Paul’s Declaration states plainly that:

“Share requests for member’s medical expenses are received from providers, and **Alera, on behalf of Trinity, reviews these requests in accordance with the member guidelines. Payments of any eligible share requests are made after approval by Trinity**, and eligible payments are made directly to the providers.”

(Paul Declaration, p. 2, para. 4) (emphasis added). Mr. Paul further explains that “Trinity also makes the final decision regarding any dispute or appeal concerning member-sharing eligibility.” (Paul Declaration, p. 2, para. 5.)

The only voluntary actions by Trinity members were choosing to purchase a membership and choosing to submit a share request. However, these actions are no more different, nor “voluntary,” than a purchaser of an authorized insurance product who selects a policy and then later submits a claim for payment if a covered occurrence arises. Choosing an insurance product and choosing to exercise a member’s rights under that product does not negate its nature as insurance.

Thus, Alera has failed to rebut OIC’s evidence that its products functioned as insurance; in fact, Alera’s own declaration makes clear that the Trinity products were paid upon

determinable contingencies according to the member guidelines, and not on a purely voluntary basis by individual members. OIC should be granted summary judgment on this issue.

Contrary to Alera’s argument, OIC has not conflated the issue of whether 1) the Trinity products solicited and sold by Alera are insurance, with 2) whether Trinity is not a valid HCSM. These are separate issues that OIC has proven separately. However, many courts in other jurisdictions have found that HCSMs are acting as insurers. *See Commonwealth v. Reinhold*, 325 S.W.3d 272, 277-78 (Kentucky 2010) (holding that a 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)). That a HCSM’s business model can be identical to that of an insurance company is likely why the Legislature found the need to enact the exemption found in RCW 48.43.009, as otherwise there would be no need for the exemption. At the same time, this similarity or identity to an insurer’s operations makes it imperative that only those entities that are entitled to the exemption receive it. Trinity does not meet this exemption under the plain language adopted by the Legislature from federal statute, as discussed more fully below.

B. Trinity does not qualify as a HCSM.

Under RCW 48.43.009, “Health care sharing ministries are not . . . insurers as defined in RCW 48.01.050. . . . ‘[H]ealth care sharing ministry’ has the same meaning as in 26 U.S.C. § 5000A.” 26 U.S.C. § 5000A was enacted as part of the Affordable Care Act, and provided religious exemptions to the individual mandate for members of HCSMs. *See Liberty Univ., Inc. v. Lew*, 733 F.3d 72, 84 (4th Cir. 2013). However, this matter does not concern an individual’s entitlement to the individual mandate, which was in any event repealed by Congress in 2018. Instead, this litigation concerns whether an entity is able to claim the exemption from insurance regulation that is provided for valid HCSMs under RCW 48.43.009.

The only relevance that 26 U.S.C. § 5000A has to this matter is the language it provides which was incorporated by the Washington Legislature so that the OIC would have meaningful criteria to enforce RCW 48.43.009, pursuant to the OIC’s statutory mandate. *See* RCW 48.01.020;

1 *see also* RCW 48.02.060. The relevant language incorporated by reference by RCW 48.43.009 is
2 as follows:

3 [T]he term ‘health care sharing ministry’ means an organization—
4 (I) which is described in section 501(c)(3) and is exempt from taxation under
5 section 501(a),
6 (II) members of which share a common set of ethical or religious beliefs and share
7 medical expenses among members in accordance with those beliefs and without
8 regard to the State in which a member resides or is employed,
9 (III) members of which retain membership even after they develop a medical
10 condition,
11 (IV) which (or a predecessor of which) has been in existence at all times since
12 December 31, 1999, and medical expenses of its members have been shared
13 continuously and without interruption since at least December 31, 1999, and
14 (V) which conducts an annual audit which is performed by an independent certified
15 public accounting firm in accordance with generally accepted accounting principles
16 and which is made available to the public upon request.

17 26 U.S.C. § 5000A(d)(2)(B). Trinity does not meet the second, fourth, and fifth prongs
18 required for HCSMs.

19 Trinity does not meet the fourth prong of the HCSM criteria, which requires that “the
20 organization (or a predecessor of which) must have been in existence at all times since December
21 31, 1999, and medical expenses of its members have been shared continuously and without
22 interruption since at least December 31, 1999.” 26 U.S.C. § 5000A(d)(2)(B)(IV). Trinity was
23 formed as a domestic Delaware entity on June 27, 2018. (Ex. 9, p. 421). The Management and
24 Administration Agreement between Trinity and Alera recognized that Trinity was starting from
25 scratch and had no members. (Ex. 32, p. 1.) It is undisputable that the Trinity corporate entity was
26 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. The term “predecessor” is undefined in 26
U.S.C. § 5000A(d)(2)(B). Merriam Webster defines “predecessor” as “one that precedes
especially: a person who has previously occupied a position or office to which another has
succeeded.”⁵ This definition suggests a specific entity that is fully replaced by its successor, not

⁵ “Predecessor.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/predecessor>. Accessed 15 Oct. 2020.

