

# STATE OF OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES DIVISION OF FINANCIAL REGULATION

In the Matter of:

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Case No. INS-19-0109

THE ALIERA COMPANIES, INC. FORMERLY KNOWN AS ALIERA HEALTHCARE, INC., AND TRINITY HEALTHSHARE, INC.

**CONSENT ORDER AS AGAINST** THE ALIERA COMPANIES, INC. FKA ALIERA HEALTHCARE, INC.

Respondents

On October 9, 2019, the Director of the Department of Consumer and Business Services for the State of Oregon ("Director"), by and through the Oregon Division of Financial Regulation ("Division"), acting in accordance with Oregon Revised Statutes ("ORS") chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750 ("Insurance Code"), issued an Order to Cease and Desist, Notice of Proposed License Revocation and Assessment of Civil Penalties, and Right to Administrative Hearing ("Notice") against The Aliera Companies, Inc., formerly known as Aliera Healthcare, Inc. ("Aliera") and Trinity Healthcare, Inc. ("Trinity"), which is incorporated herein and a copy attached herewith. Aliera timely submitted a hearing request on October 24, 2019. In accordance with ORS 183.417(3), the Division and Aliera do hereby agree and stipulate as follows:

- 1. The Division and Aliera are willing to settle all matters concerning the Notice.
- 2. Aliera hereby withdraws its request for hearing on all matters described in the Notice and understands and agrees that this Consent Order constitutes a final resolution of the matter. Aliera hereby waives all rights to any contested case hearing or further appeal or judicial review of this matter.
- 3. Aliera shall exit the Oregon market by June 1, 2021, as described below:



a. No later than June 1, 2021, Aliera, and all of its agents, affiliates, employees, contractors, successors-in-interest, and/or authorized representatives shall cease to solicit, negotiate, sell, or effectuate any product or service in Oregon or to Oregon consumers.

- b. Notification to current members: Aliera agrees to assist and/or cooperate with Trinity in providing written notice to the existing Oregon members of Aliera or Trinity plans, no later than February 28, 2021, that neither Aliera nor Trinity be providing memberships or products to Oregon consumers, effective June 1, 2021. The written notice will provide information about the federal Affordable Care Act special enrollment period (or, SEP) that will occur between February 15, 2021 and May 15, 2021. The notice will be sent to all Oregon members by both first-class mail and electronic mail, and Aliera shall make all reasonable efforts to ensure that the notice is sent to members at their current mailing addresses and electronic mail addresses.
- 4. In lieu of revocation, the Director agrees to allow Aliera and/or its affiliated entities to voluntarily surrender its Oregon nonresident insurance producer license. Aliera shall provide the documentation required to accomplish voluntary surrender within five business days of the date it exits from the Oregon market as described in paragraph 3, above; under no circumstances shall the required documentation be submitted to the Director later than 5 p.m. Salem local time on June 7, 2021.
- 5. Aliera and any of its successors, assigns, or affiliates will not reapply for licensure in Oregon for five years following the effective date of this Consent Order, and will not offer any products or services to Oregon consumers during that five year timeframe. At the end of the five year period, Aliera and/or its successors, assigns or affiliates may re-enter the Oregon market only if they provide information to the Division regarding the products and services it intends to offer Oregon consumers,

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Division of Financial Regulation Labor and Industries Building 350 Winter Street NE, Suite 410 Salem, OR 97301-3881 Telephone: (503) 378-4387

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| and only it such | nroducts and | services are  | nre-annroved h | v the Livision  |
| and only if such | products and | sci vices are | pre approved b | y the Division. |

