



## PROCEDURAL FINDINGS

1. On December 7, 2020, HCAI assessed a penalty against Appellant in the amount of \$1,100 for Kindred Hospital – San Diego’s late extension request for its Long-Term Care Annual Disclosure Report.<sup>2</sup>
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated December 20, 2020 and received by the Hearing Office on December 31, 2020.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.<sup>3</sup>
4. The hearing was conducted electronically using video and teleconferencing. No party objected to the use of video and teleconferencing or requested an in-person hearing.
5. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 10 were found to be authentic and relevant and admitted to the record.
6. Appellant submitted written statements to the Hearing Office and HCAI at the time of appeal. The written statement was found to be authentic and relevant and admitted to the record.

## FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128740 to file its report by November 14, 2020.<sup>4</sup> Penalties accrued from November 15, 2020 until November 25, 2020, when the extension was requested and granted.
2. On November 20, HCAI mailed the initial delinquency notification<sup>5</sup> to Appellant using GLS overnight delivery. Due to various delays on the part of the carrier, it was not delivered until November 25, 2020.

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

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

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

<sup>5</sup> Cal. Code Regs. tit. 22, § 97045.

3. On November 25, 2020, approximately 48 minutes after the delinquency notice was signed for by Appellant, a representative for Appellant requested the 30-day extension for the report at issue.<sup>6</sup>

4. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for 11 days for the late extension request for Kindred Hospital – San Diego’s hospital quarterly financial utilization report, resulting in a penalty amount of \$1,100.<sup>7</sup>

5. Appellant submitted the report at issue prior to the expiration of the extension.

6. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

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>8</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 Jeanne Brown was still listed as the contact in HCAI’s System for Integrated Electronic Reporting and Auditing (“SIERA”), but she left employment in or around September 11, 2020. Their previous SIERA contact, Ms. Alice Barton, left Appellant’s employment on or about May 21, 2019, but was not removed from the SIERA system and was still receiving notifications. Ms. Lupu started as Controller for Appellant in or around October of 2020. Ms. Williams, the district controller, and a SIERA administrator, was able to add Ms. Lupu as a SIERA user, but as she is off site and oversees 13 other hospitals within the state, this transition did not happen immediately. Ms. Lupu’s SIERA account was not set up until the end of November, after Appellant had already passed the deadline for the report at issue. Consequently, no representative for Appellant received the courtesy reminders or the emailed delinquency notice. Appellant was unaware that the extension had not been requested and the report was delinquent until the initial delinquency notice arrived via GLS on

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

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

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

November 25, 2020, five days after it was mailed. Appellant immediately requested an extension and began working on the report. Ms. Lupu filed the report on behalf of Appellant prior to the end of the extension.

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

11. HCAI's exhibit 10 shows that Appellant does have a history of filing or requesting extensions for required reports in a timely manner and that the report at issue was filed before the expiration of the extension.

## 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>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

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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].

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. Appellant asserts the extension for the report at issue was requested late due to the staff transition between Ms. Brown's resignation and Ms. Lupu's hiring which occurred as this report was coming due. The substantiated facts show that Appellant did not receive email reminders of the due date, however HCAI is only required to send a delinquency notice, not courtesy reminders. 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>13</sup> Since October 1, 2019, Appellant is given 15 days to update their primary contact person with HCAI.<sup>14</sup> Had Appellant complied with that regulation, it would have received at least one courtesy reminder and the initial delinquency notification. Appellant failed to take proper procedures to ensure a smooth transition when Ms. Lupu was hired. However, Appellant did act with reasonable haste once it was aware of the mistake. Had the initial delinquency notice arrived on November 21<sup>st</sup> as it should have, Appellant likely would have requested the extension that same day. The delays with GLS overnight delivery were clearly outside the control of Appellant and do constitute good cause for a reduction of the penalty.

5. These facts do not demonstrate that Appellant acted with due diligence with regard to the transition, but Appellant did act with reasonable haste to once it was aware of the mistake. Therefore, the substantiated facts show good cause for a reduction of the penalty assessed.

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<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.

<sup>13</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.

<sup>14</sup> Cal. Code Regs. tit. 22, § 97041.1.

PROPOSED ORDER

The assessed penalties are waived in part. \$700 of the penalty is upheld.

Dated: November 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: 11/15/2021

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