1 a generic tradition or an entity that coexists alongside its successor. The logical meaning of
2 “predecessor” in this context is a HCSM organization that is acquired, merged with, or otherwise
3 replaced by another HCSM organization. This interpretation is consistent with the purposes of the
4 1999 cutoff date as explained in *Lew*:

5 “Applying *Lemon*, the date serves at least two “secular legislative purpose[s].” 403
6 U.S. at 612. First, **the cutoff ensures that the ministries provide care that
7 possesses the reliability that comes with historical practice. Second, it
8 accommodates religious health care without opening the floodgates for any
9 group to establish a new ministry to circumvent the Act.”**

10 *Lew*, 733 F.3d at 102 (emphasis added). Requiring a specific HCSM entity that is acquired,
11 merged with, or otherwise replaced by another HCSM organization to be the meaning of
12 “predecessor” would help ensure care “possesses the reliability that comes with historical practice”
13 and also prevent an entity from establishing “a new ministry to circumvent the Act.” *Id.*

14 This approach is also consistent with the interpretation of the terms “predecessor” and its
15 “successor” in Washington corporate case law, as these terms are used when one corporation has
16 acquired the assets of another. *See, e.g., Payne v. Saberhagen Holdings, Inc.*, 147 Wn. App. 17,
17 35 (2008). Further, the interpretation the Federal Insurance Contributions Act uses. *See also* 26
18 U.S.C. § 3121(a)(1) (the term “predecessor” for an employer whose property was substantially
19 acquired) and RCW 82.04.180(1) (“successor” must acquire more than fifty percent of the value
20 of the “predecessor,” or is the “surviving corporation of a statutory merger.”) All of these
21 interpretations are broadly consistent with the dictionary definition: that of a specific entity that is
22 replaced by another in the HCSM role. Trinity cannot meet this standard.

23 Trinity appears to implicitly recognize the lack of a valid predecessor. In a response to
24 OIC’s investigation, Trinity admitted that “Trinity’s predecessor church association does not have
25 a rigid corporate form.” (Ex. 18, p. 3.) However, the plain language of 26 U.S.C. § 5000A(d)(2)(B)
26 requires “an organization” – i.e., a specific legal entity – to meet its requirements. Trinity cannot
27 identify a predecessor organization whose assets were obtained by Trinity, as Trinity was created
28 without assets or members by Alieria in 2018. (Ex. 32.)

29 An application of the cutoff date to the organization’s religion is contrary to a plain reading
30 of the statute, which requires the organization to be a 501(c)(3) organization and in existence since
31 December 31, 1999. 26 U.S.C. § 5000A(d)(2)(B)(I) and (IV); *see also Liberty Univ., Inc. v. Lew*,

1 733 F.3d 72, 86 (4th Cir. 2013) (applying the cutoff date to the educational institution, not
Christianity). OIC should be granted summary judgment on this issue.

2 Trinity fails to meet the fourth prong of the HCSM criteria for a second reason: Trinity has
3 not shared the medical expenses of its members continuously and without interruption since
4 December 31, 1999. Based on a plain reading of the statute, there must be continuity in the sharing
5 of medical expenses. On the contrary, Alieria-Trinity members have only shared medical expenses
6 since the inception date of the agreement between Alieria and Trinity on June 27, 2018. It is
undisputed that Trinity had no members prior to the agreement. (Ex. 32.)

7 Trinity also fails to meet the second prong of the HCSM criteria. 26 U.S.C. §
8 5000A(d)(2)(B)(II) plainly requires, in relevant part, that members of the HCSM organization
9 must share “a common set of ethical or religious beliefs.” This requirement does not require a
10 regulator to evaluate the merits of members’ beliefs. However, through RCW 48.43.009, the OIC
11 is required to determine whether members of an alleged HCSM actually share common beliefs.
12 Unfortunately, Trinity’s “Statement of Faith,” to which it required all members to agree, is
13 materially different than the more generic “Faith Statements” it allowed Alieria to market to
14 potential consumers. (*Compare* Ex. 18, p. 13 *with* Ex. 34, p. 4.) While either formulation of faith
15 is equally valid, having a materially different statement of belief marketed to consumers, as Alieria
16 did, than what the HCSM’s own governing documents say, cannot be reconciled with this
requirement for meeting the HCSM exemption.