- 6. Aliera shall pay a civil penalty as described below:
  - a. A total civil penalty of \$90,000, attributed as follows:
    - 1. \$40,000 for alleged violations of ORS 731.354;
    - 2. \$10,000 for alleged violations of ORS 744.702;
    - 3. \$25,000 for alleged violations of ORS 746.075; and
    - 4. \$15,000 for alleged violations of ORS 746.110.
  - b. The Director hereby suspends \$30,000 of the civil penalty assessed against Aliera provided that Aliera does not violate the Oregon Insurance Code or any terms of this Consent Order. If Aliera satisfies these conditions, the Director shall waive the suspended portion of the civil penalty five years after the effective date of this Consent Order.
  - c. If Aliera violates the Oregon Insurance Code or any terms of this Consent Order during the five-year period, the \$30,000 suspended civil penalty shall immediately become due and payable.
  - d. The \$60,000 unsuspended civil penalty assessed herein against Aliera is due and payable at the time this Consent Order is submitted to the Director for signature.
- 7. The Consent Order is made for settlement purposes only and does not constitute nor should it be construed as an admission by Aliera or any of Aliera's officers, members, agents, or employees of the allegations contained in the Notice.
- 8. This Consent Order shall not be deemed a concession on the part of the Division regarding the factual allegations and legal conclusions in the Notice.
- 9. In the event the Division imposes any future sanction against Aliera that is based, in part, upon the facts alleged in the Notice, Aliera maintains its right to contest any and all aspects of such action. In such event, this Consent Order shall not be

| deemed a waiver on the part of Aliera to assert any and all defenses that exist nov |
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| or may arise in the future, except that Aliera agrees it will not assert that this  |
| Consent Order in any way precludes such future actions that are based in part upon  |
| the facts alleged in the underlying Notice.   |

- 10. By signing below, Aliera acknowledges, understands, stipulates, and agrees that: Aliera has fully read this Consent Order and understands it completely; Aliera voluntarily, without any force or duress, enters into this Consent Order and consents to the Division's adoption of this Consent Order; and Aliera has consulted with legal counsel regarding this Consent Order and has been fully advised of its rights.
- 11. The Division and Aliera agree that this Consent Order constitutes the entire agreement between them on the subject matter hereof. There are no promises, inducements, understandings, agreements, or representations, oral or written, not specified herein regarding this Consent Order.
- 12. The Division and Aliera agree that if any term or provision of this Consent Order is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the signatories shall be construed and enforced as if the Consent Order did not contain the particular term or provision held to be invalid.
- 13. This Consent Order is binding upon Aliera's successors, assigns, and affiliates.
- 14. This Consent Order may be executed in one or more multiple counterparts, including facsimile, scanned, and electronically transmitted counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.
- 15. This Consent Order is based solely on the application of the Oregon Insurance Code to the specific facts of the Division's investigation in this case. Aliera and the

Director are the only parties to this Consent Order. Therefore, this Consent Order, and any provision, findings, or conclusions contained herein, do not, and is not intended to, determine any factual or legal issue in any other jurisdiction, or have any preclusive or collateral estoppel effects in any lawsuit or action by any person or party other than the Director.

SO ORDERED this <u>23rd</u> day of <u>March</u>, 2021 in Salem, Oregon.

ANDREW R. STOLFI, Director Department of Consumer and Business Services

/s/ Dorothy Bean

Dorothy Bean, Chief of Enforcement Division of Financial Regulation

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### ENTITY CONSENT TO ENTRY OF ORDER

I, Shelley Steele, am an officer of The Aliera Companies, Inc. formerly known as Aliera Healthcare, Inc. ("Aliera"), and I am authorized to act on its behalf. I have read the foregoing Consent Order and I know and fully understand the contents hereof. I have been advised of the right to a hearing and of the right to be represented by counsel in this matter. Aliera voluntarily consents to the entry of this Consent Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this Consent Order. Aliera understands that the Director reserves the right to take further action against it to enforce this Consent Order or to take appropriate action upon discovery that Aliera has committed other violations of the Oregon Insurance Code. Aliera, along with its officers, directors, employees, or agents, will fully comply with the terms and conditions stated herein.

Aliera understands that this Consent Order is a public document.

Signature: /s/ Shelley Steele

Position Held: CEO

Division of Financial Regulation Labor and Industries Building 350 Winter Street NE. Suite 410 Salem, OR 97301-3881 Telephone: (503) 378-4387 

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Salem, OR 97301-3881
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| STATE OF OREGON                              |
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| DEPARTMENT OF CONSUMER AND BUSINESS SERVICES |
| DIVISION OF FINANCIAL REGULATION             |

In the Matter of:

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Case No. INS-19-0109

THE ALIERA COMPANIES, INC. FORMERLY KNOWN AS ALIERA HEALTHCARE, INC., AND TRINITY HEALTHSHARE, INC.

