S249132

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

SAINT FRANCIS MEMORIAL HOSPITAL, Petitioner/Appellant. v. CALIFORNIA DEPARTMENT OF HEALTH, Respondent/Respondent.	)	No. _____

PETITION FOR REVIEW

After a Decision by the Court of Appeal,
First Appellate District, Division One
Case No. A150545

Superior Court of California
County of San Mateo
Case No.:CIV537118
Honorable George A. Miram

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I. ISSUES PRESENTED FOR REVIEW

1. Can the Doctrine of Equitable Tolling apply to a late-filed Petition of Writ of Mandate to challenge an action by a California State Regulatory Agency?
2. Do the facts of this case merit the application of the Doctrine of Equitable Tolling?

II. WHY REVIEW SHOULD BE GRANTED

In virtually every published case on the subject of equitable tolling of the statute of limitations it has been the California Supreme Court that has decided this doctrine should be applied to a given case. This case represents another case where this should occur, and will give this Court the opportunity to further delineate the circumstances under which the lower courts should apply equitable tolling.

This case involves a late-filed Petition for Writ of Mandate to challenge a decision by the California Department of Public Health (CDPH). The trial court sustained a demurrer without leave to amend, and the Court of Appeal affirmed.

Factually, CDPH issued a monetary penalty against Saint Francis Memorial Hospital in San Francisco (SFMH) for an alleged regulatory violation, in accordance with Health & Safety Code § 1280.1(c). SFMH appealed the decision, and the case went to an administrative hearing before an Administrative Law

Judge. The ALJ found in favor of SFMH on the appeal, but CDPH rejected the decision by the ALJ. After further briefing, the CDPH rejected the appeal of SFMH and affirmed the citation. The decision concluded with the statement that the decision was "effective immediately."

Government Code §§11518.5 and 11521 provide a mechanism for seeking reconsideration of administrative decisions. Under Government Code §11518.5 the time to file a Petition for Writ of Mandate is extended when the request is made, and has to be submitted within 15 days of the decision. Government Code §11521 (a) says the following with respect to when a request for reconsideration can be made:

> The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration.

Pursuing reconsideration is optional, but was sought by SFMH by way of a written request sent to CDPH. In so doing SFMH did not appreciate that the decision by the CDPH was "effective immediately" which foreclosed any effort to seek reconsideration. However, there can be no doubt SFMH pursued

reconsideration in good faith.

Counsel for CDPH replied to the reconsideration request made by SFMH on the merits by serving a written opposition. The opposition did not raise the issue of whether reconsideration was available to SFMH, and instead focused on the merits of the request. The Request for Reconsideration undoubtedly put CDPH on notice that SFMH did not agree with the final decision, and would challenge the decision. In addition, one day before the running of the 30 day time period of Government Code §11523 within which to file a petition for writ of mandate, counsel for SFMH sent the following email to counsel for CDPH:

"Evelyn,

We submitted our request for reconsideration on December 30. As I read the statute CDPH has until today to accept or reject the request. If no action is taken it is deemed denied. I think the additional five days for mailing arguably applies; do you agree? This would extend to next Tuesday to decide the request.

The main reason I ask is we intend to petition for a writ of mandate with the Superior Court if the request for reconsideration is denied. Since we already have a copy of the administrative record I would like to use a joint appendix as the record for the writ. I would include the record we got from the administrative court, the documents

related to the agency decision to reject the ALJ decision, the subsequent submissions by both of us, the agency decision denying the appeal, and then the subsequent submissions regarding reconsideration. I would also obviously include anything we get on the reconsideration. Let me know if you would be agreeable to this approach; I have used it before in another writ on and agency decision (involving the BRN)."

The subsequent response from counsel for CDPH was:

"Good morning, Cyrus

I believe you are correct.

I will not be handling the matter in Superior Court; rather it will be an attorney from the AG's office. A referral has yet to be made from our office, but when it takes place, I will notify you so that you can contact the assigned DAG.

Thank you.

Evelyn Hodson"

A few days later CDPH rejected the request for reconsideration on the grounds it was untimely since the decision had been deemed effective immediately. A Petition for Writ of Mandate was then filed by SFMH. This occurred eleven days after the running of the 30 day statute of limitations of

Government Code §11523.

