

June 16, 2020

Occupational Safety and  
Health Review Board  
443 Lafayette Road N.  
St. Paul, MN 55155

**Re: Commissioner v. Maple Hill Senior Living L. L. C.  
Inspection No. 318149747  
Response to Petition to Vacate**

Dear Occupational Safety and Health Review Board Members:

I am counsel for the Minnesota Occupational Safety and Health Administration division (MNOSHA) of the Department of Labor and Industry in the above-referenced matter.

Petitioner Maple Hill Senior Living L. L. C. (“Petitioner”) filed a Petition to Vacate the Commissioner’s April 27, 2020, Final Order (Commissioner’s Final Order). I am submitting this letter in opposition to the Petition to Vacate. The Petition to Vacate should be denied for two reasons. First, the Commissioner’s Final Order correctly determined that Petitioner’s Notice of Contest was late. Second, Petitioner has not demonstrated good cause to vacate the Commissioner’s Final Order, which is required by Minnesota Statutes, section 182.664, subdivision 5 (2018).

### **FACTS**

During the period of February 5, 2020 - March 4, 2020, MNOSHA inspected Petitioner’s worksite located at 3030 Southlawn Drive, Maplewood, Minnesota. On March 23, 2020, MNOSHA issued a Citation and Notification of Penalty (“Citation”) for violations of occupational safety and health standards.<sup>1</sup> The Citation clearly states, in multiple places, that a Notice of Contest must be filed within 20 calendar days of the date of receipt. The first paragraph of the Citation provides the following instruction:

You must abate the violations referred to in this Citation by the dates listed and pay the penalties, *unless within 20 calendar days from your receipt of this Citation you file a Notice of Contest with the Commissioner . . . .* Your contestation rights and other employer and employee rights and responsibilities are set out in the first three pages of the Citation. (Emphasis added.)

The following instruction appears on page three of the Citation:

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<sup>1</sup> A copy of the Citation is attached as Exhibit A.

*Equal Opportunity Employer*

**Employer Right to Contest** - The employer has the right to a hearing to contest any or all parts of this Citation. If the employer wishes to contest, the employer must fully complete and notarize the attached NOTICE OF CONTEST AND SERVICE TO AFFECTED EMPLOYEES (Notice of Contest form) and file it with the Commissioner at the address shown on page 1 of this Citation within 20 calendar days of receiving the citation.

**Important: To be considered filed, all parts of the Notice of Contest form must be completed and the completed form must be deposited in the United States mail and postmarked, or otherwise timely received by the Commissioner at the above address within 20 calendar days after the date this Citation is received by the employer. You may also file electronically at (contestation.dli@state.mn.us), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received no later than 4:30 p.m. on the 20th calendar day. If the employer fails to file the Notice of Contest form on time, this Citation and Notification of Penalty becomes a final order of the Commissioner which is not subject to review by any court or agency and the Occupational Safety and Health Division may file and enforce the penalty as a district court judgment without further notice or additional proceedings pursuant to Minnesota Statutes § 16D.17.**

Petitioner received the Citation on March 26, 2020, as evidenced by the signed receipt form.<sup>2</sup> The deadline for filing a Notice of Contest to the Citation was 4:30 p.m. on April 15, 2020. *See* Minnesota Rules, part 5210.0536, subpart 2. Petitioner did not file its Notice of Contest to the Citation until April 16, 2020.<sup>3</sup>

Petitioner was served with a Final Order of the Commissioner signed on April 27, 2020.<sup>4</sup> This Final Order determined that Petitioner's Notice of Contest was late. The Commissioner's Final Order also provided Petitioner with information related to filing a Petition to Vacate the determination that its Notice of Contest was late.

On May 28, 2020, Petitioner filed its Petition to Vacate. In its Petition, Petitioner's representative stated that he thought everything needed to be filed by April 16, 2020, and that Petitioner was busy responding to COVID-19 as of March 13, 2020.

## ARGUMENT

### I. THE REVIEW BOARD SHOULD DENY PETITIONER'S PETITION TO VACATE BECAUSE THE COMMISSIONER'S APRIL 27, 2020, FINAL ORDER CORRECTLY DETERMINED THAT PETITIONER'S NOTICE OF CONTEST WAS LATE.

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<sup>2</sup> A copy of the receipt form is attached as Exhibit B.

<sup>3</sup> A copy of Petitioner's Notice of Contest is attached as Exhibit C. No employee or authorized representative of employees filed a Notice of Contest.

<sup>4</sup> A copy of the Commissioner's Final Order is attached hereto as Exhibit D.

The Commissioner's April 27, 2020, Final Order should be affirmed because the decision is correct under the facts. Petitioner received the Citation on March 26, 2020. Under Minnesota Rules, part 5210.0536, subpart 2, Petitioner was required to file a Notice of Contest within 20 days of receiving the Citation. There is no ambiguity in determining Petitioner's deadline for filing a Notice of Contest. Petitioner's Notice of Contest should have been filed on or before 4:30 p.m. on April 15, 2020. Instead, Petitioner filed the Notice of Contest on April 16, 2020, the day after the deadline had passed. Petitioner's Petition to Vacate should be denied because its Notice of Contest was late.

**II. THE REVIEW BOARD SHOULD DENY PETITIONER'S PETITION TO VACATE BECAUSE PETITIONER HAS NOT ESTABLISHED GOOD CAUSE.**

Minnesota Statutes, section 182.664, subdivision 5, states that, without a showing of good cause, the Review Board may not vacate a final order of the Commissioner. It further provides that "good cause is limited to fraud, mistake of law or fact, or newly discovered evidence." *Id.* Petitioner has not demonstrated the required good cause, so the Review Board cannot vacate the Commissioner's April 27, 2020, Final Order.

Petitioner's representative is Brandon Mabb. In the Petition to Vacate, Mr. Mabb's first claim is that he thought that "the date to file a petition was April 16, 2020 not April 15, 2020." (Based on the context of Mr. Mabb's statements, I will assume that by "petition" he means "Notice of Contest.") Mr. Mabb argues that he and the MNOSHA inspector counted the 20 days from when Petitioner received the Citation and that the MNOSHA inspector told Mr. Mabb that the filing date was April 16, 2020.

Mr. Mabb's account is incorrect. The MNOSHA inspector, Mildred Tures, never counted days with Mr. Mabb to determine the deadline for filing a Notice of Contest.<sup>5</sup> In Ms. Tures's affidavit, she notes that, on April 9 and April 15, 2020, she and Mr. Mabb only discussed abatement of the citations. She answered Mr. Mabb's questions about submitting a progress report to document abatement and the option to file a petition for modification of abatement date (PMA) if he needed more time.

Mr. Mabb did not speak with Ms. Tures about contesting the penalty amounts until April 16, 2020. Ms. Tures does not process Notices of Contest, so when Mr. Mabb asked about contesting the penalties, Ms. Tures consulted with MNOSHA's contest clerk, Sue Healy. Ms. Healy informed Ms. Tures that Petitioner's deadline for filing a Notice of Contest was April 15, 2020. Ms. Healy told Ms. Tures that Petitioner could still file a Notice of Contest, but that it would be late, so Petitioner would have to go through the appeal process. On that same day, April 16, 2020, Ms. Tures called back Mr. Mabb and relayed what Ms. Healy had told her.

As noted above, the Citation states in multiple places that Petitioner must file a Notice of Contest within 20 days of receiving the Citation. It was Petitioner's responsibility to meet the deadline for filing a Notice of Contest. MNOSHA did not tell Mr. Mabb that the deadline to file a Notice

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<sup>5</sup> A copy of Ms. Tures's affidavit is attached as Exhibit E.

of Contest was April 16, 2020, instead of April 15, 2020. MNOSHA is not to blame for Mr. Mabb's apparent confusion between abating the citations and filing a Notice of Contest to contest the penalties. Petitioner's failure to timely file a Notice of Contest "can only logically be construed as negligent and undeserving of pardon." *Secretary of Labor v. Barretto Granite Corp.*, 830 F.2d 396, 400 (1st Cir. 1987).

