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9 MISSIONARY GUADALUPANAS OF THE HOLY
SPIRIT, INC., a Florida non-profit corporation.
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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SACRAMENTO
14 PREROGATIVE WRITS DEPARTMENT

15
16 MISSIONARY GUADALUPANAS OF THE
HOLY SPIRIT, INC., a Florida non-profit
17 corporation,

18 Petitioner and Plaintiff,

19 v.

20 MICHELLE ROUILLARD
DIRECTOR, DEPARTMENT OF MANAGED
21 HEALTH CARE,

22 Respondent and Defendant.
23

Case No.:

**VERIFIED PETITION FOR WRIT OF
MANDAMUS AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF AND ATTORNEYS' FEES**
[Code Civ. Proc. §1085, 1021.5]

24
25 Petitioner MISSIONARY GUADALUPANAS OF THE HOLY SPIRIT, INC. , a Florida non-
26 profit corporation, (hereinafter “the Guadalupanas Sisters”) hereby petitions this court for writ of
27 mandate, pursuant to Code of Civil Procedure section 1085, and further bring this action for
28 declaratory and injunctive relief against respondent Michelle Roulliard, in her official capacity as

1 Director of the Department of Managed Health Care for the State of California (hereinafter
2 “Respondent”).

3 **THE UNDERGROUND REGULATION AT ISSUE**

4 1. This Verified Petition for Writ of Mandate and Complaint for Injunctive and
5 Declaratory Relief (“Petition”) challenges Respondent’s unlawful promulgation, and enforcement, of
6 an underground regulation on August 22, 2014, in violation of the Administrative Procedures Act,
7 California Government Code §§ 11340 et seq. (hereinafter “the APA”), finding that abortion for any
8 reason, even elective abortion, is a “basic health care service” under the Knox-Keene Health Care
9 Service Plan Act of 1975, Health & Safety Code §§ 1340 et seq. (hereinafter “the Knox-Keene Act”) and
10 requiring all California managed health care plans subject to the Knox-Keene Act consequently
11 to provide unrestricted coverage for all abortions.

12 2. Under the Knox-Keene Act, a health care service plan contract must provide plan
13 participants with all “basic health care services,” which the Act defines as physician services
14 (including consultation and referral), hospital inpatient services, ambulatory care services (i.e.,
15 outpatient services), home health services, and preventive health services. The Knox-Keene Act
16 delegates the authority “to define the scope of each basic health care service” by rule or regulation to
17 the Director of DMHC. These implementing and defining regulations are set forth in detail in Title
18 28 of the California Code of Regulations (“Health Regulations”), which states that “the basic health
19 care services required to be provided by a health care service plan to its enrollees shall include [those
20 defined below] where medically necessary.” While the regulations define each “basic health care
21 service,” they do so generally by identifying the type of service a plan must provide rather than
22 identifying specific procedures or services to be provided. Nowhere does the Knox-Keene Act, or,
23 for that matter, any regulations promulgated prior to August 22, 2014, specify that non-medically
24 necessary abortion is a “basic health care service.”

25 3. On August 22, 2014, without any prior public notice, Respondent suddenly issued
26 letters to seven health insurance plans (i.e., Aetna, Anthem Blue Cross, Blue Shield of California,
27 GEM Care, Health Net, Kaiser Permanente Healthcare, and United Health Care) directing each of
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1 them to amend all existing plan contracts so as to remove any and all exclusions and limitations
2 regarding voluntary abortions on the purported basis that abortion for any reason is a “basic health
3 care service” under Health and Safety Code § 1345 and 28 Code of Regulations § 1300.67. True and
4 correct copies of the seven letters sent to the health insurance plans is attached hereto as Exhibit ‘A’.

5 4. Respondent entirely ignored the APA rule-making process prior to issuance of the
6 August 22, 2014, letters. There was no notice of intended rule-making, no publication of a proposed
7 regulation, no period for public review, no taking of public comments on the proposed regulation, and
8 no hearing regarding the proposed regulation. Rather, Respondent arbitrarily issued the August 22,
9 2014, letters unilaterally and immediately enforced the underground regulation against California’s
10 managed health care plan providers.

