

BEFORE THE  
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT  
STATE OF CALIFORNIA

In the Matter of the Penalty Issued to:

**KAISER FOUNDATION  
HOSPITALS**

Appellant.

OSHPD No. 20-028C-HQF

**PROPOSED DECISION**

This matter was heard before Michelle Church-Reeves, Hearing Officer, Office of Statewide Health Planning and Development (“OSHPD”), State of California, on Wednesday, November 18, 2020, beginning at 10:30 a.m.

Ty Christensen, Manager, Accounting and Reporting Systems Section, and Tina Tran, Associate Governmental Program Analyst, Accounting and Reporting Systems Section represented OSHPD.

Kaiser Foundation Hospitals, owner and operator of Kaiser Foundation Hospitals Antioch, Baldwin Park, Downey, Fontana, Fremont, Fresno, Los Angeles, Manteca, Moreno Valley, Oakland/Richmond, Orange County - Anaheim, Panorama City, Redwood City, Riverside, Roseville, Sacramento, San Diego, San Francisco, San Jose, San Leandro, San Rafael, Santa Clara, Santa Rosa, South Bay, South Sacramento, South San Francisco, Vacaville, Walnut Creek, West Los Angeles, Woodland Hills, Rehabilitation Center - Vallejo, and PHF Santa Clara, collectively “Appellant,” was represented by Carri Maas, Senior In-House Counsel, Alfonso Upshaw, Senior Vice President, Corporate Controller & Chief Accounting

Officer, and Armen Shirinyan, Finance Manager.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, November 18, 2020, at 11:08 a.m.

### PROCEDURAL FINDINGS

1. On September 1, 2020, OSHPD assessed a penalty against Appellant in the amount of \$3,800 for each of Kaiser Foundation Hospital's 32 delinquent Hospital Quarterly Financial Utilization Reports.<sup>1</sup>
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated September 22, 2020 and received by the OSHPD Hearing Office on October 12, 2020.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.<sup>2</sup>
4. Appellant requested consolidation of the appeals of Kaiser Foundation Hospitals Antioch, Baldwin Park, Downey, Fontana, Fremont, Fresno, Los Angeles, Manteca, Moreno Valley, Oakland/Richmond, Orange County - Anaheim, Panorama City, Redwood City, Riverside, Roseville, Sacramento, San Diego, San Francisco, San Jose, San Leandro, San Rafael, Santa Clara, Santa Rosa, South Bay, South Sacramento, South San Francisco, Vacaville, Walnut Creek, West Los Angeles, Woodland Hills, Rehabilitation Center - Vallejo, and PHF Santa Clara at the time of appeal. The Hearing Office granted the request for consolidation.
5. The hearing was conducted electronically using video and teleconferencing.
6. OSHPD submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 19 were found to be authentic and relevant and admitted to the record.

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<sup>1</sup> Health & Saf. Code, § 128770.

<sup>2</sup> Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

7. Appellant submitted written exhibits to the Hearing Office and OSHPD in advance of the hearing in a timely manner. Exhibit A was found to be authentic and relevant and admitted to the record.

## FACTUAL FINDINGS

1. On September 5, 2019, Senate Bill (“SB”) 343 repealed Health & Safety Code section 128760 subsection (f) effective January 1, 2020.<sup>3</sup> Subsection (f) stated:

The office shall establish specific reporting provisions for health facilities that receive a preponderance of their revenue from associated comprehensive group practice prepayment health care service plans. These health facilities shall be authorized to utilize established accounting systems, and to report costs and revenues in a manner that is consistent with the operating principles of these plans and with generally accepted accounting principles. When these health facilities are operated as units of a coordinated group of health facilities under common management, they shall be authorized to report as a group rather than as individual institutions. As a group, they shall submit a consolidated income and expense statement.

Consequently, Health Maintenance Organizations such as Appellant were required to file all their quarterly reports at the facility level instead of an organizational level beginning with the first quarter, January through March, of 2020 which was originally due 45 days after the quarter ended.