17 Trinity further fails the fifth prong of the HCSM criteria, which requires an organization to
18 conduct an annual audit in accordance with generally accepted accounting principles, and made
19 public upon request. 26 U.S.C. § 5000A(d)(2)(B)(V). In response to OIC’s investigation, Alieria
20 admitted that Trinity had not undergone any financial audits. (Exhibit 22, p. 4.) Trinity failed to
comply with this requirement.

21 Trinity does not meet the plain language criteria for an exemption from insurance
22 regulation under RCW 48.43.009. As such, summary judgment should be granted to the OIC and
23 OIC’s Order upheld.
24
25

C. OIC has authority for its Order.

1 As discussed above, and more fully in OIC’s Motion and OIC’s Response, Alier
2 transacted insurance business on behalf of Trinity, which is not a valid HCSM. Therefore, the
3 OIC’s Order is specifically authorized under Title 48 RCW. RCW 48.17.060(1) provides that a
4 person “shall not sell, solicit, or negotiate insurance in this state for any line or lines of insurance
5 unless the person is licensed for that line of authority in accordance with this chapter.” RCW
6 48.15.020(2)(a) provides that a “person may not, in this state, represent an unauthorized insurer
7 except as provided in this chapter.” Alier solicited insurance without a license in Washington,
8 and represented an unauthorized insurer, Trinity, while doing so when it acted as a marketer on
9 Trinity’s behalf. Under the Insurance Code, “ ‘Solicit’ means attempting to sell insurance or
10 asking or urging a person to apply for a particular kind of insurance from a particular insurer.”
11 As discussed elsewhere in this brief, Alier solicited consumers to purchase the Trinity products
12 on behalf of Trinity, violating RCW 48.17.060(1) and RCW 48.15.020(2)(a). Where the OIC has
13 cause to believe a violation of these statutes has occurred, it may issue a cease and desist order
14 under RCW 48.17.063(4)(a)(i) and RCW 48.15.023(5)(a)(i), as was done here.

15 Further, RCW 48.02.080(3) provides that if the Insurance Commissioner “has cause to
16 believe that any person is violating or is about to violate any provision of this code or any
17 regulation or order of the commissioner, he or she may ... (a) issue a cease and desist order.” In
18 this case, Alier violated RCW 48.44.015(1) by acting as a healthcare service contractor without
19 first being registered with the Insurance Commissioner. Alier operated as a discount plan
20 organization without first obtaining a license in violation of RCW 48.155.020(1). Alier made
21 deceptive and misleading representations and advertisements in violation of RCW 48.30.040.
22 Finally, Alier violated Washington disability insurance advertising regulations WAC 284-50-
23 050 and WAC 284-50-060. These additional violations, which are discussed more broadly
24 elsewhere and in OIC’s Motion and OIC’s Response, justify the issuance of OIC’s Order under
25 RCW 48.02.080(3).

26 Applying the plain language of these statutes to the conduct by Alier and Trinity does
not exceed OIC’s authority. Determining what is insurance, and how to apply the Insurance Code,
is assuredly within the OIC’s expertise and authority. *See* RCW 48.02.060; RCW 48.01.020;

1 RCW 48.01.060. RCW 48.43.009 has nothing to do with the federal income tax liability of
2 individual taxpayers; rather, 26 U.S.C. § 5000A was only incorporated into the Insurance Code
3 to help determine what is insurance, and what should be exempt as a HCSM. OIC is authorized
4 and charged to interpret these statutes to determine what constitutes insurance, whether an entity
5 is exempt from regulation pursuant to RCW 48.43.009, and if applicable, take enforcement action
6 for violations of the Insurance Code. *Ins. Co. of N Am. v. Kueckelhan*, 70 Wn.2d 822, 831 (1967).
7 That is exactly what the OIC has done here and its Order should be upheld as a matter of law.

8 **D. Alieria solicited insurance and represented an unauthorized insurer.**

9 The undisputed evidence demonstrates that Alieria both solicited insurance without a
10 license and represented an unauthorized insurer, Trinity, violating RCW 48.17.060(1) and RCW
11 48.15.020(2)(a), respectively. Alieria clearly solicited Washington consumers to purchase the
12 Trinity HCSM products. *See* RCW 48.17.010(14). For example, Alieria’s website contains plan
13 literature that is accessible to consumers, that encourages consumers to buy healthcare plans from
14 Trinity. (Ex. 2, p. 16; Ex 20). Also, Alieria engaged in digital advertising to consumers, such as
15 its 2018 campaign that promoted their products, including Trinity, as the “Healthcare Coverage
16 You Deserve at an Affordable Cost.” (Ex. 33, p. 3). On Facebook, it encourages consumers to
17 apply – “Missed Open Enrollment? You Can Still Apply With Alieria.” *Id.* at 4. More broadly,
18 Alieria cannot dispute that it acts a marketer for Trinity products. (Ex. 22, § 8.) The Management
19 and Administration Agreement with Trinity further outlines Alieria’s responsibilities for that
20 marketing. (Ex. 32.)