11 5. As reflected in the letter attached as Exhibit ‘A’, Respondent demanded the health
12 insurance industry take proscribed actions and provide evidence that demonstrates compliance with
13 those actions. Pursuant to the “Required Actions” listed on page 2 of Respondent’s August 22 letter,
14 Respondent directed each health insurance plan provider to:

- 15
- 16 a. [R]eview all current health plan documents to ensure that they are compliant with the
17 Knox-Keene Act with regard to legal abortion. This includes plan documents previously
18 approved or not objected to by the [Respondent]. In regards to coverage for abortion
19 services, the descriptors cited below are inconsistent with the Knox-Keene Act and the
20 California Constitution. [The health insurance plan] must amend current health plan
21 documents to remove discriminatory coverage exclusions and limitations. These
22 limitations or exclusions include, but are not limited to, any exclusion of coverage for
23 “voluntary” or “elective” abortions and/or any limitation of coverage to only “therapeutic”
24 or “medically necessary” abortions. [The health insurance plan] may, consistent with the
25 law, omit any mention of coverage for abortion services in health plan documents, as
26 abortion is a basic health care service.
 - 27 b. Demonstrate compliance by filing any revised relevant health plan documents (e.g.
28 evidence of coverage [“EOC”], subscriber documents, etc.) with the Department as an

1 Amendment to the health plan’s license within 90 days of the date of this letter. The filing
2 should highlight, as well as underline the changes to the text as required by the California
3 Code of Regulations, title 28, § 1300.52(d).

4 6. Respondent’s new and unprecedented interpretation of the term “basic health care
5 services” constitutes an unlawful underground regulation in violation of the APA and imposed an
6 entirely new, sweeping, and unprecedented, interpretation of “basic health care services” that
7 contradicted the longstanding understanding of the healthcare industry regarding the meaning of that
8 term. Respondent mandated that “[r]egardless of existing EOC language, effective [August 22, 2014,
9 the health care plan organization] must comply with California law with respect to the coverage of
10 legal abortions.” Each insurer was required to comply with this mandate and file amended health
11 care plans, as required, with Respondent for review. Because Respondent is empowered to review
12 health care plans and amendments for licensure, and to enforce the Knox-Keene Act, the recipients of
13 the letter are within its jurisdictional power and constitute the regulated community subject to
14 Respondent’s executive authority.

15 7. The APA, Gov. Code § 11342.600, defines a “regulation” subject to the APA as “every
16 rule, regulation, order, or standard of general application or the amendment, supplement, or revision
17 of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or
18 make specific the law enforced or administered by it, or to govern its procedure.”

19 8. Respondent’s August 22 letters clearly impose a new interpretation of the term “basic
20 health care services,” as used in the Knox-Keene Act, and enforce that particular interpretation by
21 requiring all health plan providers subject to Knox-Keene to amend their evidence of coverage
22 contracts to provide coverage for all abortion services. Such being the case, Respondent's
23 interpretation constitutes a “regulation,” as defined in the APA. Hence, because Respondent failed to
24 comply with the APA in the promulgation of this regulation, the interpretation set forth in the August
25 22, 2014, constitutes an unlawful “underground regulation.”

26 9. The instant petition and complaint raises an issue of great public importance because
27 Respondent determined for the very first time anywhere in the United States—let alone California—
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1 that all forms of abortion, regardless of the circumstances or reasons for them, constitute a “basic
2 health care service.” As a result of this purported regulatory determination by Respondent, all health
3 plans subject to the Knox-Keene Act are now required, as a matter of regulatory mandate, to cover all
4 legal abortions—even late-term abortions, partial birth abortions, and gender selection abortions—for
5 any reason whatsoever. This action precludes thousands of California employers (including the
6 Guadalupanas Sisters), who conscientiously object to paying for abortion, from procuring and paying
7 for and paying for health plans that do not cover abortion-on-demand, which plans the Respondent
8 had routinely approved prior to August 22, 2014..

9
10 10. This action reflects an unlawful disregard of Respondent’s statutory obligations to
11 promulgate regulations in compliance with the provisions of the APA. As Respondent has made it
12 clear that it will not review, reconsider, or revise its decision, this matter requires resolution. Because
13 the underground regulation imposed upon California insurers in the August 22, 2014, letters was
14 promulgated in violation of the APA, the interpretation imposed therein is unlawful, void, and
15 unenforceable.

16 **JURISDICTION AND VENUE**

17 11. This court has jurisdiction over this matter pursuant to Code of Civil Procedure section
18 1085. Venue is proper pursuant to Code of Civil Procedure section 395.

19 **PARTIES**

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21 12. Petitioner-Plaintiff Missionary Guadalupanas of the Holy Spirit, Inc. is a Florida non-
22 profit corporation qualified to do business in the State of California, having its principal place of
23 business in the City of Los Angeles in Los Angeles County.