Although all the requirements for the application of the Doctrine of Equitable Tolling were met, as set forth by this court in *McDonald v. Antelope Valley Community College District* (2008) 45 Cal.4th 88, both the San Mateo County Superior Court and the First District Court of Appeal determined that Equitable Tolling was not available to SFMH. This was despite clear language in *McDonald v. Antelope Valley Community College District* that equitable tolling is an available option to parties like SFMH under the circumstances presented.

In *McDonald v. Antelope Valley Community College District* Mr. McDonald and the other plaintiffs filed suit against the Antelope Valley Community College District alleging racial harassment, racial discrimination, and retaliation. One of the plaintiffs, Sylvia Brown, initially pursued an administrative action through the office of the Chancellor of Human Resources at the California Community Colleges Chancellor's Office. While that action was pending Ms. Brown was advised the Chancellor's office "does not have primary jurisdiction over employment cases" and she was advised she may ultimately still have to pursue an action through the Department of Fair Employment and Housing (DFEH).

While the administrative action was still pending, but after the running of the statute of limitations, Ms. Brown filed an administrative complaint with

DFEH. The Chancellor's office ultimately found her complaint to be unsubstantiated, but DFEH issued a right to sue letter, and a civil action was then filed.

The District moved for Summary Judgement on the statute of limitations. Ms. Brown argued the Doctrine of Equitable Tolling applied in opposition to the motion. The trial court held the doctrine did not apply, and granted the motion. The Court of Appeal reversed, and held it was a triable issue of fact whether equitable tolling applied. The Supreme Court granted review as to the sole issue of whether equitable tolling applied.

Initially, the *McDonald* court held the legitimacy of the Doctrine of Equitable Tolling is "unquestioned." (45 Cal.4th , at p. 100). With regard to the application of the doctrine generally, the court said:

> "Broadly speaking, the doctrine applies" "'[w]hen and injured person has several legal remedies, and reasonably and in good faith, pursues one.'"" (45 Cal.4th, at p. 100)

After going through some of the other cases which in the past applied the Doctrine of Equitable Tolling, the *McDonald* court held the application of equitable tolling was firmly available in situations where a party pursued an alternative remedy short of a formal appeal so long as the following considerations were present:

> " . . . 'timely notice, and lack of prejudice to the defendant, and

reasonable and good faith conduct on the part of the plaintiff.'[citation omitted.]" (45Cal.App.4th, at p. 102)

Applying these criteria to the case at hand, SFMH's request for reconsideration was submitted before the running of the 30 day limitations period of Government Code §11523. The request for reconsideration put CDPH on notice that SFMH was going to challenge the decision by CDPH not to accept the ALJ's decision. There was also the email from counsel for SFMH clearly indicating a petition for writ of mandate would be pursued if the request for reconsideration did not result in a change in position. Either way CDPH was given timely notice that SFMH would pursue further relief. The resulting "delay" was a mere eleven days, for which prejudice has not been claimed. Finally, SFMH acted reasonably and in good faith in submitting the request for reconsideration.

In *Collier v. City of Pasadena* (1983) 142 Cal.App.3d 917 the plaintiff was a fire fighter who timely filed a workers compensation claim. He was later terminated from his position, and filed for a disability pension. The disability claim was denied, and he filed a late Petition for Writ of Administrative Mandamus. The trial court dismissed the writ petition on the grounds it was not timely filed. The Court of Appeal reversed, and held the filing of the earlier workers compensation claim equitably tolled the timing on the pursuit of the disability claim writ.

The Plaintiff in *Collier* took no action specifically with regard to the disability pension prior to filing his claim, but the *Collier* court felt the workers compensation case was sufficient to put the City of Pasadena on notice enough to allow for the application of equitable tolling. The key was obviously that the City of Pasadena was received some form of timely notice. The same thing happened in the present case.