Next, Mr. Mabb states that, since March 13, 2020, Petitioner has spent significant time and resources working to prevent the spread of COVID-19 while also taking steps to abate the citations. Mr. Mabb does not explain how this constitutes good cause to vacate the Commissioner's Final Order. MNOSHA does not dispute that Petitioner may have been busy due to COVID-19, but this does not amount to fraud, mistake of law or fact, or newly discovered evidence.

In sum, Petitioner has not demonstrated good cause to vacate the Commissioner's Final Order, so the Petition to Vacate should be denied.

### CONCLUSION

First, the Commissioner's April 27, 2020, Final Order correctly determined that Petitioner's Notice of Contest was late. Second, Petitioner has not demonstrated good cause to vacate the Commissioner's April 27, 2020, Final Order. Therefore, the Petition to Vacate should be denied.

Petitioner Maple Hill Senior Living L. L. C. is served with a copy of this letter as stated in the enclosed Affidavit of Service.

Respectfully submitted,

s/ Matthew P. Jobe

General Counsel  
Office of General Counsel  
Minnesota Department of Labor and Industry  
(651) 284-5019 (main)  
(651) 284-5725 (fax)

Enclosures

cc: Brandon Mabb, Vice President of Operations, Maple Hill Senior Living L. L. C.  
Jim Krueger, MNOSHA  
Ev Kuehl, MNOSHA

**Minnesota Department of Labor and Industry**

Occupational Safety and Health Division

443 Lafayette Road

St. Paul, MN 55155-4307

Phone: 651-284-5050 FAX: 651-284-5741

**Citation and Notification of Penalty**

**To:**

Maple Hill Senior Living LLC

3030 Southlawn Dr

Maplewood, MN 55109

**Inspection Number:** 318149747

**OSHI ID:** G4097

**Optional Report No.:** 00320

**Inspection Date(s):** 02/05/2020 - 03/04/2020

**Issuance Date:** 03/23/2020

**Inspection Site:**

3030 Southlawn Dr

Maplewood, MN 55109

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty (this Citation) describes violations of the Minnesota Occupational Safety and Health Act of 1973 (the Act). The penalty amounts listed herein are based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation you file a Notice of Contest with the Commissioner of the Department of Labor and Industry. Your contestation rights and other employer and employee rights and responsibilities are set out in the first three pages of this Citation. The description of alleged violations begins on page 5 of this Citation.

**EMPLOYER AND EMPLOYEE RIGHTS AND RESPONSIBILITIES**

**Posting** - The Act requires that a copy of this Citation shall be promptly posted at or near each place that an alleged violation referred to in the citation occurred or, if not practicable, in a prominent place where it will be readily visible by all affected employees. If uncontested, this Citation must remain posted until all alleged violations cited therein are corrected, or for 20 days, whichever is longer. If contested, this Citation must remain posted until the contestation is resolved.

**Penalty Payment** - Payment of all penalties is to be made by check or money order payable to "Minnesota Department of Labor and Industry, MNOSHA", and remitted to the Occupational Safety and Health Division at P.O. Box 64025, St. Paul, MN, 55164-0025, within 20 calendar days following receipt of this Citation. After 60 days, unpaid penalties shall increase 25 percent and shall accrue an additional interest of 10 percent per month compounded monthly until the fine is paid in full.

Effective August 1, 2003, the minimum \$25,000 penalty issued to employers with fewer than 50 employees for serious citations connected to the death of an employee may be made in five payments of \$5,000. The first \$5,000 payment is due within 20 calendar days following receipt of this Citation. The 2nd-5th payments of \$5,000 are due on the next four anniversary dates of this Citation becoming a Final Order. The Commissioner may elect to waive the 2nd-5th \$5,000 payment if in the preceding year the employer receives no citations. MNOSHA will provide written notice of the 2nd-5th payments dates or of any penalty waiver.

**Notification of Corrective Action** - Progress reports on correction of alleged violations not immediately abated as observed by the occupational safety and health investigator shall be submitted on the Progress Report form provided with this Citation. Written progress reports must be mailed to the address shown on the top of page 1 of this Citation by the latest abatement date on the citation, or within 30 days after receipt of the citation, whichever is earlier. Reports must state the specific corrective action taken on each cited item, the date of such action and the anticipated abatement date of uncompleted items. Additional written progress reports shall be submitted every thirty days until the items are fully abated. Facsimile (FAX) transmittal is acceptable.

All alleged violations not contested must be corrected by the abatement date specified in this Citation. A followup inspection may be made for the purpose of ascertaining that the employer has corrected the alleged violations and posted this Citation as required by the Act. Failure to correct an alleged violation by the abatement date on this Citation may result in further penalties for each day the alleged violation has not been corrected.

**Petition for Modification of Abatement Date (PMA)** - If, due to factors beyond reasonable control, compliance cannot be achieved by the abatement day on the citation, the employer may file a Petition for Modification of Abatement Date (PMA) to obtain an extension of the abatement time period. The PMA must be in writing and received at the address shown on the top of page 1 of this Citation prior to the expiration of the abatement date on the citation. Facsimile (FAX) transmittal of a PMA is acceptable. A copy of the PMA must be posted for ten days in the location where this Citation is posted. A copy of the PMA must also be served upon authorized employee representatives.

The employer's written petition must describe:

- 1) The action that has been taken so far to achieve compliance;
- 2) The amount of additional time needed for compliance;
- 3) The reasons why additional time is needed;
- 4) A description of the interim steps that will be taken to safeguard employees against the cited hazard;
- 5) A statement that employees have been notified of the PMA filing.

Employees have the right to file a written objection to the Commissioner regarding the employer's PMA request. A copy of the objection must be served on the employer within 10 days of the employer's posting of the PMA. The employee objection must be received by the Commissioner within 15 days of the employer's PMA request. Facsimile (FAX) transmittal is acceptable.

**Employer Right to Contest** - The employer has the right to a hearing to contest any or all parts of this Citation. If the employer wishes to contest, the employer must fully complete and notarize the attached NOTICE OF CONTEST AND SERVICE TO AFFECTED EMPLOYEES (Notice of Contest form) and file it with the Commissioner at the address shown on the top of page 1 of this Citation within 20 calendar days of receiving the citation.

**Important:** To be considered filed, all parts of the Notice of Contest form must be completed and the completed form must be deposited in the United States mail and postmarked, or otherwise timely received by the Commissioner at the above address within 20 calendar days after the date this Citation is received by the employer. You may also file electronically at (contestation.dli@state.mn.us), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received no later than 4:30 p.m. on the 20th calendar day. If the employer fails to file the Notice of Contest form on time, this Citation and Notification of Penalty becomes a final order of the Commissioner which is not subject to review by any court or agency and the Occupational Safety and Health Division may file and enforce the penalty as a district court judgment without further notice or additional proceedings pursuant to Minnesota Statute § 16D.17.

**Employee Right to Contest** - An employee or authorized representative of employees has the right to a hearing to contest this Citation by filing a letter with the Commissioner of the Department of Labor and Industry at the address shown on page 1 within 20 calendar days of the employer's receipt of this Citation.

**Important:** To be considered filed, an employee letter of contest must be deposited in the United States mail and postmarked, or otherwise timely received by the Commissioner at the above address within 20 calendar days after the date this Citation is received by the employer. You may also file electronically at (contestation.dli@state.mn.us), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received no later than 4:30 p.m. on the 20th calendar day. If the employee fails to file a letter of contest on time, this Citation and Notification of Penalty becomes a final order of the Commissioner which is not subject to review by any court or agency and the Occupational Safety and Health Division may file and enforce the penalty as a district court judgment without further notice or additional proceedings pursuant to Minnesota Statute § 16D.17.

