

CASE ALERT

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Statute of limitations period for nursing home to file lawsuit contesting DHS citation is tolled while nursing home's request for administrative review is pending

Waterman Convalescent Hospital, Inc. v. Department of Health Services (02 C.D.O.S. 9462)

The 90-day statute of limitations period for a nursing home to file a lawsuit contesting a citation issued by the DHS was tolled during the period the nursing home's request for a citations review conference was pending, according to a recent California Court of Appeals opinion.

The DHS issued a citation against Waterman Convalescent Hospital for class "A" violations. Within 15 days of its receipt of the citation, Waterman notified DHS of its intent to contest the citation and requested a citations review conference ("CRC"). Approximately four months later, Waterman notified the DHS of its intent to withdraw its request for a CRC and to instead contest the citation in court.

Waterman then sued the DHS, seeking an order dismissing the citation. DHS demurred on the ground that Waterman's action was barred by the statute of limitations in Health and Safety Code §1428(b), which requires that any court action be filed within 90 days of the facility's notification to DHS of its intent to contest a citation. Citing the expiration of the statute of limitations, the trial court sustained the demurrer without leave to amend and dismissed the case.

The Court of Appeal reversed the trial court's decision. It held that under §1428, when a nursing home chooses to contest a citation by requesting a CRC, the limitations period on the judicial remedy does not begin to run until the request for a CRC is withdrawn, or until the CRC is received by the facility.

The court concluded that Waterman's suit against the DHS was commenced within the statute of limitations, as the limitations period did not begin to run until Waterman withdrew its request for a CRC. It had 15 business days from the time of its withdrawal of the CRC to notify the director of its intent to file a court action, and 90 calendar days after that notice in which to do so.

Note: This opinion is not final. It may be withdrawn from publication, rehearing may be granted or the Supreme Court may grant a hearing. If any of these events take place, the opinion would be unavailable for use as authority.

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