21 Alieria represented Trinity in its solicitation, sale, and administration of these unauthorized
22 insurance products, pursuant to the agreement between Alieria and Trinity, explicitly acting on
23 behalf of Trinity. (Ex. 32). Further, Alieria’s sale and solicitation of Trinity products constituted
24 representation of Trinity, an unauthorized insurer, violating RCW 48.15.020(2)(a). According to
25 Merriam Webster, to “represent” is in relevant part to:

- 26 6a (1): to take the place of in some respect
(2): **to act in the place of or for usually by legal right**
(3): to manage the legal and business affairs of.

(emphasis added.)⁶ It is clear that Alieria acted on behalf of Trinity, particularly in light of the language between explicitly authorizing the solicitation by Alieria. (Ex. 32.) Therefore, Alieria represented Trinity, the unauthorized insurer, violating RCW 48.15.020(2)(a).

While Alieria complains that it is acting as a third party administrator (“TPA”), any TPA status of Alieria is entirely irrelevant to the case at hand. Being a TPA is not an element or a defense under any of the statutes at issue in the case. Even if Alieria is a TPA, it still must not solicit insurance without an insurance producer’s license, and still must not represent an unauthorized insurer, but Alieria did both. For these violations, the OIC’s Order was justified and OIC should be granted summary judgment.

E. Alieria misrepresented its products to consumers as well as producers.

Alieria undisputedly misrepresented its products to both industry and the public, violating several Insurance Code provisions. Alieria seeks to minimize its misconduct by focusing on its misrepresentations to insurance producers. However, this ignores the requirements of RCW 48.30.040, which requires that 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.” By its terms, this statute is not limited to consumers; a misrepresentation in the business of insurance, or relative to insurance, or relative to persons engaged in insurance, violates the statute. Such misconduct also violates RCW 48.01.030, which requires that all persons engaged in the business of insurance “be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters.” When Alieria made misrepresentations to insurance producers, it violated these statutes.

Alieria further ignores that it in fact made misrepresentations to consumers, and those consumers were actually misled. (*See Ex. 5, 6, 7, 8, 10; see also Ex. 20 and 21*). Even if the Presiding Officer disagrees that Alieria “knowingly” misled consumers about the Trinity products, despite Alieria’s producer license in states other than Washington, it is clear that Alieria’s

⁶ “Represent.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/represent>. Accessed 16 Oct. 2020.

1 advertisements both had the capacity and tendency to mislead consumers, as prohibited by WAC
284-30-050. (Ex. 20 and 21). Misconduct of this nature harms the public.

2 Finally, Alieria wrongly argues that whether these misrepresentations occurred is a
3 question of fact. However, whether insurance advertisements are misleading is a legal question,
4 ripe for summary judgement. “Whether a particular act or practice is ‘unfair or deceptive’ is a
5 question of law.” *State v. Mandatory Poster Agency, Inc.*, 199 Wn. App. 506, 519-20, 398 P.3d
6 1271, 1277 (2017). RCW 48.30.040 is found in Chapter 48.30 RCW (unfair practices and frauds).
OIC’s Order should be upheld as a matter of law.

7 **F. Alieria acted as a health care service contractor.**

8 Alieria has also acted as an unregistered health care service contractor (HCSC) within the
9 meaning of RCW 48.44.010(9), which defines an HCSC as a person, entity or corporation that
10 “accepts prepayment for health care services from or for the benefit of persons or groups of
11 persons as consideration for providing such persons with any health care services.” It is
12 undisputable that Alieria collects monies from its members (prepayment) as consideration for
13 providing health care services for its members through its network of preferred providers. (Ex.
14 21, p. 16 (“Financial Participation”); *see also* Exs. 20 and 34). The Management and
15 Administration Agreement between Trinity and Alieria provides that Alieria collected prepayment
16 from members. (Ex. 32, p. 5.) Alieria also referred to its “Provider Networks” in its plan materials,
and is a corporation.

