

BEFORE THE  
DEPARTMENT OF HEALTH CARE ACCESS AND INFORMATION  
STATE OF CALIFORNIA

In the Matter of the Penalty Issued to:

**UNITED CARE BASQUE, UNITED  
CARE MINFORD, AND UNITED  
CARE PELONA**

Appellant.

HCAI No. 20-040C-LTC

**PROPOSED DECISION**

This matter was heard before Michelle Church-Reeves, Hearing Officer, Department of Health Care Access and Information (“HCAI”), successor to the Office of Statewide Health Planning and Development (“OSHPD”),<sup>1</sup> State of California, on Monday, February 1, 2021, beginning at 10:44 a.m.

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

United Care Facilities LLC, owner and operator of United Care Basque, United Care Minford, and United Care Pelona, collectively “Appellant,” was represented by Alex Fishkin, Chief Financial Officer, and Alexandre Kouchavchili, Chief Executive Officer, United Care Facilities, LLC.

Both documentary and testamentary evidence was received. The record was held open after the hearing adjourned for Appellant to provide additional documentary evidence. The

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<sup>1</sup> CA LEGIS 143 (2021), 2021 Cal. Leis. Serv. Ch. 143 (A.B. 133), §§ 30, 31.

matter was submitted for decision and the record was closed on Monday, February 1, 2021, at 1:46 p.m.

## PROCEDURAL FINDINGS

1. On December 3, 2020, HCAI assessed a penalty against Appellant in the amount of \$1,400 for United Care Basque's delinquent Long-Term Care Annual Disclosure Report.<sup>2</sup>
2. On December 3, 2020, HCAI assessed a penalty against Appellant in the amount of \$1,500 for United Care Minford's delinquent Long-Term Care Annual Disclosure Report.<sup>3</sup>
3. On December 3, 2020, HCAI assessed a penalty against Appellant in the amount of \$1,800 for United Care Pelona's delinquent Long-Term Care Annual Disclosure Report.<sup>4</sup>
4. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated December 11, 2020 and received by the HCAI Hearing Office on December 14, 2020.
5. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.<sup>5</sup>
6. Appellant requested consolidation of the appeals of United Care Basque, United Care Minford, and United Care Pelona at the time of appeal. The Hearing Office granted the request for consolidation.
7. The hearing was conducted electronically using video and teleconferencing.
8. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 14 were found to be authentic and relevant and admitted to the record.
9. Appellant submitted written statements to the Hearing Office and HCAI at the time of appeal as well as Exhibit A after the hearing. The written statements and Exhibit A were found to be authentic and relevant and admitted to the record.

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<sup>2</sup> Health & Saf. Code, § 128770.

<sup>3</sup> Health & Saf. Code, § 128770.

<sup>4</sup> Health & Saf. Code, § 128770.

<sup>5</sup> Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

## FACTUAL FINDINGS

1. On January 9, 2020, Appellant requested the both the 30-day and 60-day extensions for its upcoming reports.<sup>6</sup> Due to the COVID-19 emergency, an additional 90-day extension was automatically granted to all annual filers in accordance with the Governor's Executive Order.<sup>7</sup> Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128740 to file its three reports by October 29, 2020.<sup>8</sup> Penalties accrued from October 30, 2020 until November 12, 2020, November 13, 2020, and November 16, 2020 when the respective reports were filed.
2. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for 14 days for United Care Basque's report, resulting in a penalty amount of \$1,400.<sup>9</sup>
3. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for 15 days for United Care Minford's report, resulting in a penalty amount of \$1,500.<sup>10</sup>
4. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for 18 days for United Care Pelona's report, resulting in a penalty amount of \$1,800.<sup>11</sup>
5. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.
6. 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>12</sup>
7. 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.

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<sup>6</sup> Cal. Code Regs. tit. 22, § 97051.

<sup>7</sup> Executive Order N-55-20 (April 22, 2020).

<sup>8</sup> *See also* Cal. Code Regs. Tit. 22, § 97051.

<sup>9</sup> Health & Saf. Code, § 128770(a).

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

<sup>11</sup> Health & Saf. Code, § 128770(a).

<sup>12</sup> Health & Saf. Code, § 128770(c).

8. Appellant's representative testified that the impact of COVID-19 pandemic combined with corrections to the 2018 reports for the same facilities caused the delay in filing of the reports at issue. All reports submitted to HCAI undergo a series of automated checks and review. The desk audit of Appellant's 2018 reports resulted in questions from HCAI which required Appellant to work with the Certified Public Accountant ("CPA") who prepared the reports to make corrections. Appellant was originally asked to provide answers to the audit questions by May 1, 2020, which was extended to June 15, 2020, and then ultimately to October 7, 2020. However, due to the COVID-19 pandemic, Appellant's previous CPA closed his office and was unable to be reached. Furthermore, Appellant testified that it was unable to begin working on the reports at issue due to the corrections to the previous years' annual reports both for accuracy of the 2019 reports and due to the submittal system. After difficulties reaching their previous CPA during the pandemic, Appellant found a new CPA. The new CPA began working on the 2019 reports around October 15, 2020 and was able to complete them all in less than 5 weeks. Appellant hired a new CPA due to the issues it was having, but it took the new CPA time to review the previous reports, identify the corrections for HCAI, and then finalize and submit the reports at issue.