ORDER TO CEASE AND DESIST, NOTICE OF PROPOSED LICENSE REVOCATION AND ASSESSMENT OF RESTITUTION AND CIVIL PENALTIES, AND RIGHT TO ADMINISTRATIVE HEARING

Respondents.

The Director of the Department of Consumer and Business Services for the State of Oregon ("Director"), acting in accordance with Oregon Revised Statutes ("ORS") chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750 ("Insurance Code"), hereby gives notice that the Director issues an Order to cease and desist, proposes to revoke the nonresident insurance producer license of The Aliera Companies, Inc. formerly known as Aliera Healthcare, Inc. ("Aliera") and assess restitution and civil penalties as to Aliera and Trinity Healthshare, Inc ("Trinity," collectively "Respondents").

The Director makes the following Findings of Fact, Conclusions of Law, Order, Proposed Orders, and Notice of Right to an Administrative Hearing.

### FINDINGS OF FACT

The Director FINDS that:

Aliera Healthcare, Inc. is a Delaware corporation first formed on September 29,
 The Aliera Companies, Inc. is a Delaware corporation first formed on December 18,
 2015.

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- 2. Aliera is registered as a foreign for-profit corporation in the state of Georgia, formed on April 28, 2016. Aliera's principal address is listed as 990 Hammond Drive, Suite 700. Atlanta, GA 30328.
- According to the National Association of Insurance Commissioners' State Based Systems, Aliera has its principal office located at 5901 Peachtree Dunwoody Rd, Suite B-200, Atlanta, GA 30328.
- 4. Aliera has been licensed as an Oregon nonresident insurance producer since September 26, 2017. Aliera's national producer number is 18501490. Aliera does not hold a certificate of authority in Oregon.
- 5. Aliera is not and has never been licensed as a third party administrator ("TPA") in Oregon.
- 6. Trinity is a Delaware corporation first formed on June 27, 2018. Trinity is not a licensed insurance producer and does not hold a certificate of authority in Oregon.
- Trinity represents itself as a health care sharing ministry ("HCSM") as defined 7. by 26 USC §5000A. To qualify as an HCSM, it must be a 501(c)(3) organization whose members share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs. An HCSM must have been in operation and continuously sharing member health care costs since December 31, 1999.
- 8. According to the "Management and Administration Agreement" effective August 13, 2018 ("the Agreement") between Respondents, Aliera is the administrator, marketer, and program manager for Trinity and is solely responsible for the development of HCSM plan designs, pricing, marketing materials, vendor management, processing medical claims forms and determining sharing eligibility, and issuance of payment to members and providers on behalf of Trinity.

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without the prior written consent of Aliera."

| the Parties intend that the members who enroll in the Plans become 'customers' of Aliera, |
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| and that Aliera maintain ownership over the 'Membership Roster.'"                         |
| 10. The Agreement also states that "Trinity is not authorized to contact any              |
| members or use any information contained in the Membership Roster for any purpose         |

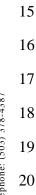
The Agreement states that "Trinity currently has no members in its HCSM, and

- 11. By the terms of the Agreement, "Aliera has the right, at its sole discretion, to develop and market the HCSM (the schedule of medical services eligible for sharing under the HCSM) with other non-insurance health care products that are developed and managed by Aliera."
- 12. The Agreement provides detail regarding the fees that Aliera charges, depending on the product line. For the AlieraCare & InterimCare products, for example, Aliera receives and retains 65% of the total share contribution paid by each primary member. Out of the remaining 35%, Trinity reimburses Aliera for additional costs and expenses, including: 19.6% for "Aliera management fee general overhead ops labor internal sales," 30% for commissions, 2.6% TPA fees, 1.2% provider network, and 0.8% telemedicine. In total, Aliera is reimbursed 54.2% of the 35% remaining in member contributions, receiving almost 84% of the total member contributions. In other words, out of every \$100 a member pays in premiums only \$16.03 goes towards paying the medical expenses of members.
- A video seminar<sup>1</sup> used by Aliera for training prospective agents states that 13. Aliera's individual plans called "Everyday Plans" make up seventy percent of Aliera's sales. When describing emergency care benefits, the narrator states "MSRA [Member Share Responsibility Amount, which is just another term for deductible." The narrator

