THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In re: Aliera Healthcare, Inc. (dba The Aliera Companies, Inc.)
& Trinity Healthshare, Inc.

Docket No.: INS 19-027-EP
INS 20-014-EP
INS 20-015-EP

ORDER ON MOTION TO DISMISS

On April 23, 2020, Aliera Healthcare, Inc. ("Aliera") filed Motion to Dismiss arguing that the above referenced matters must be dismissed as the New Hampshire Insurance Department ("NHID") lacks subject matter jurisdiction and that by bringing an enforcement action, NHID is engaging in religious discrimination against Trinity Healthshare, Inc. ("Trinity"). On April 30, 2020, Trinity filed a motion seeking to join Aliera's Motion to Dismiss and requested in the alternative that the administrative proceedings be stayed until the Superior Court rules on jurisdictional issues raised by Aliera. NHID Enforcement Counsel filed a motion on April 30, 2020, objecting to the motion to dismiss and motion to stay the administrative proceedings. On May 11, 2020, Aliera filed a Reply in Support of Motion to Dismiss. Having reviewed the arguments made by all parties, the motion to dismiss and the motion to stay the administrative proceedings are DENIED.

The Insurance Commissioner ("Commissioner") is charged with the enforcement and execution of the insurance laws in this state. RSA 400-A:3. The Commissioner shall issue orders as reasonably necessary to secure compliance with insurance laws, rules, and regulations. RSA 400-A:14. In accordance with RSA 400-A:14, II, the Commissioner issued Notices of Hearing for the above referenced docket numbers outlining alleged facts and alleged violations of state insurance laws under Title XXXVII.

In the Orders to Show Cause and Notices of Hearing, the Department alleges that both Aliera and Trinity have operated as an unlicensed insurance company in New Hampshire in violation of RSA 406-B:3 and have engaged in unfair insurance trade practices in violation of RSA 417. "The commissioner may hold hearings for any purpose within the scope of this title as he may deem advisable." RSA 400-A:17, I. The Commissioner may impose an administrative fine against "any person who knowingly violates any statute, rule, regulation, or order of the commissioner." RSA 400-A:15, III. The statutory language clearly authorizes the Commissioner to hold hearings for any purpose relating to insurance regulation and to take administrative action against any person found to have knowingly violated any insurance law or rule.

Furthermore, RSA 417:6 requires the Commissioner to issue a Notice of Hearing whenever the Commissioner has reason to believe that any "person has been engaged or is engaging in any unfair method of competition or any unfair or deceptive act or practice defined in RSA 417:4." RSA 417:6. "[T]he insurance commissioner need only suspect a violation of RSA 417:4 in order to properly issue a notice of hearing." *In re Bennett (N.H. Ins. Dep't)*, 151 N.H. 130, 133 (2004). The Hearings Officer cannot dismiss the action without the Commissioner making a determination regarding whether an unfair insurance trade practice has occurred. *Id.* Under RSA 417, "person" is defined as "any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurers, fraternal benefit society and any other legal entity, engaged in the business of insurance, including agents, brokers, and adjusters. RSA 417:2, I.

Neither RSA 400-A:15 nor RSA 417 limits the Commissioner's authority to regulated entities. Instead, the Commissioner has jurisdiction over any person engaging in the business of

insurance in New Hampshire. NHID has alleged that Aliera and Trinity have engaged in the business of insurance in New Hampshire. In order to determine whether Aliera and Trinity have engaged in the business of insurance, it will be necessary to receive evidence on this issue in the context of a hearing. As pointed out in *Bennett*, "the purpose of the subsequent hearing would be to determine whether a violation actually occurred." *In re Bennett*, at 133. Aliera and Trinity's assertions that they are not engaging in the business of insurance are insufficient, on their own, to find that NHID lacks jurisdiction over the alleged conduct.

Aliera and Trinity's assertions that NHID is engaging in discrimination on the basis of religion are not yet ripe for a ruling. No hearing has been held yet in the above referenced matters and the Commissioner has not yet made any findings of fact or rulings of law on the issues raised by Aliera and Trinity. Aliera and Trinity are free to raise the arguments and present evidence on the issues included in their motions during the hearing. However, it would be premature to rule on the issues raised by Aliera and Trinity without first receiving all relevant evidence.

Aliera's argument that the standard or review set forth in NHID's motion cannot be applied as it has not been promulgated in administrative rules is misplaced. RSA 400-A:17 and RSA 417:6 authorize the Commissioner to hold hearings. Where the Commissioner has clear statutory authority to initiate and conduct hearings, "[p]romulgation of a rule pursuant to RSA chapter 541-A is not necessary to carry out what a statute authorizes on its face." *Smith v. N.H. Bd. of Exam'rs of Psychologists*, 138 N.H. 548, 553 (1994).

If the allegations included in the Orders to Show Cause and Notices of Hearing are found to be true, it would not be in the public's interest to stay these proceedings. The deadline to submit a scheduling timeline has already been extended until after the Superior Court issues an

order in the pending matter as requested by all the parties. The deadline extension was intended to provide the parties with adequate time to confer regarding a reasonable timeline and to prepare for the hearing in light of the adjustments that are necessary given the current public health emergency. However, it is expected that the parties will be able to proceed with the hearing in the near future and shortly after the Superior Court issues an order.

SO ORDERED.

Date: May 29, 2020

Michelle Heaton, Esq.
Hearing Officer