**Employee Right to Party Status** - Affected employees or their authorized employee representatives may elect to participate as parties in the formal contested case hearing by filing written notice with the Commissioner at the address shown above at least 45 days before the start of the hearing. The notice must contain the employees' names, addresses, authorized employee representatives, if any, and a statement that they are affected employees of the cited employer.

**Employer Discrimination Unlawful** - Employees who believe that they have been discharged or otherwise discriminated against by any person because the employees have exercised any right authorized under the provisions of Minnesota Statutes §§ 182.65 to 182.674, may, within 30 days after such alleged discrimination occurs, file a complaint with the Commissioner of the Department of Labor and Industry at the address shown above, alleging the discriminatory act.

## PENALTY INFORMATION

Types of Violations - There are 5 types of violations that may be cited by MNOSHA. They are: Nonserious, Serious, Willful, Repeat and Failure to Abate.

Penalties - In cases not involving the death of an employee, the law allows the following maximum penalties: Nonserious, \$7,000; Serious, \$7,000; Willful, \$70,000; Repeat, \$70,000; and Failure to Abate, \$7,000 per day the violation remains unabated. If a Willful or Repeat violation caused or contributed to the death of an employee, however, MNOSHA is compelled by law to assess the employer a total non-negotiable penalty of at least \$50,000 for all citations connected to the employee's death. If there are no Willful or Repeat violations among the violations that caused or contributed to the employee's death, MNOSHA must assess the employer a non-negotiable penalty of at least \$25,000 for each citation connected to the employee's death. The following violations are not subject to these minimums and will be processed according to MNOSHA's ordinary penalty system: (a) any serious violations issued to an employer with fewer than 50 employees when the victim of a workplace fatality owned a controlling interest in the business unless the Commissioner determines that a fine shall be assessed, and (b) any violations found during a fatality investigation but determined not to be connected to the death of an employee.

Credits - A penalty for a violation may be credited by as much as 95 percent, depending on the employer's good faith (up to 30%), size of business (up to 55%), and previous violation history (up to 10%). The penalties which appear on the Citation and Notification of Penalty have been reduced by the credits described.

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

### Citation and Notification of Penalty

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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#### Citation 01 Item 001 Type of Violation: **Serious**

29 CFR 1910.151(c): Where employees were exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes were not provided within the work area for immediate emergency use:

An emergency eyewash station capable of providing 15 minutes of continuous flushing was not available where there was exposure to injurious corrosives such as cleaners, sanitizers and degreasers used by housekeeping and kitchen employees.

#### Abatement Guidelines:

- 1) Facilities must be provided so that their sole purpose is to serve as eyewashes. That is, they should not be used for other activities or industrial processes. Equipment and installation should be in compliance with ANSI Z358.1-2014.
- 2) All eyewash facilities should be located so that they are accessible within 10 seconds (an average person covers about 55 feet in 10 seconds at normal walking speed).
- 3) The eyewash locations should be well lit and clearly indicated by signs and directional markings. The paths to the facilities should be on the same level as the hazard and must be kept clear.
- 4) Eyewashes shall be operable at all times. If shut off valves are installed in plumbed systems, provision shall be made to prevent unauthorized shut off.
- 5) Drains to sanitary sewers for the eyewash are desirable but not essential. The discharge, depending on what is in the immediate area, can go directly onto the floor or ground.
- 6) The eyewash should be capable of delivering directly to the eyes a pressure-reduced divergent flow of flushing fluid (minimum flow of 0.4 gallons per minute of flushing fluid for at least 15 minutes) and should be designed and installed so that both hands can be free to assist in irrigation. A quick opening valve, which remains open when released, is also necessary.
- 7) The flushing fluid temperature must be tepid (between 60 degrees 100 degrees F). If ambient temperatures below 32 degrees F are anticipated, provisions shall be made to ensure that facilities will remain operational.

8) Eyewashes should be tested weekly to ensure proper operation. The testing of facilities should include testing for adequate flow of flushing fluid, unobstructed eyewash head passages, and assurance that the water controls operate so that the flow of water is even without spurts and other signs of periodic overpressurization. Eyewashes should be flushed for at least three minutes weekly to reduce Acanthamoebae bacteria.

9) Portable facilities such as pump cans with flush nozzles should be used only where fixed installation is not feasible. If portable facilities are provided, the requirements of 6 above must be met and procedures should be developed to ensure that the water is potable at all times.

10) Squeeze bottles of sterile water or eye flush solution should only be used in conjunction with a properly located eyewash.

<b>Date By Which Violation Must Be Abated:</b>	<b>4/16/2020</b>
<b>Penalty:</b>	<b>\$2,000.00</b>

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

### Citation and Notification of Penalty

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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#### Citation 01 Item 002 Type of Violation: **Serious**

29 CFR 1910.1030(c)(1)(i): The employer having employee(s) with occupational exposure to bloodborne pathogens did not establish a written Exposure Control Plan designed to eliminate or minimize employee exposure:

The employer did not have an adequate written Exposure Control Plan for employees exposed to blood or other potentially infectious materials. The employer's blood borne pathogen exposure control plan did not include the following required information:

- a. Determination of employee exposures.
- b. Reflect changes in technology that eliminate or reduce exposures to bloodborne pathogens.
- c. Document annual consideration and implementation of appropriate commercially available and effective safer medical devices designed to eliminate or minimize occupational exposure.
- d. Implementation of various methods of exposure control, including: Engineering and work practice controls, Personal protective equipment, Housekeeping.
- e. Post-exposure evaluation and follow-up.
- f. Procedures for evaluating circumstances surrounding exposure incidents.

**Date By Which Violation Must Be Abated:** 4/16/2020  
**Penalty:** \$1,600.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

**Citation and Notification of Penalty**

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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**Citation 01 Item 003 Type of Violation: **Serious****

29 CFR 1910.1030(d)(4)(iii)(A)(1)(iv): Contaminated sharps were not discarded immediately or as soon as feasible in containers that were labeled or colorcoded in accordance with 29 CFR 1910.1030(g)(1)(i):

Unlabeled milk jugs were used as sharps containers.

**Date By Which Violation Must Be Abated:** 4/16/2020  
**Penalty:** \$1,200.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

**Citation and Notification of Penalty**

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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**Citation 01 Item 004 Type of Violation: **Serious****

29 CFR 1910.1030(f)(3)(i): The postexposure evaluation and followup of an exposure incident did not include documentation of the route(s) of exposure or the circumstances under which the exposure incident occurred:

The employer did not document circumstances under which exposure incidents occurred and did not complete a post exposure follow-up following needlestick exposure.

**Date By Which Violation Must Be Abated:** 4/16/2020  
**Penalty:** \$2,800.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

**Citation and Notification of Penalty**

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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**Citation 01 Item 005 Type of Violation: **Serious****

29 CFR 1910.1200(h)(1): Employees were not provided information and training as specified in 29 CFR 1910.1200(h)(1) and (2) on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard was introduced into their work area:

Hazard communication training was not conducted for employees exposed to hazardous substances including cleaners, degreasers and sanitizers.

**Date By Which Violation Must Be Abated:** 4/16/2020  
**Penalty:** \$1,200.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

**Citation and Notification of Penalty**

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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**Citation 02 Item 001 Type of Violation: **Nonserious****

29 CFR 1910.22(a)(1): Places of employment, passageways, storerooms, service rooms, and walking-working surfaces were not kept in a clean, orderly, and sanitary condition:

The storage area was not kept clean and orderly which led to falling objects on a storage cart and inadequate walkways being used to access stored items.

