

DEC 24 1997

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY ED

In the Matter of:

PEOPLE OF FAITH,

Petitioner.

) Docket No. 97A-158-INS
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ORDER

On November 24, 1997, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted Recommended Decision of Administrative Law Judge ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following order:

1. The recommended findings of fact and conclusions of law are adopted.
2. The Department's \$7,200.00 penalty assessment against the Petitioner is upheld.

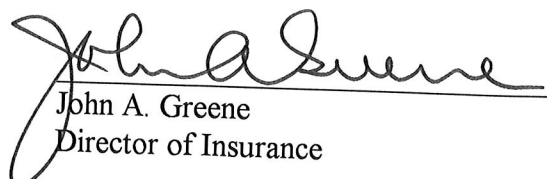
NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of

1 Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal,
2 pursuant to A.R.S. § 41-1092.10.

3 DATED this 24 day of December, 1997

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5 
6 John A. Greene
Director of Insurance

7 A copy of the foregoing mailed
8 this 24th day of December, 1997

9 Charles R. Cohen, Deputy Director
10 Gregory Y. Harris, Executive Assistant Director
11 Catherine O'Neil, Assistant Director
12 Gary A. Torticill, Assistant Director
13 Kelly Stephens, Deputy Assistant Director
14 Arizona Department of Insurance
2910 N. 44th Street, Suite 210
15 Phoenix, AZ 85018

16 Office of Administrative Hearings
17 1700 W. Washington, Suite 602
18 Phoenix, AZ 85007

19 Shelby L. Cuevas
20 Assistant Attorney General
21 1275 W. Washington
22 Phoenix, AZ 85007

23 Clarke H. Greger
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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

PEOPLE OF FAITH,
Petitioner.

No. 97A-158-INS

**RECOMMENDED DECISION
OF ADMINISTRATIVE
LAW JUDGE**

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HEARING: November 4, 1997

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APPEARANCES: Clarke H. Greger, Esq. on behalf of the Petitioner; Assistant
Attorney Shelby L. Cuevas on behalf of the Arizona Department of Insurance

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ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

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Based on the entire record, the following Findings of Fact, Conclusions of Law
and Recommended Order are made:

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FINDINGS OF FACT

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1. On August 26, 1997, the Arizona Department of Insurance (the "Department")
issued to People of Faith dba Royal Oaks("Petitioner") a notice of assessment in the
sum of \$7,200.00 for delinquent filing of Financial and Income Statement pursuant to
A.R.S. §20-1807(E).

2. On September 5, 1997, Petitioner timely filed with the Department a notice of
appeal of the Department's penalty assessment of August 26, 1997.

3. It is undisputed that Petitioner is a life care provider subject to the reporting
requirements of A.R.S. §§20-1802(B)(15) and 20-1807.

4. Petitioner's fiscal year ends on February 28. On March 22, 1997, Petitioner
submitted its annual report to the Department for the year ending 1996 without a
certified financial statement for the year ending 1996. On August 25, 1997, Petitioner
filed with the Department its certified financial statement for the year ending 1996.
Petitioner asserts that it was not possible for Petitioner to submit a certified financial

1 statement for the year ending 1996 to the Department by March 31, 1997. Further,
2 Petitioner contends that in the past it has never submitted an audited financial report to
3 the Department by March 31.

4 5. Petitioner maintains that because it has not had to pay any assessment for
5 late filings made to the Department in prior years, the Department should not deviate
6 from that pattern of conduct and should waive the \$7,200.00 penalty.

7 6. Kelly Stephens, Deputy Assistant Director of the Corporate and Financial
8 Division of the Department, testified that Petitioner's Annual Report was filed with the
9 Department on March 25, 1997. As one of her normal duties, Ms. Stephen's duties in
10 the capacity of Deputy Assistant Director, she reviews annual reports of life care
11 providers. During the process of inventorying Petitioner's annual report for the year
12 ending 1996, Ms. Stephens determined that the filing was incomplete as Petitioner's
13 filing did not include a certified financial statement for the year ending 1996. Although
14 Petitioner did not file such a document with the Department by March 31, 1997,
15 Petitioner did include a copy of a certified financial statement for the year ending 1995.

16 7. Ms. Stephens testified that in the documents the Department sent out to life
17 care providers for their 1996 annual report filing, the Department included an insert to
18 clarify the financial statement filing required to be filed with the annual report. That
19 insert provides that pursuant to A.R.S. §20-1807(C)(3), certified financial statements
20 must be filed with the annual report by March 31 for the two most recent fiscal years. In
21 bold print on the bottom of the insert, it states "FAILURE TO COMPLY WILL RESULT
22 IN CIVIL PENALTY OF \$50 PER DAY".

23 8. According to Ms. Stephens, previously the Department assessed a penalty
24 against Petitioner for the late filing of the 1995 annual report but did not take any further
25 action with respect to that assessment after it was challenged by the Petitioner.

26 9. On March 4, 1997, the Department sent the revised instructions to the
27 Respondent. On March 5, 1997, the Department sent other authorized life care providers
28 the revised instructions. Those instructions affected only those life care providers whose
29 fiscal year ends on March 31.

1 10. According to Ms. Stephens, the Department sent out revised instructions to
2 clarify the obligation for filing certified financial statements for life care providers whose
3 fiscal year ends on March 31. While Petitioner contends that the Department made an
4 exception to the filing requirements for those life care providers, the evidence shows that
5 the Department issued revised instructions based on its interpretation of A.R.S. §§20-
6 1802 and 20-1807 concerning the reporting obligations for certain life care providers. The
7 evidence established that the Department did not waive or exempt such life care
8 providers from the financial reporting requirements. Therefore, the evidence does not
9 support Petitioner's contention.

10 11. Petitioner asserts that Lee Books, an independent contractor for the
11 Department, who deals specifically with lifecare providers, provided an alternative
12 approach as a possible solution to Petitioner's inability to file a certified financial
13 statement for its most recent year. However, that issue is not within the scope of this
14 hearing as the evidence established that Petitioner did not rely on Mr. Books' suggestion
15 in its late filing of the certified financial statement for the year ending 1996. Mr. Books'
16 suggestion was not even forwarded to Petitioner until after the March 31 deadline. By
17 that time, Petitioner had already filed with the Department its certified financial statement
18 for the year ending 1996.

19 12. Any and all other assertions made by the Petitioner as to why it should not
20 have to pay the above-mentioned penalty assessment were either not supported by the
21 weight of the evidence or are found to be without merit.

22 **CONCLUSIONS OF LAW**

23 Although Petitioner wants the Department to waive the \$7,200.00 civil penalty
24 assessed against Petitioner, the language in A.R.S. §20-1807(E) is mandatory not
25 discretionary. Therefore, the Department does not have the authority to waive a civil
26 penalty assessed pursuant to that statute.

27 The evidence of record supports the Department's penalty assessment against
28 the Petitioner in the sum of \$7,200.00 for the late filing of the certified financial
29 statement for the year ending 1996 pursuant to A.R.S. §§20-1802 and 20-1807.
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RECOMMENDED ORDER

Based on the above, the Administrative Law Judge recommends that the Department's \$7,200.00 penalty assessment against Petitioner be upheld.

Done this day, November 24, 1997.



Lewis D. Kowal
Administrative Law Judge

Original transmitted by mail this 24 day of November, 1997, to:

Mr. John A. Greene, Director
Department of Insurance
2910 North 44th Street, #210
ATTN: Curvey Burton
Phoenix, AZ 85018-7256

By Chris Crawford Thomson