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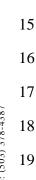
**ALIERA INS-19-0109** 

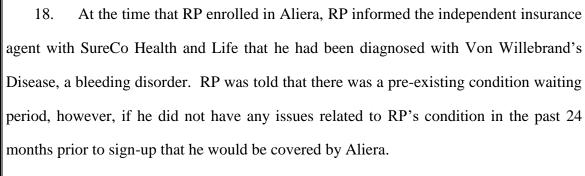
Aliera Healthcare Product Overview, <a href="https://www.youtube.com/watch?v=OiI5Ff112Ck&feature=voutu.be">https://www.youtube.com/watch?v=OiI5Ff112Ck&feature=voutu.be</a>, last visited July 23, 2019.



states that Aliera's comprehensive plans "not only mirrors traditional insurance, but truly provide comprehensive healthcare for an individual." Aliera also uses the terms "Bronze," "Silver," and "Gold" options, which are commonly used in the Affordable Care Act ("ACA") Marketplace. The training fails to mention any requirement of a statement of faith. Aliera's repeated use of insurance terminology in its agent training and marketing materials has the capacity to deceive both prospective agents and prospective consumers into believing they are purchasing health insurance, with the corresponding benefits required under the ACA and state law, rather than an HCSM membership.

- 14. According to the "Aliera Welcome Letter instantly after enrollment" document provided during the Division's investigation, claim forms are sent to Aliera Healthcare Trinity, PO Box 16818, Lubbock, TX 79490-6818. Aliera's website, www.alierahealthcare.com, also provides a claims portal for members.
- 15. Although Aliera claims that all HCSM plans are offered by Trinity, Aliera's name and information is provided on all the sales materials, online content, and member guides, and some of the plans are specifically marketed as Aliera products.
- 16. Since April 2017, Aliera has enrolled 1,333 Oregon consumers in HCSM plans, and such member have paid no less than \$7,816,719.31 in contributions and application fees.
- 17. Oregon consumer RP purchased an Aliera product in or around June 2018. RP was told at the time of purchase that he and his wife would have "coverage similar to Providence [Health Plan]." They were not informed that Aliera was not subject to federal or state insurance laws. RP stated that he and his wife paid a combined \$751.08 per month for the Aliera policy from June 2018 to July 2019, for a total amount of approximately \$10,515.12. RP also paid a one time enrollment fee of \$125 to Aliera. During such timeframe, Aliera only made a partial payment of \$89.44 for a routine doctor visit, leaving RP to pay the balance of \$375.66.





- 19. On February 20, 2019, RP had gone to the dentist for a cleaning and fillings. After the appointment, RP's gums continued to bleed. It was the weekend with no access to his primary doctor and no urgent care facility in the community, RP went to the emergency room. RP was twice infused with DDAVP and admitted to the hospital.
- 20. On June 10, 2019, RP filed a complaint with the Division after Aliera denied payment for the February 20, 2019 emergency room visit and hospital stay. The denial of the claim left RP with a \$79,594.94 medical bill. An ACA approved health insurance plan, like Providence Health Plan, would have been required to cover this preexisting condition.
- 21. Since January 2018, there have been no less than six (6) complaints filed by consumers against Aliera.

### **CONCLUSIONS OF LAW**

The Director CONCLUDES that:

- 22. Pursuant to ORS 731.252(1), whenever the Director has reason to believe that any person has been engaged or is engaging or is about to engage in any violation of the Insurance Code, the Director may issue an order to discontinue or desist from such violation or threatened violation.
- 23. ORS 731.354 states that no person shall act as an insurer and no insurer shall directly or indirectly transact insurance in this state except as authorized by a subsisting certificate of authority. Trinity does not meet the legal definition of an HCSM under 26 USC §5000A because it has not been in operation and continuously sharing member health care costs since December 31, 1999. Neither Trinity nor Aliera have certificates of

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authority to transact insurance in Oregon. Therefore, Respondents are in violation of ORS 731.354.