**Date By Which Violation Must Be Abated:** 4/16/2020  
**Penalty:** \$400.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
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**Citation and Notification of Penalty**

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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**Citation 02 Item 002 Type of Violation: **Nonserious****

29 CFR 1910.1030(g)(2)(iv): Annual training for employees with occupational exposure was not provided within one year of their previous training:

The employer did not provide annual bloodborne pathogen training to all employees potentially exposed to bloodborne pathogens and other potentially infectious materials.

**Date By Which Violation Must Be Abated:** 4/16/2020  
**Penalty:** \$800.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
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**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

### Citation and Notification of Penalty

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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#### Citation 02 Item 003 Type of Violation: **Nonserious**

29 CFR 1910.1200(e)(1): The employer did not develop, implement, and/or maintain at the workplace a written hazard communication program which describes how the criteria specified in 29 CFR 1910.1200(f), (g), and (h) will be met:

The employer did not develop a written hazard communication program for employees exposed to hazardous chemicals including cleaners, degreasers and sanitizers.

Abatement Guidelines: The written program must be made available, upon request to employees, their designated representatives, and representatives of the Occupational Safety & Health Division and shall include:

- 1) A description of how the training, availability of information, and labeling provision will be met for hazardous chemicals.
- 2) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate safety data sheet. The list may be compiled for the workplace as a whole or for individual work areas.
- 3) The methods the employer will use to inform employees of the hazards of non-routine tasks that involve exposure to hazardous chemicals, and the hazards associated with hazardous chemicals contained in unlabeled pipes in their work areas.
- 4) Additionally, in multiemployer workplaces where the employer produces, uses or stores hazardous chemicals in such a way that employees of other employers may be exposed, the written program shall include:
  - a) the methods the employer will use to provide the other employers with a copy of the safety data sheet, or to make it available at a central location in the workplace, for each hazardous chemical the other employers' employees may be exposed to while working;
  - b) the methods the employer will use to inform the other employers on any precautionary measures that need to be taken to protect employees during normal operating conditions and in foreseeable emergencies; and
  - c) the methods the employer will use to inform the other employers of the labeling system used in the workplace.

**Date By Which Violation Must Be Abated:**  
**Penalty:**

**4/16/2020**  
**\$0.00**

Nancy J. Leppink, Commissioner  
MN Department of Labor and Industry

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Latrece Owens, Executive Director  
 Maple Hill Senior Living LLC  
 3030 Southlawn Dr  
 Maplewood, MN 55109  
 318149747 G4097 00320



9590 9402 5179 9122 8696 89

2. Article Number (Transfer from service label)

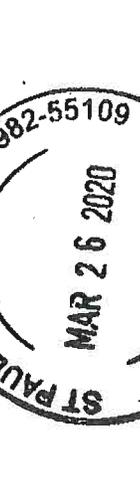
7019 0700 0000 1466 7527

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature *[Handwritten Signature]*  Agent  Addressee

B. Received by (Printed Name) *[Handwritten Signature]* C. Date of Delivery *[Handwritten: 3/26]*

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below: *[Handwritten: 982-55109]*



3. Service Type
- Priority Mail Express®
  - Registered Mail™
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Collect on Delivery
  - Insured Mail
  - Insured Mail Restricted Delivery
  - Registered Mail Restricted Delivery
  - Return Receipt for Merchandise
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery

Domestic Return Receipt

**Minnesota  
Department of Labor and Industry**

Occupational Safety and Health Division  
443 Lafayette Road North  
St. Paul, MN 55156-4307

Phone: 1-800-DIAL-DLI (1-800-342-5354)  
(651) 284-6050  
FAX: (651) 284-5741  
www.dil.mn.gov

Latrece Owens, Executive Director Maple Hill Senior Living LLC 3030 Southlawn Dr Maplewood, MN 55109 318149747 G4097 00320 3030 Southlawn Dr Maplewood MN 55109
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APR 16 2020

**NOTICE OF CONTEST AND SERVICE TO AFFECTED EMPLOYEES**

MINNESOTA OSH DIVISION

**PURPOSE OF THIS FORM**

If you have received a Citation and Notification of Penalty from the Minnesota Occupational Safety and Health Division (MNOSHA) and you wish to contest any part of the Citation, including the penalty, you must complete this form. For your contest to be valid, you must file this form within 20 calendar days of the date the employer received the Citation.

If you only wish to obtain an extension of time to correct the violation, you may file a Petition for Modification of Abatement Date according to the instructions on the Citation and Notification of Penalty.

By filing this Notice of Contest form, you are initiating a formal contested case proceeding before an administrative law judge of the parts of the Citation and Notification of Penalty you are contesting. This form must be filed in good faith and not solely for delay or avoidance of penalties.

**HOW TO FILE THIS FORM**

- This Notice of Contest form must be filed with the Commissioner of the Department of Labor and Industry at the above address within 20 calendar days after the date the employer received the Citation and Notification of Penalty. To be considered filed, all parts of the Notice of Contest form must be completed and the completed form must be mailed and postmarked, within 20 calendar days after the date the employer received the Citation and Notification of Penalty. You may also file electronically at [contestation.dil@state.mn.us](mailto:contestation.dil@state.mn.us), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received no later than 4:30 p.m. on the 20<sup>th</sup> calendar day.
- If you fail to file the fully completed Notice of Contest form on time, the Citation and Notification of Penalty becomes a final order of the Commissioner that is not subject to review by any court or agency.

**APPEAL PROCESS**

Upon receipt of a timely filed Notice of Contest form, MNOSHA will contact you and schedule a date, time and location for an informal conference. The purpose of the informal conference is to allow you to discuss with a MNOSHA representative the Citation and Notification of Penalty and the basis for your contest. The goal of the informal conference is to reach an early resolution of the contest. If you and MNOSHA are unable to reach a resolution at the informal conference then the contest will proceed to a formal contested case hearing.

**COMPLETING THIS FORM**

**1. HOW TO IDENTIFY THE INSPECTION BEING CONTESTED.**

Complete the box at the top of this form using the Inspection Number, OSHI ID, Optional Report Number and Employer's Mailing Address from the Citation and Notification of Penalty being contested.

**2. HOW TO CONTEST THE CITATION AND NOTIFICATION OF PENALTY.**

Indicate in the boxes on the next page which part(s) of the Citation and Notification of Penalty you wish to contest. Identify the citations you are contesting by indicating the citation and item numbers. Then indicate which part(s) of each item is being contested. Finally, state your reasons for contesting in the space provided below the boxes.

- Check the box CITATION if you wish to contest that the violation occurred.
- Check the box TYPE OF VIOLATION if you wish to contest the characterization of the violation as non-serious, serious, willful or repeat.
- Check the box ABATEMENT DATE if you wish to contest the date by which you must abate the violation.
- Check the box PENALTY if you wish to contest the amount of the penalty.



04172020 000507, 005

**Jones, Tonya (DLI)**

**From:** Brandon Mabb <brandonm@rm-mgmt.net>  
**Sent:** Thursday, April 16, 2020 1:50 PM  
**To:** Progress, Citation (DLI)  
**Subject:** Maple Hill Senior Living  
**Attachments:** 20200416135351646.pdf

**This message may be from an external email source.**

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

Attached is the Contest Report, PMA and Progress notes for Maple Hill Senior Living.

Thank you,

Brandon Mabb

Vice President of Operations

820 North Lifac Drive Suite #170  
Golden Valley, MN 55422  
Ph. 763-334-3127  
[brandonm@rm-mgmt.net](mailto:brandonm@rm-mgmt.net)

**CONFIDENTIALITY NOTICE:**

This message (including any attachments) may contain confidential client information. The information is intended only for the use of the individual or entity to whom it is addressed. If you're not the addressee or the employee or agent responsible to deliver this e-mail to its intended recipient, you are hereby notified that any review, use, dissemination, distribution, disclosure, copying or taking of any action in reliance on the contents of this information is strictly prohibited.



