

In the Matter of the Penalty Issued to:  
**KINDRED HOSPITAL SAN DIEGO**  
Appellant.

Page 1 of 7

## PROCEDURAL FINDINGS

1. On November 19, 2024, HCAI assessed a penalty against Appellant in the amount of \$400 for its delinquent Hospital Quarterly Financial Utilization Report.<sup>2</sup>
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated December 9, 2024, and received by the HCAI Hearing Office on December 27, 2024.
3. Due to the holidays that occurred in December 2024, the Hearing Officer accepted Appellant's submitted appeal as timely within the required fifteen business days from receipt of the penalty letter.<sup>3</sup> Appellant's appeal was due on December 24, 2024; however, the Hearing Office recognizes that December 24<sup>th</sup> – December 26<sup>th</sup> typically occur within business holiday schedules. While the Appellant did not have the email that showed the date the Request for Administrative Hearing form was originally submitted to the Hearing Office, based on the aforementioned, the appeal request was granted.
4. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 9 were found to be authentic and relevant and admitted to the record. Appellant had no objections to Exhibits 1 through 9.
5. Appellant submitted only the Request for Administrative Hearing, HCAI invoice, and penalty letter to the Hearing Office and HCAI at the time of appeal, hereinafter referred to as Exhibit A. Appellant did not provide a statement explaining the basis of its appeal. Exhibit A was found to be authentic and relevant and admitted to the record. HCAI had no objection to admitting Exhibit A.

## FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128770 to file or timely request an extension for its Hospital Quarterly Financial Utilization Report for the Report Period Ending ("RPE") date Monday, September 30, 2024, by Thursday, November 14, 2024.<sup>4</sup>

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<sup>2</sup> Health & Saf. Code, § 128770. *See also* exhibit 7.

<sup>3</sup> Health & Saf. Code, § 128775. *See also* Cal. Code Regs. Tit. 22, § 97052.

<sup>4</sup> Health & Saf. Code, § 128770. *See also* Cal. Code Regs. Tit. 22, §§ 97051.

2. HCAI sent automated reminders to Appellant via email on Monday, November 4, 2024,<sup>5</sup> and Wednesday, November 13, 2024.<sup>6</sup> A delinquent report reminder was automatically emailed to Appellant on Sunday, November 17, 2024.<sup>7</sup>

3. On Wednesday, November 27, 2024, an initial delinquency letter dated November 19, 2024, was delivered to Appellant at the facility location via General Logistics Systems (“GLS”) mail.<sup>8</sup>

4. Penalties accrued from Thursday, November 14, 2024, until Monday, November 18, 2024, when the report was filed.<sup>9</sup>

5. In accordance with Health and Safety Code section 128770, subsection (a), HCAI assessed penalties in the amount of \$100 per day for four days, resulting in a total penalty amount of \$400.<sup>10</sup> These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

6. Appellant submitted Exhibit A with its appeal, however, a statement for the basis of its appeal was not included, and Appellant made oral statements of facts it believes show good cause why the report at issue was not submitted in a timely manner.

7. Ms. Pine testified that Appellant’s turnover created difficulties and explained she is trying to create some new general emails that the accounting department has access to, so reports can be handled by more than one person to avoid late-filed reports in the future.

8. Ms. Pine further testified that she was just hired by Appellant in November 2024 and she immediately reached out to HCAI for a login and requested assistance gaining access to the System for Integrated Electronic Reporting and Auditing (“SIERA”). Once Ms. Pine was able to access SIERA, she was able to compile all information required to file the report. Ms. Pine also explained that Appellant has experienced significant turnover, including the departure of Sheila Bova, who was previously responsible for filing the reports.<sup>11</sup>

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<sup>5</sup> Exhibit 1.

<sup>6</sup> Exhibit 2.

<sup>7</sup> Exhibit 5.

<sup>8</sup> Exhibits 7 and 8.

<sup>9</sup> Exhibits 7 and 9.

<sup>10</sup> Health & Saf. Code, § 128770.

<sup>11</sup> Exhibit 13.

9. In response to questions from the Hearing Officer about the role of Veronica Mattis, who was also listed on some of the emails related to report filing, Ms. Pine explained Veronica Mattis is not responsible for filing the reports because she works in accounting and in a different market.<sup>12</sup> Ms. Pine was unable to explain why the Hearing Office did not receive Appellant's first email request for a hearing; however, she did explain that she lives in Colorado; further, due to her out-of-state location, she is unable to retrieve physical mail from HCAI. Ms. Pine recommended that HCAI should get proof of delivery to ensure physical mail is received. In response to Ms. Pine's suggestion, HCAI explained the delinquent report letter was sent by GLS overnight and signed for by the facility.<sup>13</sup>

10. These facts were substantiated by oral statements made under oath by Ms. Pine at the hearing.

## DISCUSSION AND LEGAL CONCLUSIONS

1. The issue is whether Appellant had good cause, as required by Health and Safety Code section 128770, for failing to file its report or timely request an extension by Thursday, November 14, 2024, and whether the penalty should be fully, or partially, waived.