2. On April 1, 2020, Appellant requested the 30-day extension for the Hospital Quarterly Financial Utilization Reports.<sup>4</sup> Only one extension is available for quarterly reports, however due to the COVID-19 emergency, an additional 30-day extension was automatically granted to

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<sup>3</sup> HEALTH CARE FACILITIES – HEALTH CARE SERVICE PLAN – FINANCIAL STATEMENTS AND REPORTS, 2019 Cal. Legis. Serv. Ch. 247 (S.B. 343), §6.

<sup>4</sup> Cal. Code Regs. tit. 22, § 97051.

all quarterly filers in accordance with the Governor's Executive Order.<sup>5</sup> Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128740 to file Kaiser Foundation Hospital's 32 Hospital Quarterly Financial Utilization Reports by July 14, 2020.<sup>6</sup> Penalties accrued from July 15, 2020 until August 21, 2020 when the reports were filed.

3. In accordance with Health and Safety Code section 128770, OSHPD assessed penalties in the amount of \$100 per day for 38 days for each report, resulting in a penalty amount of \$3,800 for each of the 32 reports for a total of \$121,600.<sup>7</sup> These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

4. Under Health and Safety Code section 128770, a penalty may "be reviewed on appeal, and the penalty may be reduced or waived for good cause."<sup>8</sup>

5. Appellant submitted a written statement with its appeal and made oral statements of facts it believes show good cause why its report was not submitted in a timely manner.

6. Appellant's representative testified that the impact of COVID-19 pandemic combined with the additional reporting requirements caused the delay in filing of the quarterly reports. Appellant was aware of the additional facility-level reporting that would be effective in 2020 due to the implementation of SB 343 and had developed a compliance plan which included internal deadlines to meet these new reporting requirements. These changes were substantial and involved mapping of patient revenue data, aligning revenue and utilization, revising allocation methodologies, and changing the general ledger to support the required detail for each facility. The reporting changes were further complicated by the fact that Appellant's hospitals are broken into Northern California and Southern California regions and do not bill insurance plans in a traditional fashion due to their organization as a Health Maintenance Organization. Despite attempting to implement changes to its general ledger beginning less than four months after SB 343 was signed into law, Appellant testified that it should have been able to file timely if it were not for the additional difficulties imposed by the COVID-19 pandemic. Appellant had set a

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<sup>5</sup> Executive Order N-55-20 (April 22, 2020).

<sup>6</sup> *See also* Cal. Code Regs. Tit. 22, § 97051.

<sup>7</sup> Health & Saf. Code, § 128770(a).

<sup>8</sup> Health & Saf. Code, § 128770(c).

target date of the end of April for patient revenue data pre-COVID-19. Patient revenue data was not compiled until the end of June however due to impacts from COVID-19.

7. Appellant testified that the COVID-19 emergency caused staffing and workload issues which delayed compiling of quarterly patient revenue figures by approximately two months, which rendered them unable to even begin working on the reports by their internal deadline as detailed in exhibit A. Specifically, COVID-19 caused staffing and workload issues for staff assigned to work on the reports due to the inability of staff to be relieved from floor duties to tackle non-essential administrative tasks. Nurses who had promoted into administrative and managerial positions were needed to work non-administrative duties, especially with nursing staff having periodic exposure to COVID-19 and complying with quarantine and isolation requirements. Finally, COVID-19 impacted the hospital utilization at all 32 facilities due to the cancellation of all elective procedures to reserve space for COVID-19 cases, causing what appeared to be discrepancies in the quarterly reports, that needed to be corrected or verified prior to the filing of the reports. As Appellant does not bill insurance companies like a traditional hospital, the finances of their hospitals are more interconnected, and all reports had to be verified before any could be submitted. The verification process could not even begin until after the draft reports were compiled, which occurred already after the exhaustion of the extensions. Despite the two-month delay caused by COVID-19 impacts, the reports were submitted only 38 days late. These facts were substantiated by oral statements made under oath by Mr. Upshaw and Mr. Shirinyan at the hearing.