**DEPARTMENT OF  
LABOR AND INDUSTRY**

April 27, 2020

Brandon Mabb  
Maple Hill Senior Living L. L. C.  
820 North Lilac Drive, Suite 170  
Golden Valley, MN 55422

Re: Maple Hill Senior Living L. L. C.  
Inspection No. 318149747  
**FINAL ORDER DETERMINING LATE FILING**

Dear Mr. Mabb:

The Department has issued a Final Order Determining Late Filing related to this inspection by the Occupational Safety and Health Division (MNOSHA). It is attached to this letter.

You have the right to file a Petition to Vacate this Final Order Determining Late Filing. The procedures for filing a Petition to Vacate are explained in Minnesota Statutes § 182.664, subdivision 5 (2018), and Minnesota Rules, parts 5215.0700 and 5215.5350, which are available at [www.revisor.mn.gov](http://www.revisor.mn.gov). As the statute and rules clearly state, any Petition to Vacate must be filed within 30 days following service by mail of this Final Order Determining Late Filing. If you would like to appear before the OSH Review Board, you may make a request for oral argument in the Petition to Vacate.

The statute sets forth the grounds under which the Board may grant a Petition to Vacate this Final Order. The Board may only vacate this Final Order upon a showing of good cause. Good cause is limited to fraud, mistake of fact or law, or newly discovered evidence. At this time, the Board may only review the determination that the Notice of Contest was late.

The Petition to Vacate must be filed with the Board by mail or personal delivery to: Debra Jevne, Executive Secretary, OSH Review Board, 443 Lafayette Road N., St. Paul, Minnesota, 55155. Additionally, a copy of the Petition to Vacate must be served on the Department by mail or personal delivery to: Occupational Safety and Health Division, Department of Labor & Industry, 443 Lafayette Road N., St. Paul, Minnesota 55155.

This letter does not constitute legal advice.

Sincerely,

s/ Matthew P. Jobe

General Counsel for the  
Occupational Safety and Health Division  
Minnesota Department of Labor and Industry  
(651) 284-5019

MPJ/cx

Enclosures

*Equal Opportunity Employer*

Office of General Counsel, 443 Lafayette Road North, St. Paul, MN 55155  
(651) 284-5019 | [www.dli.mn.gov](http://www.dli.mn.gov) | Fax (651) 284-5725

**EXHIBIT D**

STATE OF MINNESOTA

DEPARTMENT OF LABOR  
AND INDUSTRY

Nancy J. Leppink, Commissioner,  
Minnesota Department of Labor and Industry,

Complainant,

**FINAL ORDER DETERMINING**  
**LATE FILING**

v.

Maple Hill Senior Living L. L. C.,

Inspection No. 318149747

Respondent.

To: Maple Hill Senior Living L. L. C.  
820 North Lilac Drive, Suite 170  
Golden Valley, MN 55422

On March 23, 2020, the Occupational Safety and Health Division, on behalf of Nancy J. Leppink, Commissioner, Minnesota Department of Labor and Industry, issued a Citation and Notification of Penalty (Citation) in this inspection. (Exhibit A). The certified mail return receipt indicates that Maple Hill Senior Living L. L. C. (Respondent) received the Citation on March 26, 2020. (Exhibit B). On April 16, 2020, the Department of Labor and Industry received a copy of the Notice of Contest and Service to Affected Employees (Notice of Contest) form, via email, stating Respondent was contesting the Citation. (Exhibit C).

Minnesota Statutes § 182.661, subdivisions 1 & 3b (2018), and Minnesota Rules, part 5210.0007 (2017), require that a notice of contest and certification of service be filed on a form provided by the commissioner and postmarked, faxed, emailed, or hand-delivered within twenty (20) calendar days from the date the Citation was received. This requirement is clearly stated on both the Citation and the Notice of Contest form that were received by the employer on March 26, 2020. Respondent did not properly file a completed Notice of Contest within the 20-day time period, so the Notice of Contest was late. As a result, the Citation is final.

Dated: April 27, 2020

s/ Matthew P. Jobe  
Attorney Reg. No. 0395447  
Department of Labor and Industry  
Office of General Counsel  
443 Lafayette Road N.  
St. Paul, Minnesota 55155

**Minnesota Department of Labor and Industry**

Occupational Safety and Health Division

443 Lafayette Road

St. Paul, MN 55155-4307

Phone: 651-284-5050 FAX: 651-284-5741

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**Citation and Notification of Penalty**

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**To:**

Maple Hill Senior Living LLC

3030 Southlawn Dr

Maplewood, MN 55109

**Inspection Number:** 318149747**OSHI ID:** G4097**Optional Report No.:** 00320**Inspection Date(s):** 02/05/2020 - 03/04/2020**Issuance Date:** 03/23/2020**Inspection Site:**

3030 Southlawn Dr

Maplewood, MN 55109

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty (this Citation) describes violations of the Minnesota Occupational Safety and Health Act of 1973 (the Act). The penalty amounts listed herein are based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation you file a Notice of Contest with the Commissioner of the Department of Labor and Industry. Your contestation rights and other employer and employee rights and responsibilities are set out in the first three pages of this Citation. The description of alleged violations begins on page 5 of this Citation.

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**EMPLOYER AND EMPLOYEE RIGHTS AND RESPONSIBILITIES**

**Posting** - The Act requires that a copy of this Citation shall be promptly posted at or near each place that an alleged violation referred to in the citation occurred or, if not practicable, in a prominent place where it will be readily visible by all affected employees. If uncontested, this Citation must remain posted until all alleged violations cited therein are corrected, or for 20 days, whichever is longer. If contested, this Citation must remain posted until the contestation is resolved.

**Penalty Payment** - Payment of all penalties is to be made by check or money order payable to "Minnesota Department of Labor and Industry, MNOSHA", and remitted to the Occupational Safety and Health Division at P.O. Box 64025, St. Paul, MN, 55164-0025, within 20 calendar days following receipt of this Citation. After 60 days, unpaid penalties shall increase 25 percent and shall accrue an additional interest of 10 percent per month compounded monthly until the fine is paid in full.

Effective August 1, 2003, the minimum \$25,000 penalty issued to employers with fewer than 50 employees for serious citations connected to the death of an employee may be made in five payments of \$5,000. The first \$5,000 payment is due within 20 calendar days following receipt of this Citation. The 2nd-5th payments of \$5,000 are due on the next four anniversary dates of this Citation becoming a Final Order. The Commissioner may elect to waive the 2nd-5th \$5,000 payment if in the preceding year the employer receives no citations. MNOSHA will provide written notice of the 2nd-5th payments dates or of any penalty waiver.

**Notification of Corrective Action** - Progress reports on correction of alleged violations not immediately abated as observed by the occupational safety and health investigator shall be submitted on the Progress Report form provided with this Citation. Written progress reports must be mailed to the address shown on the top of page 1 of this Citation by the latest abatement date on the citation, or within 30 days after receipt of the citation, whichever is earlier. Reports must state the specific corrective action taken on each cited item, the date of such action and the anticipated abatement date of uncompleted items. Additional written progress reports shall be submitted every thirty days until the items are fully abated. Facsimile (FAX) transmittal is acceptable.

All alleged violations not contested must be corrected by the abatement date specified in this Citation. A followup inspection may be made for the purpose of ascertaining that the employer has corrected the alleged violations and posted this Citation as required by the Act. Failure to correct an alleged violation by the abatement date on this Citation may result in further penalties for each day the alleged violation has not been corrected.