2. Under Health and Safety Code section 128770, subsection (c), a penalty may "be reviewed on appeal, and the penalty may be reduced or waived for good cause." In *Waters v. Superior Court*, the California Supreme Court stated that, "good cause may be equated to a good reason for a party's failure to perform that specific requirement from which he seeks to be excused."<sup>14</sup> Good cause must be directly related to the specific legal requirement which the party failed to perform and should be outside the reasonable control of the party.<sup>15</sup> Good cause is sometimes defined as circumstances beyond the party's control, and not related to the party's

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<sup>12</sup> Exhibit 3.

<sup>13</sup> Exhibits 7 and 8.

<sup>14</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereinafter *Waters*).

<sup>15</sup> *Waters, supra*, 58 Cal.2d 885,893 and Secretary of State, "Good Cause" Reasons for Waiving Late Campaign & Lobbying Filing Fees <https://www.sos.ca.gov/campaign-lobbying/good-cause-reasons-waiving-late-campaign-lobbying-filing-fees/> [as of December 4, 2019].

own negligent act or failure to act. On an individual basis, courts and administrative bodies have often found that hospitalization, incapacitation, accident involvement, or loss or unavailability of records may constitute good cause.<sup>16</sup> The determination of good cause in a particular context should utilize common sense based on the totality of the circumstances, including the underlying purpose of the statutory scheme.<sup>17</sup> A party's diligence is a factor in determining good cause for an extension or a delay; further, mere ignorance is not a strong showing of good cause.<sup>18</sup> Every facility that reports information to HCAI is required to have a primary contact and if the primary contact changes, the facility is required to contact HCAI to designate another primary contact.<sup>19</sup>

3. Here, the substantiated facts show Appellant late filed an extension after the November 14, 2024, deadline and filed its report 4 days late on November 18, 2024, resulting in a \$400 penalty. Ms. Pine testified that Sheila Bova, a former employee responsible for filing the reports, left Appellant's facility on an unspecified date in September 2024. Email records show that Amy Williams had access to SIERA because an email from HCAI Financial was sent directly to her email address on November 13, 2024, one day before the report was due.<sup>20</sup> Ms. Williams also filed the untimely extension request on November 18, 2024.<sup>21</sup> It is unclear why Ms. Williams, or someone else knowledgeable about the reporting requirement, did not request an extension on November 13, 2024, or the next day on November 14, 2024, when the report was due.<sup>22</sup> Ms. Pine had only begun working at Appellant's facility very recently and was unfamiliar with the report procedures according to her testimony and the emails.<sup>23</sup> Ms. Pine ultimately gained access to SIERA on November 14, 2024, as a user and late filed the report on November 18, 2024.<sup>24</sup> However, Ms. Pine's lack of knowledge about the report filing requirement does not constitute

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<sup>16</sup> Fair Political Practices Commission, Guidelines for Waiving Late Fines (Nov. 2017) <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/FilingOfficer/700FO-Folder/Late%20Fine%20Guidelines.pdf> [as of November 15, 2022]. See also *Waters, supra*, 58 Cal.2d 885, 893.

<sup>17</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

<sup>18</sup> *People v. Financial & Surety, Inc.* (2016) 2 Cal.5th 35, 47. See also *Wang v. Unemployment Ins. Appeals Bd.* (1990) 225 Cal.App.3d 412, 420; See *Laraway, supra*.

<sup>19</sup> Health & Saf. Code, § 128810. See also Cal. Code Regs. Tit. 22, §§ 97041.1.

<sup>20</sup> Exhibit 3.

<sup>21</sup> Exhibit 6.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> Exhibits 3 and 4.

good cause.

4. Ms. Pine further testified that Appellant had experienced a great deal of employee turnover, leading to difficulty in maintaining a consistent contact user for report submission. However, that statement appears to be inconsistent with the facts. Exhibit 3 shows that Amy Williams had access to SIERA, even if she was not responsible for filing the reports, which means someone other than Ms. Pine could have timely requested an extension. Exhibit 3 shows Ms. Williams even indicated in her email to Ms. Pine that she could assist if Ms. Pine needed help with the report. A failure to timely communicate an extension request and employee turnover are not circumstances beyond the Appellant's control. Appellant's own negligent act or failure to act resulted in the late-filed report; accordingly, the facts do not demonstrate timely filing the report was outside of Appellant's control.

Therefore, the substantiated facts do not show good cause for waiver of the penalty assessed and the \$400 penalty should be upheld.

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## PROPOSED ORDER

The assessed penalty in the amount of \$400 is upheld.

Dated: February 25, 2025

//original signed//  
CAMILLE DIXON  
Hearing Officer  
Department of Health Care Access and Information

## DECISION

Pursuant to Health and Safety Code section 128775, after due consideration of the record,  
the Proposed Decision is:

☒ Accepted

☐ Rejected

Dated: March 3, 2025

//original signed//  
JAMES YI, Attorney IV  
FOR ELIZABETH A. LANDSBERG, Director  
Department of Health Care Access and Information