17 Alieria’s contracts with providers demonstrate that it acted as a HCSC by prearranging to
18 provide health care services to members, as it promised to do in its customer brochures and
19 member guides, and accepted prepayment for the same. (Ex. 20; Ex. 21; *see also* Ex. 35). Alieria’s
20 HCSCM plans include access to nationwide network providers through First Choice Health
21 Network. Ex. 38. Under Alieria’s Provider Network Services Agreement, “Covered Services
22 means those medical, hospital and other health care services provided to Members that are
23 payable under the terms of a Plan.” (Ex. 38, p. 2.) Additionally, “Member means a person eligible
24 and entitled to received health benefits under a Plan.” *Id.* Thus, Alieria transacted business as an
25 unregistered HCSC, violating RCW 48.44.015. Even if the Presiding Officer finds that such

violations can be sustained only when an entity is not otherwise engaged in the business of insurance, this violation is an alternative basis upon which the OIC's Order should be upheld.

G. Alieria acted as an unlicensed discount plan organization.

As discussed in OIC's Motion, Alieria has operated as a discount plan organization without obtaining the license required under RCW 48.155.020(1). Alieria entered into a contract with Rx-Valet to offer its customers prescriptions at a discounted rate. (Ex. 21, p. 5) (The . . . prescription savings program delivers significant discounts for a variety of drugs (depending on prescription), saving members an average of 55% on prescription drug purchases."). The RX Valet contract included a price reduction in the aggregate. (Ex. 37 at 6.) Members paid Alieria for access to these discounts. (See Ex. 34, p. 6-8.) Accordingly, under the plain language of Chapter 48.155 RCW, Alieria acted as an unauthorized discount plan organization.

It is clear from the undisputed facts that Alieria itself engaged in the discount plan business. Pursuant to the Management and Administration Agreement, "the members who enroll in the Plans become "customers" of Alieria, and that Alieria maintain ownership over the Membership Roster . . . for each member who enrolls in the Plan." (Ex 32, p. 1) Trinity could not even contact members without Alieria's consent. *Id.* at 2. Aside from marketing, Alieria administered Trinity. *Id.* at 1. Alieria administered enrollment, billing and collection of monthly share amounts from health care sharing members, maintenance of membership records, management of TPAs responsible for the processing of medical claims forms and determining eligibility, and issuance of payment to members and providers, etc. *Id.* Even Trinity's HCSM was referred to as an Alieria Product. *Id.* at 2. Alieria accepted the prepayment from members. *Id.* at 5 (All member share contributions . . . and Member Enrollment Fees will be first paid directly to a banking account in the name of Alieria.") These facts are evident on the face of the Management and Administration Agreement, and demonstrate that Alieria engaged in unlicensed discount plan activity. RCW 48.155.020(1). OIC is entitled to summary judgment on this issue.

V. CONCLUSION

As established in OIC's Motion, OIC's Response, and in this Reply, Alieria and Trinity were engaged in the business of insurance when marketing, selling, and administering their HCSM products. However, Trinity is not a valid HCSM and neither Alieria nor Trinity are exempt

1 from insurance regulation. The undisputed evidence shows that the HCSM products that Alera
2 sold acted like health plans, despite the various disclaimers inserted as boilerplate language
3 inserted therein, and were understood as such by several consumers. This conduct resulted in
4 several violations of the Insurance Code, such as unlicensed and unauthorized activity, as well as
5 misrepresentations to consumers and others engaged in insurance business, all violating various
6 provisions of Title 48 RCW and related regulations. Accordingly, the OIC issued its Order to
7 Cease and Desist, which is supported by the applicable law and the material facts. Therefore, the
8 OIC respectfully requests that its motion for summary judgement be granted and its Order upheld
9 as a matter of law.

10
11 DATED this 16th day of October, 2020.

12 /s/ Darryl E. Colman
13 Darryl E. Colman
14 Attorney Manager
15 Legal Affairs Division
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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 REPLY IN SUPPORT
6 OF OIC’S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION IN RESPONSE
7 TO ALIERA’S MOTION FOR SUMMARY JUDGMENT on the following individuals in the
8 manner indicated:
9

10 Julia Eisentrout, Presiding Officer
11 Office of the Insurance Commissioner
12 5000 Capitol Boulevard SE
13 Tumwater, WA 98501
14 hearingsu@oic.wa.gov

15 *By email*

16 Eric Neiman, Counsel for Alieria
17 Lewis Brisbois Bisgaard & Smith
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26 *By email per electronic service agreement.*

17 **SIGNED** this 16th day of October, 2020 at Tumwater, Washington.

18
19 Christine M. Tribe
20 Christine M. Tribe
21 Paralegal
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