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OPINION	:	No. 84-1201
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of	:	<u>MARCH 15, 1985</u>
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THE CALIFORNIA HEALTH FACILITIES COMMISSION has requested an opinion on the following question:

Are publicly owned health facilities subject to the civil penalty provisions of Health and Safety Code section 442.3?

CONCLUSION

Publicly owned health facilities are subject to the civil penalty provisions of Health and Safety Code section 442.3.

ANALYSIS

Health and Safety Code section 442.3¹ provides:

"(a) Any health facility which does not file any report as required by Sections 441.18 and 441.185 with the commission is liable for a civil penalty of one hundred dollars (\$100) a day for each day the filing of any report is delayed. No penalty shall be imposed if an extension is granted in accordance with the guidelines and procedures established by the commission pursuant to Section 442.4.

"(b) Any health facility which does not use an approved system of accounting pursuant to the provisions of subdivision (d) of Section 441.16 for purposes of submitting financial and statistical reports as required by this part shall be liable for a civil penalty of not more than five thousand dollars (\$5,000).

"(c) Civil penalties are to be assessed and recovered in a civil action brought in the name of the people of the State of California by the commission. Assessment of a civil penalty may, at the request of any health facility, be reviewed on appeal, and the penalty may be reduced or waived for good cause.

"(d) Any money which is received by the commission pursuant to this section shall be paid into the commission's operating fund established by Section 442.10."

The question presented for analysis is whether the penalty provisions of section 442.3 are applicable to publicly owned health facilities.² We conclude that they are.

Section 442.3 is part of the California Health Facilities Disclosure Act (§§ 440-442.13; hereafter "Act"), a legislative scheme designed to encourage economy and efficiency in the furnishing of health care services. This is accomplished by requiring all health facilities operating in the state to file cost reports so that the purchasers of health services may make informed decisions. (§ 441; see *Wilson v. California Health Facilities Com.* (1980) 110 Cal.App.3d 317, 320-325.)

¹ All unidentified section references hereafter are to the Health and Safety Code.

² We are informed that of 595 general acute care hospitals in California, 123 are publicly owned, 66 of which are district hospitals, 37 are county hospitals, 13 are state hospitals, and 5 are city hospitals.

Health facilities that are publicly owned are expressly required by the Legislature to comply with the provisions of the Act:

"It is the policy of the state that in order to achieve uniform and equitable statewide implementation of the policies of this part and to allow for comparisons of the performance of particular health facilities subject to its provisions, it is necessary to require that every person, political subdivision of the state, or any governmental agency within the state, that establishes, conducts, operates, manages, maintains, or controls in this state any health facility complies with the provisions of this part." (§ 441, subd. (b).)

Manifestly the civil penalty provisions of section 442.3 are to encourage the filing of the required reports in a timely and useful manner. They are to help assure an effective statutory program.

The California Supreme Court has recently reaffirmed that the "state may impose reasonable penalties as a means of securing obedience to statutes validly enacted under the police power" without violating due process principles. (*Hale v. Morgan* (1978) 22 Cal.3d 388, 398.) "There is no inhibition upon the state to impose such penalties for disregard of its police power as will insure prompt obedience to the requirements of such regulations." (*Shalz v. Union School Dist.* (1943) 58 Cal.2d 599, 606.) "Imposition of civil penalties has, increasingly in modern times, become a means by which legislatures implement statutory policy." (*Hale v. Morgan, supra*, 22 Cal.3d 388, 398; see *People ex rel. Younger v. Superior Court* (1976) 16 Cal.3d 30, 42-44; *People v. Western Air Lines* (1954) 42 Cal.2d 621, 627-628; *People v. Superior Court (Olson)* (1979) 96 Cal.3d 181, 195-196; *State of California v. City and County of San Francisco* (1979) 94 Cal.3d 522, 531; Note, Developments in the Law--Corporate Crimes: *Regulating Corporate Behavior Through Criminal Sanctions* (1979) 92 Harv.L.Rev. 1227, 1369.)

In light of the foregoing principles and statutory provisions, what argument may be made that the penalty provisions of section 442.3 are inapplicable to publicly owned facilities?

In Government Code section 818 the Legislature has given public entities an immunity from the payment of certain "damages." It states:

"Notwithstanding any other provision of law, a public entity is not liable for damages awarded under Section 3294 of the Civil Code or other

damages imposed primarily for the sake of example and by way of punishing the defendant."