8. The initial statements of both parties were not rebutted.

9. OSHPD's representative confirmed that Appellant does have a history of filing required reports on time. Furthermore, Appellant's filing history shows that they filed their subsequent quarterly reports timely.

## DISCUSSION AND LEGAL CONCLUSIONS

1. The issue here is whether Appellant had good cause, as required by Health and Safety

Code section 128770, for failing to file the 32 Hospital Quarterly Financial Utilization Reports for the consolidated Kaiser Foundation Hospitals by July 14, 2020, and whether the penalty should be waived in whole or in part.

2. 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>9</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>10</sup> Good cause is sometimes defined as circumstances beyond the party’s control, and not related to the party’s 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>11</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>12</sup>

3. As a category, unavailability of records can sometimes include unavailability of correct and accurate records. The substantiated facts show that Appellant had not fully created the records at the time its reports were due. Appellant asserts this was due to the combination of effects from the COVID-19 pandemic and the changes to the reporting requirements due to SB 343. Appellant asserts that despite the statutory changes to their reporting requirements, it was on track to meet the extended filing deadline prior to impacts from COVID-19. It is important to note however that the extension available to Appellant under section 97051 is available for any reason and was requested immediately at the end of the quarter and before the impacts of

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<sup>9</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

<sup>10</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].

<sup>11</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 December 4, 2019]. See also *Waters, supra*, 58 Cal.2d 885, 893.

<sup>12</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

COVID-19 were fully developed. The additional extension due to COVID-19 was only meant to account for COVID-19 and did not consider the additional reporting changes Appellant faced. No documentary or testamentary evidence refuted this assertion and Appellant’s testimony was credible.

4. While OSHPD statutes and regulations allow amendments to be filed and do not explicitly impose penalties for filing incomplete or inaccurate reports, Appellant also certified under penalty of perjury that “to the best of my knowledge and information, the information reported is true and correct” at the time of filing.<sup>13</sup> The substantiated facts show that Appellant was unable to meet this certification requirement at the filing deadline due to external factors, especially the COVID-19 emergency and its associated impacts on hospitals and staff. The substantiated facts demonstrate that at the due date Appellant knew that the reports were not accurate and complete, which constituted unavailability of records in fact.

5. A party’s diligence is a factor in determining good cause for an extension or a delay.<sup>14</sup> Here, even though Appellant was unable to obtain patient revenue data until two months after their internal deadline due to impacts from COVID-19, it was able to submit the reports only 38 days late. This demonstrated Appellant’s commitment to complying with the statutory requirements and filing their reports as quickly as possible. Furthermore, Appellant submitted the following quarter’s reports in a timely fashion despite ongoing impacts of COVID-19, clearly demonstrating its commitment to fulfilling its statutory obligations.

6. These facts demonstrate that circumstances outside of Appellant’s control related to the COVID-19 pandemic contributed to the late filings and that Appellant acted with due diligence under the circumstances and with reasonable haste to provide the late reports. Therefore, the substantiated facts show good cause for waiver of the penalties.

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<sup>13</sup> Office of Statewide Health Planning and Development ACCOUNTING AND REPORTING MANUAL FOR CALIFORNIA HOSPITALS, Section 8300 (Oct. 2019) <https://oshpd.ca.gov/wp-content/uploads/2020/10/Chpt8000.pdf> [as of July 21, 2021].

<sup>14</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.

PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: August 16, 2021

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MICHELLE L. CHURCH-REEVES  
Hearing Officer  
Office of Statewide Health Planning and Development

DECISION

Pursuant to Health and Safety Code section 128775 and California Code of Regulations, title 22, section 97054, after due consideration of the record, the Proposed Decision is:

Accepted

Rejected

Dated: August 16, 2021

//original signed//  
ELIZABETH A. LANDSBERG  
Director  
Office of Statewide Health Planning and Development