

**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

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

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

**ORDER ON NHID'S NOTICE TO WITHDRAW REFERENCE AND
MOTIONS TO STRIKE NOTICE TO WITHDRAW REFERENCE FILED BY TRINITY AND ALIERIA**

NHID filed a Notice to Withdraw Reference to the Requirement that the Respondent's Limit Participation to Individuals who Share a Common Set of Either Ethical or Religious Beliefs ("Notice" or "Notice to Withdraw"). In the Notice, NHID withdraws certain paragraphs ("paragraphs") from the Cease and Desist Order and Orders to Show Cause in the administrative actions pending against Respondents Alieria Healthcare, Inc. dba The Alieria Companies, Inc. ("Alieria") and Trinity Healthshare, Inc. ("Trinity").

The Notice details that NHID withdraws Paragraph 25 of the Cease and Desist Order issued to the Respondents in October of 2019. It also withdraws Paragraphs 9 and 26 from the Order to Show Cause and Notice of Hearing issued against Trinity on March 10, 2020, and Paragraph 28 of the Order to Show Cause and Notice of Hearing issued against Alieria on March 10, 2020. In the Notice, NHID explains for each paragraph withdrawn that it is being withdrawn because NHID will not be relying or arguing those allegations in the administrative action.

Trinity filed a Motion to Strike Notice to Withdraw Reference ("Motion to Strike") arguing that only the Commissioner can modify the Cease and Desist Order or Order to Show Cause by withdrawing the orders in their entirety and issuing new ones or modifying them by motion. Trinity relies on RSA 400-A:3 for this position. Trinity also argues that it has not been provided with an opportunity to respond to the Notice to Withdraw. Alieria filed a Motion to

Strike Notice to Withdraw Reference (“Motion to Strike”) joining Trinity’s Motion. NHID objects (“NHID’s Objection” or “Objection”) to the Motions to Strike.

In its Objection, NHID argues that the Respondents have no legal basis to provide input on or dictate NHID’s strategic decisions about how it will establish that the Respondents violated New Hampshire insurance laws. In addition, NHID argues that the removal of the paragraphs results in a simplification of the issues while the remaining charges in the Cease and Desist Order and Orders to Show Cause are reasonably specific to allow the Respondents to prepare adequate defenses.

The Respondents’ position that only the Commissioner can modify the Cease and Desist Order or Orders to Show Cause is not supported by New Hampshire law. RSA 400-A:13, I,¹ allows the Commissioner to delegate duties, powers, and functions to New Hampshire Insurance Department employees. In accordance with RSA 400-A:13, I, the Commissioner delegated the role of NHID staff advocates, representing the Department’s interests in this matter, to Enforcement and Compliance Counsel and/or Assistant Enforcement and Compliance Counsel.² The Commissioner has also delegated the matter to be handled by a hearing officer.³ Notably, under RSA 400-A:13, II, “[t]he official act of any such person acting in the commissioner’s name and by his authority shall be deemed an official act of the commissioner.”

¹ RSA 400-A:13, I, provides:

The commissioner may delegate to his deputies, assistants, actuaries, examiners, or employees of the department the exercise or discharge in the commissioner’s name of any power, duty, or function, whether ministerial, discretionary or of whatever character, vested in or imposed upon the commissioner. However, he shall not delegate his rulemaking powers upon RSA 400-A:15.

RSA 400-A:13, I; *see also* Ins 203.01 and Ins 204.05(b)(formerly Ins 203.07(b)).

² Notice of Hearing and Appointment of Hearing Officer (Docket No.: INS No. 19-027-EP) dated December 3, 2019; Order to Show Cause and Notice of Hearing issued in In re: Trinity Healthshare, Inc. (Docket No.: INS No. 20-015-EP) dated March 10, 2020; and Order to Show Cause and Notice of Hearing issued in In re: Alieria Healthcare, Inc. (dba The Alieria Companies, Inc.) (Docket No.: INS No. 20-014-EP) dated March 10, 2020.

³ Order on Appointment of New Hearing Officer (Docket Nos.: INS 19-027-EP, INS 20-014-EP, INS 20-015-EP) dated July 30, 2020; Order to Show Cause and Notice of Hearing issued in In re: Trinity Healthshare, Inc. (Docket No.: INS No. 20-015-EP) dated March 10, 2020; Order to Show Cause and Notice of Hearing issued in In re: Alieria Healthcare, Inc. (dba The Alieria Companies, Inc.) (Docket No.: INS No. 20-014-EP) dated March 10, 2020; and Notice of Hearing and Appointment of Hearing Officer (Docket No.: INS No. 19-027-EP) dated December 3, 2019.

Whereas RSA 400-A:13, I, allows the Commissioner to delegate his duties, powers and functions,⁴ as has been done here, and no law or rule prohibits the modification of the Cease and Desist Order or the Orders to Show Cause issued in this matter⁵ by the Commissioner's delegates, there is no legal support for Trinity's and Alier's argument that the Cease and Desist Order and Orders to Show Cause can only be modified by the Commissioner. In addition, Trinity's and Alier's argument that they have not had a chance to respond to the Notice lacks merit. For the reasons explained in NHID's Objection, Trinity and Alier are not entitled to object to NHID's strategic decisions relative to its enforcement of New Hampshire insurance laws. However, even assuming, *arguendo*, that the Respondents are entitled to respond/object to the Notice to Withdraw, each did respond/object by filing a motion to strike. For these reasons, as well as for the reasons set forth in NHID's Objection, Trinity's and Alier's Motions to Strike are **DENIED**.

Relative to NHID's Notice to Withdraw, I hereby acknowledge and accept the Notice for the reasons stated herein and for those set forth in the Notice and in NHID's Objection, including but not limited to allowing for simplification of the issues in this administrative action. Ins 203.01(d). Accordingly, Paragraph 25 of the Cease and Desist Order is removed. In addition, Paragraphs 9 and 26 of the Order to Show Cause issued against Trinity are removed. Paragraph 28 of the Order to Show Cause issued against Alier is also removed.

SO ORDERED.

Date: September 11, 2020



Emily Doherty, Hearing Officer

⁴ New Hampshire Administrative Rules Ins 203.01 and Ins 204.05(b), formerly Ins 203.07(b), also allow the delegation.

⁵ An Order issued on March 26, 2020, titled "Order Consolidating Hearings and Scheduling Prehearing Conference," consolidated the proceedings for Docket Numbers INS 19-027-EP, INS 20-014-EP, and INS 20-015-EP.