- 24. ORS 744.702 states that a person shall not transact business or purport or offer to transact business as a TPA in this state unless the person holds a TPA license. Aliera is not and has never been licensed as a TPA in Oregon. Aliera is processing claims and otherwise transacting business as a TPA without a license, in violation of ORS 744.702, as indicated in the Aliera Welcome Letter, claims portal for members on Aliera's website and complaints filed with the Division.
- ORS 746.075 states that a person may not engage, directly or indirectly, in 25. making, issuing, circulating or causing to be made, issued or circulated, any statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages therein. Respondents are in violation of ORS 746.075 for misrepresenting the terms of policies being sold to Oregon consumers by using insurance terms in advertisements to mislead consumers into believing that they are purchasing health insurance, with the corresponding benefits under the ACA and state law.
- 26. ORS 746.110 states that no person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of the insurance business, which is untrue, deceptive or misleading. Respondents are in violation of ORS 746.110 for publishing an advertisement with respect to the business of insurance which is untrue, deceptive or misleading by using insurance terms in advertisements to mislead consumers into believing that they are purchasing insurance.

27. ORS 744.074(1)(g) states the Director may revoke an insurance producer license for having been found to have committed unfair trade practices or fraud related to insurance. Aliera violated ORS 744.074(1)(g) by committing unfair trade practices or fraud related to insurance when it advertised non-insurance policies as being equivalent to insurance. Furthermore, Aliera has attempted to evade regulation by operating under an allegedly exempt HCSM, when in fact Trinity has given control of most, if not all, of its operations, marketing, sales, and claims processing to Aliera. Even if Trinity were a properly qualified HCSM, which it is not for the reasons described in paragraph 7, it cannot be controlled by a for-profit company like Aliera.

28. ORS 744.074(1)(h) states the Director may revoke an insurance producer license for using fraudulent, coercive or dishonest practices in the conduct of business in this state. Aliera violated ORS 744.074(1)(h) by committing unfair trade practices or fraud related to insurance when it advertised non-insurance policies as being equivalent to insurance. Furthermore, Aliera has attempted to evade regulation by operating under an allegedly exempt HCSM, when in fact Trinity has given control of most, if not all, of its operations, marketing, sales, and claims processing to Aliera. Even if Trinity were a properly qualified HCSM, which it is not for the reasons described in paragraph 7, it cannot be controlled by a for-profit company like Aliera.

29. ORS 731.256 states that the Director may institute actions or other lawful proceedings that the director deems necessary to enforce a provision of the Insurance Code or any order or action the director makes or takes in pursuance of law, including seeking restitution on a consumer's behalf for actual damages the consumer suffers as a result of the insurer's violation of a provision of the Insurance Code. Since Respondents do not meet the legal definition of a HCSM under 26 USC § 5000A, and have engaged in the business of entering into policies of insurance in Oregon, they are insurers as defined under ORS 731.106.

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| 30. ORS            | 5 731.988(1) states the Director   | may impose a  | civil penalty of u | p to \$10, | 000  |
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| per violation up   | pon any person who violates        | a provision   | of the Insurance   | Code. E    | lach |
| violation is a sep | parate offense.                    |               |                    |            |      |
|                    | ORDE                               | ERS           |                    |            |      |
| Now the            | erefore, the Director issues the f | following Ord | ler and Proposed ( | Orders:    |      |