**Petition for Modification of Abatement Date (PMA)** - If, due to factors beyond reasonable control, compliance cannot be achieved by the abatement day on the citation, the employer may file a Petition for Modification of Abatement Date (PMA) to obtain an extension of the abatement time period. The PMA must be in writing and received at the address shown on the top of page 1 of this Citation prior to the expiration of the abatement date on the citation. Facsimile (FAX) transmittal of a PMA is acceptable. A copy of the PMA must be posted for ten days in the location where this Citation is posted. A copy of the PMA must also be served upon authorized employee representatives.

The employer's written petition must describe:

- 1) The action that has been taken so far to achieve compliance;
- 2) The amount of additional time needed for compliance;
- 3) The reasons why additional time is needed;
- 4) A description of the interim steps that will be taken to safeguard employees against the cited hazard;
- 5) A statement that employees have been notified of the PMA filing.

Employees have the right to file a written objection to the Commissioner regarding the employer's PMA request. A copy of the objection must be served on the employer within 10 days of the employer's posting of the PMA. The employee objection must be received by the Commissioner within 15 days of the employer's PMA request. Facsimile (FAX) transmittal is acceptable.

**Employer Right to Contest** - The employer has the right to a hearing to contest any or all parts of this Citation. If the employer wishes to contest, the employer must fully complete and notarize the attached NOTICE OF CONTEST AND SERVICE TO AFFECTED EMPLOYEES (Notice of Contest form) and file it with the Commissioner at the address shown on the top of page 1 of this Citation within 20 calendar days of receiving the citation.

**Important:** To be considered filed, all parts of the Notice of Contest form must be completed and the completed form must be deposited in the United States mail and postmarked, or otherwise timely received by the Commissioner at the above address within 20 calendar days after the date this Citation is received by the employer. You may also file electronically at ([contestation.dli@state.mn.us](mailto:contestation.dli@state.mn.us)), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received no later than 4:30 p.m. on the 20th calendar day. If the employer fails to file the Notice of Contest form on time, this Citation and Notification of Penalty becomes a final order of the Commissioner which is not subject to review by any court or agency and the Occupational Safety and Health Division may file and enforce the penalty as a district court judgment without further notice or additional proceedings pursuant to Minnesota Statute § 16D.17.

**Employee Right to Contest** - An employee or authorized representative of employees has the right to a hearing to contest this Citation by filing a letter with the Commissioner of the Department of Labor and Industry at the address shown on page 1 within 20 calendar days of the employer's receipt of this Citation.

**Important:** To be considered filed, an employee letter of contest must be deposited in the United States mail and postmarked, or otherwise timely received by the Commissioner at the above address within 20 calendar days after the date this Citation is received by the employer. You may also file electronically at ([contestation.dli@state.mn.us](mailto:contestation.dli@state.mn.us)), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received no later than 4:30 p.m. on the 20th calendar day. If the employee fails to file a letter of contest on time, this Citation and Notification of Penalty becomes a final order of the Commissioner which is not subject to review by any court or agency and the Occupational Safety and Health Division may file and enforce the penalty as a district court judgment without further notice or additional proceedings pursuant to Minnesota Statute § 16D.17.

**Employee Right to Party Status** - Affected employees or their authorized employee representatives may elect to participate as parties in the formal contested case hearing by filing written notice with the Commissioner at the address shown above at least 45 days before the start of the hearing. The notice must contain the employees' names, addresses, authorized employee representatives, if any, and a statement that they are affected employees of the cited employer.

**Employer Discrimination Unlawful** - Employees who believe that they have been discharged or otherwise discriminated against by any person because the employees have exercised any right authorized under the provisions of Minnesota Statutes §§ 182.65 to 182.674, may, within 30 days after such alleged discrimination occurs, file a complaint with the Commissioner of the Department of Labor and Industry at the address shown above, alleging the discriminatory act.

## PENALTY INFORMATION

Types of Violations - There are 5 types of violations that may be cited by MNOSHA. They are: Nonserious, Serious, Willful, Repeat and Failure to Abate.

Penalties - In cases not involving the death of an employee, the law allows the following maximum penalties: Nonserious, \$7,000; Serious, \$7,000; Willful, \$70,000; Repeat, \$70,000; and Failure to Abate, \$7,000 per day the violation remains unabated. If a Willful or Repeat violation caused or contributed to the death of an employee, however, MNOSHA is compelled by law to assess the employer a total non-negotiable penalty of at least \$50,000 for all citations connected to the employee's death. If there are no Willful or Repeat violations among the violations that caused or contributed to the employee's death, MNOSHA must assess the employer a non-negotiable penalty of at least \$25,000 for each citation connected to the employee's death. The following violations are not subject to these minimums and will be processed according to MNOSHA's ordinary penalty system: (a) any serious violations issued to an employer with fewer than 50 employees when the victim of a workplace fatality owned a controlling interest in the business unless the Commissioner determines that a fine shall be assessed, and (b) any violations found during a fatality investigation but determined not to be connected to the death of an employee.

Credits - A penalty for a violation may be credited by as much as 95 percent, depending on the employer's good faith (up to 30%), size of business (up to 55%), and previous violation history (up to 10%). The penalties which appear on the Citation and Notification of Penalty have been reduced by the credits described.

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

### Citation and Notification of Penalty

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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#### Citation 01 Item 001 Type of Violation: **Serious**

29 CFR 1910.151(c): Where employees were exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes were not provided within the work area for immediate emergency use:

An emergency eyewash station capable of providing 15 minutes of continuous flushing was not available where there was exposure to injurious corrosives such as cleaners, sanitizers and degreasers used by housekeeping and kitchen employees.

#### Abatement Guidelines:

- 1) Facilities must be provided so that their sole purpose is to serve as eyewashes. That is, they should not be used for other activities or industrial processes. Equipment and installation should be in compliance with ANSI Z358.1-2014.
- 2) All eyewash facilities should be located so that they are accessible within 10 seconds (an average person covers about 55 feet in 10 seconds at normal walking speed).
- 3) The eyewash locations should be well lit and clearly indicated by signs and directional markings. The paths to the facilities should be on the same level as the hazard and must be kept clear.
- 4) Eyewashes shall be operable at all times. If shut off valves are installed in plumbed systems, provision shall be made to prevent unauthorized shut off.
- 5) Drains to sanitary sewers for the eyewash are desirable but not essential. The discharge, depending on what is in the immediate area, can go directly onto the floor or ground.
- 6) The eyewash should be capable of delivering directly to the eyes a pressure-reduced divergent flow of flushing fluid (minimum flow of 0.4 gallons per minute of flushing fluid for at least 15 minutes) and should be designed and installed so that both hands can be free to assist in irrigation. A quick opening valve, which remains open when released, is also necessary.
- 7) The flushing fluid temperature must be tepid (between 60 degrees 100 degrees F). If ambient temperatures below 32 degrees F are anticipated, provisions shall be made to ensure that facilities will remain operational.

8) Eyewashes should be tested weekly to ensure proper operation. The testing of facilities should include testing for adequate flow of flushing fluid, unobstructed eyewash head passages, and assurance that the water controls operate so that the flow of water is even without spurts and other signs of periodic overpressurization. Eyewashes should be flushed for at least three minutes weekly to reduce Acanthamoebae bacteria.

9) Portable facilities such as pump cans with flush nozzles should be used only where fixed installation is not feasible. If portable facilities are provided, the requirements of 6 above must be met and procedures should be developed to ensure that the water is potable at all times.

10) Squeeze bottles of sterile water or eye flush solution should only be used in conjunction with a properly located eyewash.