In *Elkins v. Derby* (1974) 12 Cal.3d 410 the plaintiff also initially filed a workers compensation claim, then later filed an untimely tort claim against the employer. Like the present case, the trial court sustained a demurrer on the statute of limitations without leave to amend, and the court of appeal affirmed. This court reversed, and held the Doctrine of Judicial Tolling should have been applied. In so ruling the court noted:

> "Defendants' interest in being promptly apprised of claims against them in order that they may gather and preserve evidence is fully satisfied when prospective tort plaintiffs file compensation claims within one year of the date of their injuries. To be sure, an employer notified of a compensation claim may fail to gather evidence of fault, and such evidence could prove critical in a subsequent tort action. [citation omitted.] The likelihood, however, that the employer will suffer prejudice if the compensation claimant files a tort action more

than one year after the date of injury is minimal. After the filing of a compensation claim, the employer can identify and locate persons with knowledge of the events or circumstances causing the injury. By doing so, he takes the critical steps necessary to preserve evidence respecting fault. Although he may choose not to gather evidence bearing on fault from these parties when faced only with a compensation claim, he will be able in most instances to recontact these people, particularly if they are continuing employees, for further evidentiary contributions should a controversy as to fault later arise in a tort action."

The same equitable considerations that led this court to applying judicial tolling in *Elkins v. Derby* should lead to the application of judicial tolling to the writ petition filed by SFMH.

In *McDonald v Antelope Valley Community College District* this court articulated a three part test for the application of judicial tolling:

" . . . 'timely notice, and lack of prejudice to the defendant, and reasonable and good faith conduct on the part of the plaintiff.'[citation omitted.]" (45Cal.App.4th, at p. 102)

That test was met by SFMH here. However, the trial court rejected application of judicial tolling to this case, and is so doing relied on the holding in

Kupka v. Board of Administration (1981) 122 Cal.App.3rd 791. The issue in *Kupka* was the application of Code of Civil Procedure §473 to give relief to a late file tort action. The issue of equitable tolling was not raised by the parties and was not addressed by the court in *Kupka.* Even if it had been raised, the plaintiff could not meet the three-part test articulated by the court in *McDonald v Antelope Valley Community College District* given any notice during the running of the statute of limitations that an action would be filed.

The Court of Appeal in the present case relied heavily on the decision in *Hanson v. Board of Registered Nursing* (2012) 208 Cal.App.4th 664 in deciding that equitable tolling was not available to SFMH. In *Hanson* the appellant did not respond to a BRN accusation, and a default was entered. She then claimed she did not notice of the decision, and only learned of it months later. She initially filed a request for reconsideration, then later a petition for writ of mandate.

The appellant's effort to rely on the doctrine of equitable tolling was rejected by the *Hanson* court. The critical missing piece for her was timely notice:

> "Although a statute of limitations is equitably tolled while a party with multiple available remedies pursues one in a timely manner Hansen did not seek relief from the Board until it was too late. By March 7, 2011, the date she sought reconsideration of the Board's decision to revoke her license, the Board had no power to reconsider

the decision because it had lost jurisdiction on January 21, 2011, 30 days after it mailed the decision to Hansen." 208 Cal. App. 4th, p. 672-673.

The key distinguishing factor between the present case and the decision in *Hanson* is that in the present case SFMH's reconsideration request, and the email from counsel about pursuing a writ petition, both put CDPH on notice within the 30-day time period of Government Code §11523 for the filing of petitions for writ of mandate. The court of appeal in the present case appears to have mistakenly believed that the notice given by SFMH to CDPH did not meet the test for equitable tolling. However, any fair reading of the decision in *McDonald v Antelope Valley Community College District* and other decisions like *Collier v. City of Pasadena* (1983) 142 Cal.App.3d 917 and *Addison v. State of California* (1978) 21 Cal.3d. 313 would result in the conclusion that all that is required for equitable tolling to be applied is some form of timely notice.

In rejecting the application of equitable tolling to this case the Court of Appeal said:

"We accept that Saint Francis's mistake about the availability of reconsideration was made in good faith, and we agree that Saint Francis notified the Department of its intent to file a writ peition, but these circumstances are insufficient to toll the running of the 30-day

period." (P.7).

