

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

In the Matter of the Penalty Issued to:

**CORBIN CONGREGATE HOME,  
FAMILY CIRCLE CLHF, FENTON  
VILLA, HEALTHY LIFE  
CONGREGATE CARE, INC., HOME  
OF COMPASSION NO. 2, LA TUNA  
HOME, POTTER CARE, ET AL.**

Appellant.

OSHPD No. 20-037C-LTC

**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, February 3, 2021, beginning at 10:46 a.m.

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

Elisha Kamornick and Yaakov Feingold through a series of incorporated businesses, owners and operators of Corbin Congregate Home, Family Circle CLHF, Fenton Villa, Healthy Life Congregate Care, Inc., Home of Compassion No 2, La Tuna Home, Potter Care, Pure Heart Congregate Living Facility, Royal Haven, Valley Living Center, and Valley View Congregate Living Facility, Inc., collectively “Appellant,” was represented by Meir Finck, Accountant and Controller.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, February 3, 2021, at 11:12 a.m.

## PROCEDURAL FINDINGS

1. On October 15, 2020, OSHPD assessed eleven penalties against Appellant, each in the amount of \$700, for delinquent Long-Term Care Annual Disclosure Reports for the report period ending (“RPE”) date of December 31, 2019 for the following facilities<sup>1</sup>:
  - a. Corbin Congregate Home;
  - b. Family Circle CLHF;
  - c. Fenton Villa;
  - d. Healthy Life Congregate Care, Inc.;
  - e. Home of Compassion No. 2;
  - f. La Tuna Home;
  - g. Potter Care;
  - h. Pure Heart Congregate Living Facility;
  - i. Royal Haven;
  - j. Valley Living Center, Inc.; and
  - k. Valley View Congregate Living Facility.
2. Appellant appealed the penalties by submitting a Request for Administrative Hearing form dated October 26, 2020 and received by the OSHPD Hearing Office on November 2, 2020.
3. Appellant submitted its appeals from the penalty letters within the required fifteen business days from receipt of the penalty letters.<sup>2</sup>
4. Appellant requested consolidation of the appeals of Corbin Congregate Home, Family Circle CLHF, Fenton Villa, Healthy Life Congregate Care, Inc., Home of Compassion No 2, La Tuna Home, Potter Care, Pure Heart Congregate Living Facility, Royal Haven, Valley Living Center, and Valley View Congregate Living Facility, Inc. at the time of appeal. The Hearing Office granted the request for consolidation.
5. The hearing was conducted electronically using video and teleconferencing.

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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.

6. OSHPD submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 18 were found to be authentic and relevant and admitted to the record.

7. Appellant submitted written statements to the Hearing Office and OSHPD at the time of its appeal. The written statement was found to be authentic and relevant and admitted to the record.

### FACTUAL FINDINGS

1. On February 18, 2020, Appellant requested the 60-day extension for its facilities eleven reports.<sup>3</sup> Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128740 to file its Long-Term Care Annual Disclosure Reports by June 29, 2020.<sup>4</sup>

2. Due to the COVID-19 emergency, the initial due dates for the reports were extended by three months.<sup>5</sup> Following exhaustion of this extension, Appellant was required under Health and Safety Code section 128740 to file its Long-Term Care Annual Disclosure Reports by September 29, 2020.

3. Penalties accrued from September 30, 2020 until October 6, 2020 when Appellant requested the final 30-day extension available for its facilities eleven reports.

4. In accordance with Health and Safety Code section 128770, OSHPD assessed penalties in the amount of \$100 per day for 7 days, resulting in a penalty amount of \$700 for each of the eleven facilities, or \$7,700.<sup>6</sup>

5. Following exhaustion of the final extension, Appellant was required under Health and Safety Code section 128740 to file its Long-Term Care Annual Disclosure Reports by

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<sup>3</sup> Cal. Code Regs. tit. 22, § 97051.

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

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

<sup>6</sup> Health & Saf. Code, § 128770(a).

November 5, 2020. Appellant met this deadline and did not accrue additional penalties for any report at issue.