<b>Date By Which Violation Must Be Abated:</b>	<b>4/16/2020</b>
<b>Penalty:</b>	<b>\$2,000.00</b>

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

**Citation and Notification of Penalty**

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

---

**Citation 01 Item 002 Type of Violation: **Serious****

29 CFR 1910.1030(c)(1)(i): The employer having employee(s) with occupational exposure to bloodborne pathogens did not establish a written Exposure Control Plan designed to eliminate or minimize employee exposure:

The employer did not have an adequate written Exposure Control Plan for employees exposed to blood or other potentially infectious materials. The employer's blood borne pathogen exposure control plan did not include the following required information:

- a. Determination of employee exposures.
- b. Reflect changes in technology that eliminate or reduce exposures to bloodborne pathogens.
- c. Document annual consideration and implementation of appropriate commercially available and effective safer medical devices designed to eliminate or minimize occupational exposure.
- d. Implementation of various methods of exposure control, including: Engineering and work practice controls, Personal protective equipment, Housekeeping.
- e. Post-exposure evaluation and follow-up.
- f. Procedures for evaluating circumstances surrounding exposure incidents.

**Date By Which Violation Must Be Abated:** 4/16/2020  
**Penalty:** \$1,600.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

**Citation and Notification of Penalty**

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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**Citation 01 Item 003 Type of Violation: **Serious****

29 CFR 1910.1030(d)(4)(iii)(A)(1)(iv): Contaminated sharps were not discarded immediately or as soon as feasible in containers that were labeled or colorcoded in accordance with 29 CFR 1910.1030(g)(1)(i):

Unlabeled milk jugs were used as sharps containers.

**Date By Which Violation Must Be Abated:** 4/16/2020  
**Penalty:** \$1,200.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

**Citation and Notification of Penalty**

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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**Citation 01 Item 004 Type of Violation: **Serious****

29 CFR 1910.1030(f)(3)(i): The postexposure evaluation and followup of an exposure incident did not include documentation of the route(s) of exposure or the circumstances under which the exposure incident occurred:

The employer did not document circumstances under which exposure incidents occurred and did not complete a post exposure follow-up following needlestick exposure.

**Date By Which Violation Must Be Abated:** 4/16/2020  
**Penalty:** \$2,800.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

**Citation and Notification of Penalty**

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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**Citation 01 Item 005 Type of Violation: **Serious****

29 CFR 1910.1200(h)(1): Employees were not provided information and training as specified in 29 CFR 1910.1200(h)(1) and (2) on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard was introduced into their work area:

Hazard communication training was not conducted for employees exposed to hazardous substances including cleaners, degreasers and sanitizers.

**Date By Which Violation Must Be Abated:** 4/16/2020  
**Penalty:** \$1,200.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

**Citation and Notification of Penalty**

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

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**Citation 02 Item 001 Type of Violation: **Nonserious****

29 CFR 1910.22(a)(1): Places of employment, passageways, storerooms, service rooms, and walking-working surfaces were not kept in a clean, orderly, and sanitary condition:

The storage area was not kept clean and orderly which led to falling objects on a storage cart and inadequate walkways being used to access stored items.

**Date By Which Violation Must Be Abated:** 4/16/2020  
**Penalty:** \$400.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

**Citation and Notification of Penalty**

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

---

**Citation 02 Item 002 Type of Violation: **Nonserious****

29 CFR 1910.1030(g)(2)(iv): Annual training for employees with occupational exposure was not provided within one year of their previous training:

The employer did not provide annual bloodborne pathogen training to all employees potentially exposed to bloodborne pathogens and other potentially infectious materials.

**Date By Which Violation Must Be Abated:** 4/16/2020  
**Penalty:** \$800.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318149747  
**Inspection Date(s):** 02/05/2020 - 03/04/2020  
**Issuance Date:** 03/23/2020  
**OSHI ID:** G4097  
**Optional Report No.:** 00320

### Citation and Notification of Penalty

**Company Name:** Maple Hill Senior Living LLC  
**Inspection Site:** 3030 Southlawn Dr, Maplewood, MN 55109

#### Citation 02 Item 003 Type of Violation: **Nonserious**

29 CFR 1910.1200(e)(1): The employer did not develop, implement, and/or maintain at the workplace a written hazard communication program which describes how the criteria specified in 29 CFR 1910.1200(f), (g), and (h) will be met:

The employer did not develop a written hazard communication program for employees exposed to hazardous chemicals including cleaners, degreasers and sanitizers.

Abatement Guidelines: The written program must be made available, upon request to employees, their designated representatives, and representatives of the Occupational Safety & Health Division and shall include:

- 1) A description of how the training, availability of information, and labeling provision will be met for hazardous chemicals.
- 2) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate safety data sheet. The list may be compiled for the workplace as a whole or for individual work areas.
- 3) The methods the employer will use to inform employees of the hazards of non-routine tasks that involve exposure to hazardous chemicals, and the hazards associated with hazardous chemicals contained in unlabeled pipes in their work areas.
- 4) Additionally, in multiemployer workplaces where the employer produces, uses or stores hazardous chemicals in such a way that employees of other employers may be exposed, the written program shall include:
  - a) the methods the employer will use to provide the other employers with a copy of the safety data sheet, or to make it available at a central location in the workplace, for each hazardous chemical the other employers' employees may be exposed to while working;
  - b) the methods the employer will use to inform the other employers on any precautionary measures that need to be taken to protect employees during normal operating conditions and in foreseeable emergencies; and
  - c) the methods the employer will use to inform the other employers of the labeling system used in the workplace.

**Date By Which Violation Must Be Abated:**  
**Penalty:**

**4/16/2020**  
**\$0.00**

Nancy J. Leppink, Commissioner  
MN Department of Labor and Industry

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <i>Lif</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Latrece Owens</i> C. Date of Delivery <i>3-26</i></p> <p>D. Is delivered address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: <i>982-55109</i></p>
<p>Latrece Owens, Executive Director Maple Hill Senior Living LLC 3030 Southlawn Dr Maplewood, MN 55109 318149747 G4097 00320</p>  <p>9590 9402 5179 9122 8696 89</p>	<p>ST PAUL, MN MAR 26 2020 982-55109</p>
<p>2. Article Number (Transfer from service label)</p> <p>7019 0700 0000 1466 7527</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Insured Mail (Amount Limited) <input type="checkbox"/> Insured Mail Restricted Delivery</p> <p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>
<p>Domestic Return Receipt</p>	

**Minnesota  
Department of Labor and Industry**

Occupational Safety and Health Division  
443 Lafayette Road North  
St. Paul, MN 55156-4307

Phone: 1-800-DIAL-DLI (1-800-342-5354)  
(651) 284-5050  
FAX: (651) 284-5741  
www.dli.mn.gov

Latrece Owens, Executive Director  
Maple Hill Senior Living LLC  
3030 Southlawn Dr  
Maplewood, MN 55109  
318149747 G4097 00320  
3030 Southlawn Dr Maplewood MN 55109

APR 16 2020

**NOTICE OF CONTEST AND SERVICE TO AFFECTED EMPLOYEES**

MINNESOTA OSH DIVISION

**PURPOSE OF THIS FORM**

If you have received a Citation and Notification of Penalty from the Minnesota Occupational Safety and Health Division (MNOSHA) and you wish to contest any part of the Citation, including the penalty, you must complete this form. **For your contest to be valid, you must file this form within 20 calendar days of the date the employer received the Citation.**

If you only wish to obtain an extension of time to correct the violation, you may file a Petition for Modification of Abatement Date according to the Instructions on the Citation and Notification of Penalty.

By filing this Notice of Contest form, you are initiating a formal contested case proceeding before an administrative law judge of the parts of the Citation and Notification of Penalty you are contesting. This form must be filed in good faith and not solely for delay or avoidance of penalties.

**HOW TO FILE THIS FORM**

- This Notice of Contest form must be filed with the Commissioner of the Department of Labor and Industry at the above address **within 20 calendar days** after the date the employer received the Citation and Notification of Penalty. To be considered filed, all parts of the Notice of Contest form must be completed and the completed form must be mailed and postmarked, **within 20 calendar days** after the date the employer received the Citation and Notification of Penalty. You may also file electronically at [contestation.dli@state.mn.us](mailto:contestation.dli@state.mn.us), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received **no later than 4:30 p.m. on the 20<sup>th</sup> calendar day**.
- If you fail to file the fully completed Notice of Contest form on time, the Citation and Notification of Penalty becomes a final order of the Commissioner that is not subject to review by any court or agency.