24 13. The Guadalupanas Sisters are a Catholic order of religious women, who have
25 consecrated their lives to the service of the Gospel of Jesus Christ. Such religious women are
26 commonly referred to in the popular parlance as “nuns” (although the term “nun” actually refers to a
27 religious women living in a cloistered monastic community). The Guadalupanas Sisters, whose order
28 is based in Mexico and maintains its provincial headquarters in Los Angles, live among the poor and

1 the needy in inner city and rural areas, teaching religion classes to children and young people, serving
2 the poor and needy, and working with destitute Spanish-speaking immigrants.

3 14. The Guadalupanas Sisters live lives of service, ministry, and prayer. Each sister, as
4 part of her religious vows as a consecrated religious woman, professes the Evangelical Counsels of
5 poverty, chastity, and obedience to their religious superiors. Moreover, each sister is faithful to the
6 teachings and belief of the Catholic Church.

7 15. Among the teachings of the Catholic Church is its well-known moral teaching
8 regarding the inherent dignity of the human person and the sanctity of human life from the moment of
9 conception to the moment of natural death. This belief is not some ancillary, unimportant corollary of
10 Catholic religious belief, but rather is fundamental to its understanding of the message of the Gospel
11 of Jesus Christ.

12 16. Section 2270 of the *Catechism of the Catholic Church*, which summarizes the
13 teachings of the Catholic Church, states that “[h]uman life must be respected and protected absolutely
14 from the moment of conception.” As a result, as the *Catechism* further sets forth, Catholics believe
15 that “[d]irect abortion, that is to say, abortion willed either as an end or a means, is gravely contrary
16 to the moral law...From the first moment of his existence, a human being must be recognized as
17 having the rights of a person - among which is the inviolable right of every innocent being to life.”

18 17. This teaching is so fundamental that even materially cooperating (i.e., facilitating or
19 otherwise participating in some meaningful way) in the provision of direct abortion constitutes a
20 grave moral offense under Catholic teaching. In a word, no faithful Catholic person can ever, in good
21 conscience, ever participate, facilitate, or otherwise materially cooperate with the intentional killing
22 of an unborn child. To do so, Catholics believe, violates God’s creative plan for humanity and is
23 contrary to the inherent dignity and sanctity of every human life.

24 18. For the Guadalupanas Sisters, there is no compromise possible regarding the direct
25 and intentional killing of unborn human life. Direct abortion is not a nuanced or arguable matter for
26 faithful Catholics, such as the Guadalupanas Sisters; rather, it is clearly and unequivocally immoral
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1 and unacceptable in every circumstance. They simply will not, and cannot, have anything to do with
2 it.

3 19. Moreover, the Guadalupanas Sisters are also strong advocates of social justice, as that
4 term is understood in the context of the Gospel of Jesus Christ. Compelling people to violate their
5 closely-held, intimate moral, ethical, and religious beliefs, without respecting their right to disagree
6 and live according to one's own conscience, is a grave injustice. All persons of goodwill, Catholic or
7 not, Christian or not, religious believers or not, who, for whatever reason, have conscience-based
8 objections to the practice of direct abortion ought not, and should not, in the view of the
9 Guadalupanas Sisters, be coerced by the state into doing that which their consciences tell them they
10 cannot do—and this is particularly the case when the matter involves the killing of another human
11 person, such as is the case with regard to the practice of direct abortion. By ignoring the APA when
12 promulgating the regulation in question, the Respondent unjustly denied California citizens, such as
13 the Guadalupanas Sisters, the opportunity to publicly comment on the regulation and seek an
14 appropriate exemption or accommodation for their deepest religious and moral convictions. This is a
15 fundamental injustice that demands remediation by this court..
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17 20. Moreover, the Guadalupanas Sisters, as well as the millions of other similarly-situated
18 members of the public who have conscience objections to the practice of direct abortion, have a
19 substantial, beneficial interest in the relief that is sought, and have a present interest in the
20 enforcement of the Administrative Procedures Act, which Respondent has flagrantly ignored.

21 21. Respondent Michelle Roulliard, who is sued exclusively in her official capacity as the
22 the Director of the Department of Managed Health Care for the State of California, is the chief
23 executive officer of the California public agency charged with, among other things, interpreting,
24 applying, regulating and enforcing the provisions of the Knox-Keene Act. The August 22, 2014,
25 letters were signed by Respondent, further to her responsibilities as Director of the DMHC.
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1 **THE INJURY TO THE GUADALUPANAS SISTERS**

2 22. Prior to May 1, 2015, the Guadalupanas Sisters procured their health insurance plans
3 through a federally qualified Employee Retirement Income Security Act (“ERISA”) trust available to
4 certain, qualified Catholic religious entities. The programs offered through this particular ERISA
5 trust, which is not subject to regulation by California state agencies, excluded coverage for direct
6 abortion of any kind.