The Court of Appeal did not explain *why* these factors, which meet the test of *McDonald,* were insufficient. The erroneous decision by the Court of Appeal not to apply equitable tolling to the facts presented demonstrates the need for the Supreme Court to clarify when and where equitable tolling should be applied by the lower courts. Accordingly, it is requested that this Petition for Review be accepted.

III. CONCLUSION

The Court of Appeal decision makes clear that there is sufficient confusion by the lower courts regarding the application of equitable tolling to merit this court taking up the issue to further clarify the application of this important public policy doctrine. The underlying case also raises important issues regarding the scope, and potential overreach by the CDPH in applying regulations. It is respectfully requested that the court accept review of this case so that these important public policy issues can be addressed.

Dated: June 1, 2018

SHEUERMAN, MARTINI,
TABARI, ZENERE & GARVIN

By:_____
Cyrus A. Tabari, SB #133842
Attorney for Appellant
SAINT FRANCIS MEMORIAL
HOSPITAL

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, the enclosed PETITION FOR REVIEW is produced using 14-point Roman type including footnotes and contains approximately 2,603 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: June 1, 2018

Cyrus A. Tabari, SB #133842
Attorney for Appellant
SAINT FRANCIS MEMORIAL HOSPITAL

DECLARATION OF SERVICE

At the time of service I was at least 18 years of age and not a party to this legal action.

My business address is: 1033 Willow Street, San Jose, California 95125.

I mailed a copy of PETITION FOR REVIEW as follows: placed the envelope for collection and mailing on the date and at the place shown below, following our ordinary business practices. I am readily familiar with this businesses's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal service, in a sealed envelope with postage fully prepaid.

Dated mailed: May 31, 2018

The envelope was addressed as follows:

Honorable George A. Miram
Judge of the Superior Court
County of San Mateo
400 County Center
Redwood City, CA 94063

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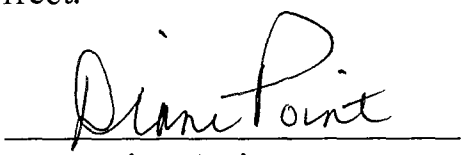
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 1, 2018



Diane Point

Filed 5/23/18

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

SAINT FRANCIS MEMORIAL HOSPITAL,

Plaintiff and Appellant,

v.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH,

Defendant and Respondent.

A150545

(San Mateo County
Super. Ct. No. CIV 537118)

Saint Francis Memorial Hospital (Saint Francis) petitioned for a writ of administrative mandate after being fined by the California Department of Public Health (Department). The trial court sustained the Department's demurrer based on the statute of limitations, and judgment was entered in the Department's favor. On appeal, Saint Francis argues that the court erred by sustaining the demurrer because the petition was timely under the applicable statutes, the limitations period was equitably tolled, and the Department is equitably estopped from claiming the petition was filed late. We affirm.

I.
FACTUAL AND PROCEDURAL BACKGROUND

This case arose after surgical staff at Saint Francis left a sponge in a patient during the patient's back surgery in 2010. The patient was required to endure a second surgery and be treated with powerful intravenous antibiotics. As a result of this incident, the Department imposed a $50,000 fine on Saint Francis for not having appropriate sponge-

count policies and for not effectively training on, and ensuring compliance with, such policies. Saint Francis challenged the fine, and a hearing was held before an Administrative Law Judge (ALJ). The ALJ issued a proposed decision finding no basis for the fine because Saint Francis had adequate policies and procedures to guard against the mistakes that led to the incident.

On December 15, 2015, after receiving further briefing and evidence, the Department issued a final decision that rejected the ALJ's proposed decision, determined that Saint Francis had not implemented an appropriate sponge-count policy, and affirmed the fine. The decision was "effective immediately," and it was served on Saint Francis by certified mail the next day, December 16.

On December 30, 2015, Saint Francis submitted a request for reconsideration. The Department answered the request without "notif[ying Saint Francis] that the request . . . was void or otherwise invalid," and then denied it on January 14, 2016. Also on January 14, apparently not knowing that the request for reconsideration had been or was being denied, counsel for Saint Francis e-mailed a Department attorney that Saint Francis intended to file a writ petition. In the e-mail, St. Francis's counsel also stated, "As I read the statute [the Department] has until today to accept or reject the request [for reconsideration]. If no action is taken it is deemed denied. I think the additional five days for mailing arguably applies; do you agree? This would extend to next Tuesday to decide the request." The Department attorney responded by e-mail, "I believe you are correct."