6. These facts, substantiated both by oral statements made under oath by Mr. Christensen and written exhibits offered by OSHPD, were not contested by Appellant.

7. 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>7</sup>

8. 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.

9. Appellant’s representative testified that the CEO Mr. Kamornick’s father was hospitalized with severe COVID-19 and placed on a ventilator during the time the reports came due in September of 2020 and was unaware that another extension was available. Mr. Kamornick was the primary contact in OSHPD’s system for emailed report reminders, and OSHPD sent the programmed reminders beginning September 4, 2020, but Mr. Kamornick was spending substantial amounts of time in the hospital with his father and did not receive those reminders in a timely manner. In addition, he contracted COVID-19 and while he himself was not hospitalized, he was unable to work during that time.

10. In or around March of 2020, the previous Chief Financial Officer, Gor Galstyan, departed the company after filing the request for the 60-day extension. Mr. Galstyan did not request the 30-day extension or make provisions for another responsible party to file the extension on behalf of Appellant. Mr. Kamornick retained Mr. Finck complete other work in mid-2020 due to Mr. Galstyan’s departure. The delinquency letters were mailed on October 5, 2020 and received on October 6 and 7, 2020 by the assorted facilities. Mr. Kamornick immediately retained Mr. Finck full-time to complete the reports when he realized they were delinquent and the final extension had not been requested. That same day, Mr. Finck requested the 30-day extension and began working on the reports, which were subsequently filed prior to the expiration of the final extension.

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

11. These facts, substantiated by oral statements made under oath by Mr. Finck and written statements offered by Mr. Kamornick, were not contested by OSHPD.
12. The parties offered no rebuttals following the initial statements.
13. OSHPD's representative confirmed that Appellant does have a history of filing required reports on time.

## 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 consolidated Long-Term Care Disclosure Reports for the consolidated facilities or request the 30-day extension by September 29, 2020, and whether the penalties 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>8</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>9</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>10</sup> The determination of good cause in a

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<sup>8</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

<sup>9</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>10</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.

particular context should utilize common sense based on the totality of the circumstances, including the underlying purpose of the statutory scheme.<sup>11</sup>

3. The substantiated facts show that the previous responsible party resigned in or around March of 2020. In addition, the substantiated facts show that Mr. Kamornick's father contracted a severe case of COVID-19 and was hospitalized for an extended time-period, impacting his ability to check emails and complete work requirements. Furthermore, Mr. Kamornick himself contracted a milder case of COVID-19. Report reminders were sent beginning at the beginning of September but were not received by Appellant in a timely manner due to the external circumstances. All this occurred during the time after the Chief Financial Officer resigned, leaving a vacancy in a role which directly impacted Appellant's ability to complete its reports. No documentary or testamentary evidence refuted this assertion and Appellant's testimony was credible.

4. Congregate living health facilities are residential homes with a capacity of no more than eighteen beds that provide inpatient skilled nursing care on a recurring, intermittent, extended, or continuous basis.<sup>12</sup> However, they are typically six-bed home-based facilities and often share administrative staff between facilities. Due to their unique organization, congregate living health facilities are exempt from the electronic reporting requirements which apply to other types of facilities.<sup>13</sup> While exact numbers were not provided by Appellant, the substantiated facts demonstrated that they operate with limited administrative staff and that Mr. Kamornick is heavily involved in the day-to-day oversight and operations of the facilities. The combination of the resignation of the Chief Financial Officer and personal and family health issues was sufficient to temporarily overwhelm both the typical processes and procedures and the planned alternatives.

5. A party's diligence is a factor in determining good cause for an extension or a delay.<sup>14</sup> Here, Appellant had previously filed its reports timely and requested extensions timely. Even

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<sup>11</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

<sup>12</sup> Health & Saf. Code §1250(i).

<sup>13</sup> Health & Saf. Code § 128755(b)(4)(B). *See also* Cal. Code Regs. tit. 22, § 97041(c).

<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 penalties are waived for good cause.

Dated: September 14, 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: 9/17/2021

//original signed//

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