7 23. In January, 2015, the Guadalupanas Sisters were informed by the administrators of the
8 ERISA trust that, due to a change in program parameters for eligible participants, the Guadalupanas
9 Sisters could no longer obtain their health insurance through this ERISA trust. The Guadalupanas
10 Sisters had an insufficient number of members residing in California to qualify as plan participants.
11 As a consequence, the Guadalupanas Sisters were compelled to seek recourse to commercial health
12 plan markets to obtain health insurance for their sisters located in California.

13 24. No California managed health care insurer would offer a managed care plan to the
14 Guadalupanas Sisters that excluded coverage for abortion-on-demand, based upon the unlawful
15 underground regulation issued on August 22, 2014, by Respondent. All of the managed care plans
16 offered to the Guadalupanas Sisters included full, and unrestricted, coverage for direct abortion
17 without limitation.

18 25. The Guadalupanas Sisters, having no alternative, enrolled in a Kaiser Permanente
19 managed care plan that covers direct abortion for all plan participants. As a result, the Sisters have
20 been coerced into paying premiums for such coverage. Even though the Guadalupanas Sisters have
21 no need for abortion coverage, given their moral and religious objections to the practice of direct
22 abortion, they nonetheless are being coerced, out of necessity, to pay premiums that are used, in part,
23 to fund the direct abortion of the unborn child of other plan participants. This situation is morally,
24 ethically, and religiously unacceptable to the Guadalupanas Sisters, as it burdens their religious
25 conscience rights in having to fund, through their premiums, the practice of direct abortion for other
26 plan participants.
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1 care service” under the Knox-Keene Act violated the APA insofar as Respondent failed to comply
2 with any of the APA’s provisions regarding regulatory rule-making in promulgating said underground
3 regulation.

4 31. Petitioner has no other plain, speedy, or adequate remedy at law to prevent Respondent
5 from enforcing its unlawful underground regulation so as to preclude the Guadalupanas Sisters from
6 obtaining a managed health care plan for the Sisters that does not include coverage for direct
7 abortion.

8 32. Petitioner requests recovery of attorneys’ fees pursuant to Code of Civil Procedure
9 section 1021.5.

10 WHEREFORE, Petitioner prays for relief as set forth below.

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12 **SECOND CAUSE OF ACTION**

13 **Declaratory and Injunctive Relief Concerning Subjective Review Standards That Are Underground**
14 **Regulations and Unlawful**

15 (Gov’t Code §§11340, et seq.; Code Civ. Proc. §1085)

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17 33. Petitioner realleges and incorporates by reference the allegations set forth in
18 paragraphs 1 through 32, as though fully set forth herein.

19 34. The APA establishes the procedures by which state agencies, including Respondent,
20 may promulgate regulations.

21 35. The APA requires that an adopting state agency give public notice of any proposed
22 regulations, issue a complete text of the proposed regulations with a statement of the reasons therefor,
23 and identification of the legal authority to propose and adopt regulations; give interested parties an
24 opportunity to comment on the proposed regulations; respond to public comments; and forward to the
25 Office of Administrative Law a file of all material relied upon by the agency in adopting the proposed
26 regulations.

1 36. The APA was created to ensure that interested parties have a voice in a proposed
2 regulation’s creation and notice of a regulation’s requirements, and to further ensure that the
3 promulgation process is lawfully pursued prior to the regulations taking effect.

4 37. The APA defines a regulation very broadly as “every rule, regulation, order, or
5 standard of general application or the amendment, supplement, or revision of any rule, regulation,
6 order, or standard adopted by any state agency to implement, interpret, or make specific the law
7 enforced or administered by it, or to govern its procedure.”

8 38. A state agency subject to the APA is prohibited from issuing, utilizing, or enforcing
9 any interpretation, instruction, order, standard of general application, or other rule, which is a
10 regulation, unless the interpretation, instruction, order, standard of general application, or other rule
11 has been adopted as a regulation, pursuant to the APA.

12 39. In promulgating, imposing, and enforcing the interpretation of the term “basic health
13 care service,” as that term is used in the Knox-Keene Act, to include direct abortion, in the August 22,
14 2014, letters sent by Respondent to California’s managed health care providers, Respondent failed to
15 comply with any of the various provisions of the APA applicable to regulatory rule-making.

16 40. Respondent's actions in promulgating, imposing, and enforcing the interpretation of
17 the term “basic health care service,” as that term is used in the Knox-Keene Act, to include direct
18 abortion, as set forth in the August 22, 2014, letters sent to California managed health care providers
19 violated its legal duties under the APA, and is actionable under California Code of Civil Procedure
20 section 1085.