Saint Francis filed its writ petition in the trial court on January 26, 2016. The Department demurred on the basis that the petition was not timely. The court sustained the demurrer with "leave to amend to allege additional facts necessary to assert the equitable tolling of the statute of limitations."

Saint Francis then filed an amended petition, to which the Department also demurred. The trial court again sustained the demurrer, this time without leave to amend. It found that the Department's decision "was effective immediately and was thus not subject to a Request for Reconsideration" and that the subsequent writ petition "was not

filed within the thirty days required by Government Code section 11521."[1] The court also found that Saint Francis's "mistake was as to law, not facts. A mistake not caused by the [Department] is not a sufficient basis to excuse [a] late filing."

II.
DISCUSSION

A. The Request for Reconsideration Did Not Extend the Deadline to File a Writ Petition.

We begin with an overview of the statutes governing the timing for filing a request to reconsider an agency decision and for filing a petition for a writ of administrative mandate challenging an agency's final decision. Section 11521 sets forth the time period governing a party's request to reconsider an agency decision. It states, "The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period." (§ 11521, subd. (a); see also § 11519, subd. (a).) Thus, when an agency makes its decision effective immediately, as the Department did here, it "eliminat[es] the 30-day period for reconsideration." (*De Cordoba v. Governing Board* (1977) 71 Cal.App.3d 155, 158.)

Section 11523 sets forth the limitations period that applies to a writ petition to challenge an agency's final decision. It requires the petition to "be filed within 30 days after the last day on which reconsideration can be ordered." (§ 11523.) Where, as here, reconsideration is unavailable, "the earliest date upon which an . . . agency's decision can become effective, thereby commencing the limitations period of section 11523, is the date on which the decision is mailed or delivered." (*Koons v. Placer Hills Union Sch. Dist.* (1976) 61 Cal.App.3d 484, 490.) We review de novo whether a trial court has properly sustained a demurrer on the basis of the statute of limitations. (*Ramirez v. Tulare County Dist. Attorney's Office* (2017) 9 Cal.App.5th 911, 924; *E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315.)

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[1] All subsequent statutory references are to the Government Code.

Here, the Department's decision was issued on December 15, 2015, and it was mailed to the parties the next day. Because the decision stated it was effective immediately, there was no period in which to file a request for reconsideration, and the 30-day period for filing a writ petition started to run on the day the decision was mailed, December 16. The last day to file any such petition was therefore January 15, 2016.

Saint Francis insists that January 15, 2016, was not the deadline for filing the writ petition because it filed its request for reconsideration. It contends that under section 11518.5, "the service of a request for reconsideration extends the time to file a Petition for Administrative Mandamus by 15 days." We are not persuaded. The statute provides that "[w]ithin 15 days after service of a copy of the decision on a party, but not later than the effective date of the decision, the party may apply to the agency for correction of a mistake or clerical error in the decision." (§ 11518.5, subd. (a).) This provision is plainly inapplicable. Not only did Saint Francis request reconsideration "later than" the effective date of the Department's decision, it sought substantive changes, not correction of a mistake or clerical error.

Rather, the provision authorizing a request for reconsideration of the merits of an agency's decision is section 11521, which, as we have explained, establishes that the time to request reconsideration expires "on the date set by the agency itself as the effective date of the decision." (§ 11521, subd. (a).) Since the effective date of the Department's decision here was December 15, and since the decision was served on the parties the next day, there was effectively no period in which to seek reconsideration.[2] The deadline for filing a writ petition was therefore 30 days from the date the decision was served, making the deadline January 15, 2016. Saint Francis's petition filed 11 days after that deadline was untimely under the applicable statutes.