- As authorized by ORS 731.252(1), the Director ORDERS Respondents, and all 31. of its agents, affiliates, employees, contractors, successors in interest, and/or authorized representatives to CEASE AND DESIST from the solicitation, negotiation, sale, or effectuation of Respondents' products in Oregon.
- 32. The Director, pursuant to ORS 744.074(1)(g) and (h), hereby proposes to REVOKE Aliera's nonresident insurance producer license.
- 33. The Director, pursuant to ORS 731.256, hereby proposes to assess restitution against Respondents, jointly and severally, in the amount of the total premiums or "member contributions" paid by Oregon consumers to Respondents. The total restitution amount shall be determined prior to hearing on this matter.
- 34. The Director, pursuant to ORS 731.988(1), hereby proposes to assess a civil penalty of \$1,333,000 (\$1,000 per Oregon consumer) against Aliera based on violations of ORS 731.354, ORS 744.702, ORS 746.075, and ORS 746.110.
- 35. The Director, pursuant to ORS 731.988(1), hereby proposes to assess a civil penalty of \$666,500 (\$500 per Oregon consumer) against Trinity based on violations of ORS 731.354, ORS 746.075, and ORS 746.110.

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| DESIGNATION OF RECORD  |
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| 36. The Director designates the Division's file on this matter, which includes all   |
| materials submitted by the party, as the record in this case. In accordance with OAR 137-  |
| 003-0670(3)(a)-(b), the record contains sufficient evidence of the existence of facts  |
| necessary to support a final order by default should the Director issue such an order.   |
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| SO ORDERED this 9 <sup>th</sup> day of October, 2019 in Salem, Oregon.   |
| CAMERON C. SMITH, Director Department of Consumer and Business Services  |
| /s/ Dorothy Bean   |
| Dorothy Bean, Chief of Enforcement Division of Financial Regulation  |
| Division of Pinancial Regulation   |
| NOTICE OF RIGHT TO AN ADMINISTRATIVE HEARING   |
| As provided by the Oregon Administrative Procedures Act, ORS Chapter 183, any person affected by the foregoing is entitled to a formal contested case hearing before an Administrative Law Judge assigned by the Office of Administrative Hearings.                        |
| In accordance with ORS 183.415, a party must file a written request for a contested case hearing within 20 days from the date the order was served personally, or by registered or certified mail. An order that is served by registered or certified mail is complete and |

effective on the date it is mailed to the correct address, even if it is not received by the person to be notified or if that person fails or refuses to accept service of the order.

If a party does not timely file a hearing request, their right to a hearing shall be considered waived.

A written hearing request should be directed to:

Department of Consumer and Business Services Division of Financial Regulation 350 Winter Street NE, Room 410 Salem, OR 97301-3881

Attn: Ann Marie Garber

In accordance with OAR 137-003-0550(1), a party that is a natural person may submit a hearing request without the assistance of an attorney.

Subject to exceptions, any hearing request that is submitted on behalf of a corporation, partnership, limited liability company, unincorporated association, trust or governmental body by a person that is not licensed to practice law in Oregon must be ratified, in writing, by a person that is allowed to practice law in Oregon within 28 days from the day the hearing request was received by the Director. In that circumstance, the filing date will be the date the hearing request was received, not the ratification date. A hearing request that is not properly ratified is invalid.

Any party that validly requests a hearing will be notified of the time and place of the hearing. If a party does request a hearing, additional information regarding rights of the party will be provided prior to the hearing. A legal aid organization may be able to assist a party with limited financial resources.

The Director may enter a final order by default against any party that: 1) does not file a request a hearing within 20 days from the date the order was served; 2) files a hearing request, but does not timely ratify it (if required); 3) withdraws the request for a hearing; or, 4) notifies the Director of the Department of Consumer and Business Services or the Administrative Law Judge that they will not appear, or fails to appear, at the scheduled hearing.

## NOTICE TO ACTIVE DUTY SERVICEMEMBERS

Active duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <a href="http://legalassistance.law.af.mil">http://legalassistance.law.af.mil</a>. The Oregon Military Department does not have a toll free telephone number.

### STATEMENT OF REASONABLE ACCOMMODATION

All proceedings will be conducted in a wheelchair accessible location. Written materials may be provided and/or graphic displays may be presented during the proceeding. For any other accommodation needed by individuals due to a disability, please contact the agency staff person noted below.

### AGENCY CONTACT INFORMATION

Questions concerning the issues raised in the order may be directed to Ann Marie Garber, Oregon Department of Consumer and Business Services, Division of Financial Regulation, Enforcement Section, telephone (503) 983-4656.

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