Do the section 442.3 penalties come within the scope of Government Code section 818?
We first note the provisions of Civil Code section 3294:

"(a) In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

"(b) An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification of act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.

"(c) As used in this section, the following definitions shall apply:

"(1) 'Malice' means conduct which is intended by the defendant to cause injury to the plaintiff or conduct which is carried on by the defendant with a conscious disregard of the rights or safety of others.

"(2) 'Oppression' means subjecting a person to cruel and unjust hardship in conscious disregard of that person's rights.

"(3) 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

"(d) Damages may be recovered pursuant to this section in an action pursuant to Section 377 of the Code of Civil Procedure or Section 573 of the Probate Code based upon a death which resulted from a homicide for which the defendant has been convicted of a felony, whether or not the decedent died instantly or survived the fatal injury for some period of time. The

procedures for joinder and consolidation contained in Section 377 of the Code of Civil Procedure shall apply to prevent multiple recoveries of punitive or exemplary damages based upon the same wrongful act."

The provisions of Civil Code section 3294 appear to be inapplicable here. The issue is thus reduced to whether the section 442.3 penalties are "other damages imposed primarily for the sake of example and by way of punishing the defendants" within the meaning of Government Code section 818. In answering this question, we may look to several recent decisions of the Supreme Court.

In *Helfend v. Southern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 1, 16, the Supreme Court concluded that while application of the collateral source rule (compensation from an outside source is not deductible from damages assessed) was punitive in nature, it also served "several legitimate and important functions" which were compensatory in nature; therefore, application of the rule was not to be classified as punitive within the meaning of section 818 of the Government Code.

In *State Dept. of Corrections v. Workmen's Comp. App. Bd.* (1971) 5 Cal.3d 885 the Supreme Court held that the immunity provisions of Government Code section 818 were inapplicable to an award of damages under Labor Code section 4553 for the serious and wilful misconduct of an employer toward an employee. The court found that the penalty had a punitive function but also served to more fully compensate the employee for the injury incurred.

In *People ex rel. Younger v. Superior Court* (1976) 16 Cal.3d 30 the Supreme Court ruled that Government Code section 818 was inapplicable to the payment of penalties assessed under Water Code section 13350 for discharging waste into the waters of the state. The penalties were found to "subserve the compensatory purpose of alleviating the harm done by persons violating the section," were "not simply and solely punitive in nature," and thus were "not punitive damages within the meaning of Government Code section 818." (*Id.*, at p. 39.)

In *San Francisco Civil Service Assn. v. Superior Court* (1976) 16 Cal.3d 46, 50-51, the Supreme Court ruled that the statute was inapplicable to the payment of penalties assessed pursuant to Water Code section 13385 for discharging pollutants into the navigable waters of the state. The penalties were found to serve a compensatory function by providing funds to clean up the damage caused to the navigable waters. Because of this compensatory function, the penalties were not "simply and solely punitive in nature" and thus were outside the scope of Government Code section 818.

While Government Code section 818 expressly grants immunity from exemplary damages awarded in a tort action pursuant to Civil Code section 3294 (See *Austin v. Regents of University of California* (1979) Cal.App.3d 354, 358), the Supreme Court has found the statute inapplicable to various types of punitive awards that served additional, non-punitive purposes.

Here we have a situation similar to that in the *Younger* case. These are penalties that are imposed "to help assure an effective statutory program" (65 Ops.Cal.Atty.Gen. 450, 454 (1982)) by encouraging the timely filing of reports and the use of approved accounting systems. The actual damages resulting from the filing of untimely reports and the use of unapproved accounting systems would be difficult to compute. The penalties collected under section 442.3 are by its terms placed in the operating budget of the commission responsible for administering and enforcing the Act's provisions. Hence, the monies collected deal directly with efforts to prevent violations of the statutory scheme and to help alleviate the consequences of such violations. They serve to mitigate actual damages difficult to quantify. (See *People ex rel. Younger v. Superior Court, supra*, 16 Cal.3d 30, 37-39.)

Accordingly, we conclude that the penalty provisions of section 442.3 have an additional, non-punitive purpose and do not come within the grant of immunity found in Government Code section 818; thus, publicly owned health facilities are subject to such penalty provisions.