9. Appellant further testified that it was confused by the Governor's extension. Appellant read the Governor's extension to be seven months of extension from the original due date of "April 31, 2020 [*sic*]", not to be due seven months after the report period ending date of December 31, 2019. In its Exhibit 3, HCAI notified Appellant that "[t]he initial due date has been extended for an additional three months; therefore, instead of the reports being due 4 months after the end of the reporting period, they will now be due 7 months after the end of the reporting period." This confusion led Appellant to believe that it had an additional month to file the 2019 reports. Appellant was unaware of the due date in the System for Integrated Electronic reporting and Auditing ("SIERA") because the previous CPA was Appellant's SIERA contact and was not responding to Appellant's inquiries. Appellant testified it became aware of the due date only when the contact person was switched to the new CPA. The CPA insisted that he could not finish the 2019 reports until the 2018 reports were corrected both for accuracy of the

2019 reports and due to the submittal system. The new CPA began working on the 2019 reports around October 15, 2020 and submitted them on Thursday, November 12, 2020, Friday, November 13, 2020, and Monday, November 16, 2020, respectively. Despite these complications, the new CPA completed them within 33 days at most, rather than the four months normally allowed.

10. These facts were substantiated by oral statements made under oath by Mr. Fishkin at the hearing.

11. Mr. Christiansen testified that nothing in the SIERA portal requires corrections to be submitted or audits to be complete for the 2019 reports to be submitted but acknowledged that the accuracy of the financial reports could be impacted if the 2019 reports were completed before those corrections were completed.

12. In addition, HCAI exhibits 4, 5, and 6 show that three reminder emails containing the due dates for the three facilities were sent to Mr. Fishkin at the email address he registered with SIERA, AlexF@unitedcarenetwork.com, on October 4, 2020, October 19, 2020, and October 28, 2020.

13. HCAI's exhibit 14 and OSHPD Appeal No. 18-001C-LTC show that Appellant does not have a history of filing or requesting extensions for required reports in a timely manner.

## 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 three Long-Term Care Annual Disclosure Reports for the consolidated United Care facilities by October 29, 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>13</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>14</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>15</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>16</sup>

3. Appellant asserts the reports were filed late due to the combination of effects from the COVID-19 pandemic and the changes to the reports related to the desk audit of their 2018 reports. The substantiated facts show that Appellant was required to provide answers to the audit, after extensions, by October 7, 2020. After difficulties reaching their previous CPA during the pandemic, Appellant found a new CPA. The CPA stated that he could not finish the 2019 reports until the 2018 reports were corrected both for accuracy of the 2019 reports and due to the submittal system. The new CPA began working on the 2019 reports around October 15, 2020 and was able to complete them all in less than 5 weeks. No documentary or testimonial evidence refuted this assertion and Appellant’s testimony was credible.

4. A party’s diligence is a factor in determining good cause for an extension or a delay.<sup>17</sup> Here, it is unclear how long Appellant’s previous CPA closed his office due to COVID-19, and facts were not entered to the record regarding how long Appellant attempted to contact the old

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<sup>13</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

<sup>14</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>15</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>16</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

<sup>17</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.

CPA prior to beginning the search for a new CPA. The substantiated facts show that the issues with the 2018 reports were known by Appellant prior to May of 2020 and the new CPA was not hired until in or around October 2020. This gave Appellant a minimum of five months, most likely more, to correct the 2018 reports and complete the 2019 reports. However, Appellant received an additional three months of emergency extensions due to the COVID-19 pandemic and did not submit facts which demonstrated that they were more impacted by the pandemic than any other filer. In addition, Appellant should have received email reminders of the due date of October 29, 2020 and did not submit documentary or testamentary evidence which showed that it did not. From the substantiated facts, it simply appears that Appellant believed the reports were not due until November 30, 2020, it took no steps to verify the due date with HCAI, and in fact received emails which indicated the due date was October 29, 2020. Appellant appears to have relied on its mistaken belief that the COVID-19 pandemic emergency extension granted by the Governor was a seven-month extension and did not work to find a new CPA until that deadline was near.

5. These facts do not demonstrate that Appellant acted with due diligence under the circumstances and with reasonable haste to provide the late reports. Therefore, the substantiated facts show do not show good cause for waiver of the penalties.

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PROPOSED ORDER

The assessed penalties are upheld.

Dated: October 12, 2021

//original signed//  
MICHELLE L. CHURCH-REEVES  
Hearing Officer  
Department of Health Care Access and Information

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: 10/13/2021

//original signed//  
ELIZABETH A. LANDSBERG  
Director  
Department of Health Care Access and Information