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[2] Saint Francis claims the Department waived the argument that reconsideration was unavailable by failing to say so when it answered the request for reconsideration. Saint Francis cites no authority in support of its position, and we therefore do not consider it. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

B. The Trial Court Properly Rejected Saint Francis's Claims that Equitable Tolling and Equitable Estoppel Apply.

Saint Francis next argues that it is entitled to a tolling of the 30-day time period to file its writ petition or to equitably estop the Department from claiming that the petition was untimely. These arguments present closer questions, but we conclude that they are ultimately unavailing.

1. Saint Francis is not entitled to a tolling of the 30-day period.

Saint Francis's first equitable argument is that it is entitled to a tolling of the 30-day period because there was "an underlying mistake, which led to the running of the [period]." We accept that there was an underlying mistake, but we disagree that it justifies a tolling of the 30-day period. "The Administrative Procedure Act (Gov. Code, § 11500 et seq.) sets strict time deadlines for judicial challenges to administrative decisions." (*Hansen v. Board of Registered Nursing* (2012) 208 Cal.App.4th 664, 669 (*Hansen*).) " 'As with any other cause of action, a proceeding for writ of mandamus is barred if not commenced within the prescribed limitation period. [Citations.] Statutes of limitation "are, of necessity, adamant rather than flexible in nature" and are "upheld and enforced regardless of personal hardship." ' " (*California Standardbred Sires Stakes Com., Inc. v. California Horse Racing Bd.* (1991) 231 Cal.App.3d 751, 756.)

The doctrine of equitable tolling applies " ' "[w]hen an injured person has several legal remedies and, reasonably and in good faith, pursues one." ' " (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 99-100; see also *Addison v. State of California* (1978) 21 Cal.3d 313, 317; *California Standardbred Sires Stakes Com., Inc. v. California Horse Racing Bd., supra*, 231 Cal.App.3d at p. 759.) As do the parties, we look to *Hansen* for guidance on whether that doctrine applies here.

In *Hansen*, the Court of Appeal rejected a claim that section 11523's 30-day period was tolled based on an untimely request for reconsideration. (*Hansen, supra*, 208 Cal.App.4th at pp. 672-673.) In that case, the Board of Registered Nursing revoked the license of a nurse by default after issuing an accusation to which she did not respond. (*Id.* at pp. 667-668.) About three months after the Board's decision, the nurse requested

reconsideration of the revocation because, due to an address change, she had not received either the accusation or the decision. (*Ibid.*) Months later, the Board denied her request because the revocation was already final, and she then filed a writ petition within 30 days of the denial of her request. (*Id.* at p. 668.) The trial court denied the petition as untimely, and the Court of Appeal affirmed. (*Id.* at p. 667.)

Hansen concluded that "[t]he Board's delay in responding to [the petitioner's] reconsideration request did not toll the 30-day limitations period of . . . section 11523." (*Hansen, supra*, 208 Cal.App.4th at p. 672.) The appellate court ruled that the Board "had no obligation to notify [the petitioner] it had denied her motion for reconsideration," and the Board's notice of its denial "did not extend the reconsideration period." (*Id.* at p. 673.) The court explained that equitable tolling applies when "a party with multiple available remedies pursues one in a timely manner," and the petitioner "did not seek relief from the Board [i.e., reconsideration] until it was too late." (*Id.* at pp. 672-673.) Similarly, we conclude that Saint Francis's request for reconsideration did not constitute the timely pursuit of an available remedy since reconsideration was unavailable, and the Department's failure to indicate that reconsideration was unavailable in answering the request did not toll the deadline for filing a writ petition.

Saint Francis attempts to distinguish *Hansen* on various grounds. First, it points out that the Board's decision in *Hansen* was the result of a default, while the Department's decision here came after a two-day hearing followed by the submission of additional briefing and evidence. We see no reason, however, why it would matter for purposes of tolling the 30-day period whether an agency's decision was the result of a default as opposed to active litigation: if anything, the position of the *Hansen* petitioner was stronger because she did not have actual notice of the proceedings until it was too late to file a request for reconsideration. Second, Saint Francis claims that, unlike the request for reconsideration in *Hansen*, its request for reconsideration was timely. But as we have already discussed, reconsideration was simply unavailable, as the Department's decision was effective immediately. Finally, Saint Francis maintains that it acted in good faith and that, unlike the Board in *Hansen*, the Department was notified "that there would

be a writ petition pursued." We accept that Saint Francis's mistake about the availability of reconsideration was made in good faith, and we agree that Saint Francis notified the Department of its intent to file a writ petition, but these circumstances are insufficient to toll the running of the 30-day period.