**APPEAL PROCESS**

Upon receipt of a timely filed Notice of Contest form, MNOSHA will contact you and schedule a date, time and location for an informal conference. The purpose of the informal conference is to allow you to discuss with a MNOSHA representative the Citation and Notification of Penalty and the basis for your contest. The goal of the informal conference is to reach an early resolution of the contest. If you and MNOSHA are unable to reach a resolution at the informal conference then the contest will proceed to a formal contested case hearing.

**COMPLETING THIS FORM**

**1. HOW TO IDENTIFY THE INSPECTION BEING CONTESTED.**

Complete the box at the top of this form using the Inspection Number, OSHI ID, Optional Report Number and Employer's Mailing Address from the Citation and Notification of Penalty being contested.

**2. HOW TO CONTEST THE CITATION AND NOTIFICATION OF PENALTY.**

Indicate in the boxes on the next page which part(s) of the Citation and Notification of Penalty you wish to contest. Identify the citations you are contesting by indicating the citation and item numbers. Then indicate which part(s) of each item is being contested. Finally, state your reasons for contesting in the space provided below the boxes.

- Check the box CITATION if you wish to contest that the violation occurred.
- Check the box TYPE OF VIOLATION if you wish to contest the characterization of the violation as non-serious, serious, willful or repeat.
- Check the box ABATEMENT DATE if you wish to contest the date by which you must abate the violation.
- Check the box PENALTY if you wish to contest the amount of the penalty.

FAILURE TO CHECK ANY PART WILL RESULT IN THAT PART OF THE CITATION BECOMING A FINAL ORDER OF THE COMMISSIONER THAT IS NOT REVIEWABLE BY ANY COURT OR AGENCY.

CITATION NUMBER	ITEM NUMBER	(check all that apply)			
01	001	<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	002	<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	003	<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	004	<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	005	<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
02	001, 002, 003	<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty

REASONS FOR CONTEST: (Additional sheets may be attached as necessary, and they will be considered part of this form.)

Maple Hill doesn't have any prior issues with OSHA compliance and has put together a good Faith effort to correct all citations Maple Hill has been focused on correcting orders timely & effectively also while working through COVID-19 issues.

3. DATES OF POSTING AND SERVING. You must certify in Box A or B below the dates you posted and served this form.

**A. Union:** Complete part A if you have affected Employees Represented by Authorized Employee Representatives

I hereby certify that I posted fully completed copies of this form on \_\_\_\_\_ (date) at the locations where the Citation and Notification of Penalty is required to be posted; and I served fully completed copies of this form on \_\_\_\_\_ (date) upon the authorized employee representatives of affected employees.

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**B. Non-Union:** Complete part B if you have affected Employees Not Represented by Authorized Employee Representatives

I hereby certify that I posted fully completed copies of this form on 4/15/2020 (date) at the locations where the Citation and Notification of Penalty is required to be posted and that I do not have any affected employees who are represented by authorized employee representatives.

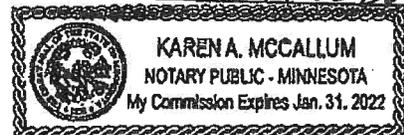
4. OATH. The employer completing this form must sign and have notarized the following statement.

I SWEAR THAT THE INFORMATION PROVIDED ON THIS FORM AND ATTACHED TO THIS FORM IS ACCURATE AND TRUTHFUL TO THE BEST OF MY KNOWLEDGE.

State of Minnesota County of Washington

Brandon Mabb VP of Ops 763-334-3127  
Name of Employer Representative, Title Phone  
[Signature] 4/16/2020  
Signature Date

Subscribed and sworn to before me  
this 16<sup>th</sup> day of April 2020  
Notary Public Karen A. McCallum  
My Commission expires 1-31-2022



04302020 000666.021

04172020 000507.005

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**Jones, Tonya (DLI)**

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**From:** Brandon Mabb <brandonm@rm-mgmt.net>  
**Sent:** Thursday, April 16, 2020 1:50 PM  
**To:** Progress, Citation (DLI)  
**Subject:** Maple Hill Senior Living  
**Attachments:** 20200416135351646.pdf

**This message may be from an external email source.**

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

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Attached is the Contest Report, PMA and Progress notes for Maple Hill Senior Living.

Thank you,

Brandon Mabb

Vice President of Operations

820 North Lilac Drive Suite #170

Golden Valley, MN 55422

Ph. 763-334-3127

[brandonm@rm-mgmt.net](mailto:brandonm@rm-mgmt.net)

**CONFIDENTIALITY NOTICE:**

This message (including any attachments) may contain confidential client information. The information is intended only for the use of the individual or entity to whom it is addressed. If you're not the addressee or the employee or agent responsible to deliver this e-mail to its intended recipient, you are hereby notified that any review, use, dissemination, distribution, disclosure, copying or taking of any action in reliance on the contents of this information is strictly prohibited.



**Affidavit of Mildred Tures**

STATE OF MINNESOTA            )  
  )    ss.  
COUNTY OF RAMSEY            )

MILDRED TURES deposes and states:

1. I am an Industrial Hygienist 2 with the Minnesota Occupational Safety and Health program (“MNOSHA”) of the Minnesota Department of Labor and Industry (DLI). I have been employed by DLI since 2015. As an Industrial Hygienist 2, I conduct inspections, draft citations, and track abatement of citations, among other duties.
2. This Affidavit is made in support of MNOSHA’s Response to Petitioner’s Petition to Vacate the Commissioner’s April 27, 2020, Final Order. That Final Order determined that Petitioner’s Notice of Contest to the Citation and Notification of Penalty was late.
3. In April 9, 2020, Brandon Mabb, Petitioner’s representative, contacted me with questions about abating the citations issued to Petitioner on March 23, 2020. I answered his questions about the requirement to complete and submit a progress report to document abatement. On April 15, 2020, he had called with a question regarding pending citation and I informed him that he could file a petition to modify abatement dates (PMA) if he needed more time to abate the citation.
4. On April 16, 2020, I spoke with Mr. Mabb regarding the PMA he had sent in the day before and I clarified to him that he needed to add the citation numbers. Then he stated that he also had a question about penalties and contesting the citations. I informed him that I do not work with

penalties or contestation, but that I would ask the staff person with MNOSHA who processes Notices of Contest, Sue Healy. I called Ms. Healy, and she informed me that the deadline for Mr. Mabb to file a Notice of Contest to contest the citations was April 15, 2020. Ms. Healey told me that Mr. Mabb could still file a Notice of Contest, but that it would be late, so he might have to go through the appeal process. That same day, April 16, 2020, I called back Mr. Mabb and informed him what Ms. Healy had told me.

5. I did not discuss the deadline for filing a Notice of Contest with Mr. Mabb before April 16, 2020. I did not tell Mr. Mabb that the deadline for filing a Notice of Contest was April 16, 2020. I did not count 20 days with Mr. Mabb to help him calculate the deadline for filing a Notice of Contest. In the five years I have worked at MNOSHA, I have never counted days with an employer to figure out the deadline for filing a Notice of Contest.

FURTHER YOUR AFFIANT SAYETH NOT.

I am signing this affidavit in Ramsey County, Minnesota on the \_\_\_12th\_\_\_ day of \_\_\_\_\_ June \_\_\_\_\_, 2020. Pursuant to Minn. Stat. § 358.116, I declare under penalty of perjury that everything I have stated in this document is true and correct.

\_\_\_\_\_ S/ Mildred J Tures \_\_\_\_\_  
MILDRED TURES