21 41. Petitioner seeks the issuance of a writ because there is no plain, speedy, and adequate
22 remedy in the ordinary course of law.

23 42. Petitioner requests recovery of attorneys’ fees pursuant to Code of Civil Procedure
24 section 1021.5.

25 WHEREFORE, Petitioner prays for relief as set forth below.
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1 **THIRD CAUSE OF ACTION**

2 **Injunctive Relief**

3 43. Petitioner realleges and incorporates by reference the allegations set forth in
4 paragraphs 1 through 42, as though fully set forth herein.

5 44. For each and every one of the reasons identified in the foregoing petition,
6 Respondent’s underground regulation and the directive to California’s managed care insurance plan
7 providers is unlawful, and must not be further enforced.

8 45. Petitioner has no adequate remedy at law to prevent Respondent from enforcing its
9 unlawful underground regulation against California’s managed health care plan providers, on grounds
10 that exceed those set forth in the Corporations Code.

11 46. Petitioner requests recovery of attorneys’ fees pursuant to Code of Civil Procedure
12 section 1021.5.

13 WHEREFORE, Petitioner prays for relief as set forth below.
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15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner prays for judgment as follows:
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18 A. For a writ of mandate ordering Respondent to withdraw and void, on the grounds of
19 Respondent’s failure to comply with the provisions of the APA, the unlawful underground regulation
20 interpreting the term “basic health care service,” as that term is used in the Knox-Keene Act, to
21 include direct abortion included in the August 22, 2014, letters to California’s seven managed health
22 care plan providers.

23 B. For a judgment declaring that Respondent has violated the APA by failing to comply
24 the provisions of the Act in promulgating, imposing, and enforcing the interpretation of the term
25 “basic health care service,” as that term is used in the Knox-Keene Act, to include direct abortion, as
26 set forth in the August 22, 2014, letters from Respondent to California’s managed health care plan
27 providers, which are attached hereto as Exhibit ‘A.’
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1 C. For a judgment declaring that the interpretation of the term “basic health care service,”
2 as that term is used in the Knox-Keene Act, to include direct abortion and directives to enforce such
3 interpretation as set forth in Respondent’s August 22, 2014, letters to California’s managed health
4 care providers, attached hereto as Exhibit ‘A,’ constitutes an underground regulations in violation of
5 the APAt and are, accordingly, null, void, and unenforceable.

6 D. For a judgment permanently enjoining Respondent from enforcing the interpretation
7 of the term “basic health care service,” as that term is used in the Knox-Keene Act, to include direct
8 abortion as set forth in Respondent’s August 22, 2014, letters to California’s managed health care
9 providers, attached hereto as Exhibit ‘A,’ on the grounds that such interpretation and directives
10 constitute an unlawful and unenforceable underground regulation promulgated in violation of the
11 APA.

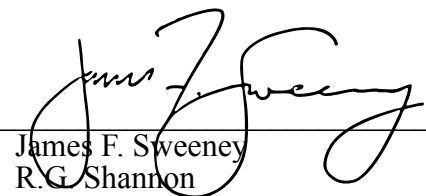
12 F. For an award to Petitioner-Plaintiff of its attorneys’ fees and costs of suit (including
13 reasonable attorney, witness, and consultant fees) as authorized by Code of Civil Procedure section
14 1021.5.

15 G. For costs of suit.

16 H. For such other and further relief as the court may deem just and proper.

17 DATED: October 20, 2015

18 LAW OFFICES OF JAMES F. SWEENEY
19 LAW OFFICES OF R.G. SHANNON

20
21
22 By: 
23 James F. Sweeney
24 R.G. Shannon
25 Attorneys for Petitioner-Plaintiff
26 MISSIONARY GUADALUPANAS OF
27 THE HOLY SPIRIT, INC. , a Florida non-
28 profit corporation

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2 **VERIFICATION**
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4 I, Sr. Ana Gabriela Castro, MGSpS, am the Provincial Superior of Petitioner-Plaintiff
5 MISSIONARY GUADALUPANAS OF THE HOLY SPIRIT, INC. , a Florida non-profit corporation.
6 I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT
7 FOR INJUNCTIVE AND DECLARATORY RELIEF AND ATTORNEYS' FEES, and know the
8 contents thereof. All facts alleged in the petition are true based on my own personal knowledge,
9 except as to those matters stated on information and belief, and as to those matters I believe them to
10 be true.
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12 I declare under penalty of perjury under the laws of the State of California that the foregoing
13 is true and correct, and that this declaration was executed on October 20, 2015, at Los Angeles,
14 California.
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Sr. Ana Gabriela Castro, MGSpS