2. The Department was not equitably estopped from claiming the petition was untimely.

Saint Francis's second equitable argument is that the trial court erred in refusing to equitably estop the Department from claiming that the petition was untimely. Again, we are not persuaded.

There are four basic elements of equitable estoppel: (1) the party to be estopped must have known the facts; (2) the party to be estopped must have intended that its conduct would be acted upon, or it must have acted so as to have given the party asserting estoppel the right to believe that it was so intended; (3) the party asserting estoppel must have been ignorant of the true state of facts; and (4) the party asserting estoppel must have relied on the conduct to its injury. (*Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1261.) An additional element is required when estoppel is sought against the government. "In such a case, the court must weigh the policy concerns to determine whether the avoidance of injustice in the particular case justifies any adverse impact on public policy or the public interest." (*Ibid.*) While the parties agree that these five elements apply, they disagree on their application.

Saint Francis insists that the Department "lulled [it] into a false sense of security" by not promptly informing it that its reconsideration request was untimely. But this argument ignores Saint Francis's own responsibility for its mistaken conclusion that reconsideration was available. True enough, the Department seems to have also been confused about its authority, demonstrated by both its attorney's response to Saint Francis's counsel's e-mail and its answering the reconsideration request without mentioning that the request was "void or otherwise invalid." But this is not the type of conduct upon which estoppel may be based.

To begin with, the Department made no affirmative representations to incite Saint Francis's mistaken understanding of the law. (See *Elliott v. Contractors' State License Bd.* (1990) 224 Cal.App.3d 1048, 1053 ["Some affirmative misleading conduct on the part of the agency appears necessary to support a finding of estoppel"].) Not correcting another party's legal misunderstanding due to one's own confusion is different from inducing the misunderstanding in the first place. Furthermore, it was not the Department's responsibility to ensure that counsel for Saint Francis understood the procedural rules, and any reliance by Saint Francis on the Department's failure to correct Saint Francis's misunderstanding was unreasonable. (See *La Canada Flintridge Development Corp. v. Department of Transportation* (1985) 166 Cal.App.3d 206, 222 [reliance "based on an erroneous interpretation of the law is not reasonable reliance"].) Lastly, not correcting another's legal misunderstanding falls short of the kind of conduct required to apply estoppel against the government. Such an application ordinarily lies only " 'in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy.' " (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1315.) The dismissal of Saint Francis's petition, while not the result Saint Francis sought, caused no such grave injustice, and estopping the Department from claiming that the petition was untimely would defeat the oft-repeated public policy of strictly construing the filing period for challenging an agency's final decision. (*Hansen, supra*, 208 Cal.App.4th at pp. 669, 675.) In sum, although we are sympathetic to Saint Francis's position, we can find no basis for overturning the trial court's ruling.

III.
DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal.

Humes, P.J.

We concur:

Dondero, J.

Banke, J.

Saint Francis Memorial Hospital v. Cal. Dept. of Public Health A150545

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Saint Francis Memorial Hospital, Appellant v. California Department of Public Health, Respondent**
Case Number: **TEMP-3YYB4HQM**
Lower Court Case Number:

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Service Recipients:

Person Served	Email Address	Type	Date / Time
Cyrus Tabari Sheuerman, Martini, Tabari, Zenere & Garvin 133842	ctabari@smtlaw.com	e-Service	6/1/2018 3:38:01 PM
Gregory Brown Additional Service Recipients	Gregory.Brown@doj.ca.gov	e-Service	6/1/2018 3:38:01 PM
Nimrod Elias Additional Service Recipients	Nimrod.Elias@doj.ca.gov	e-Service	6/1/2018 3:38:01 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/1/2018
Date

/s/Cyrus Tabari
Signature

Tabari, Cyrus (133842)
Last Name, First Name (PNum)

Sheuerman, Martini, Tabari, Zenere & Garvin
Law Firm