

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

In the Matter of the Penalty Issued to:

**THE ROYAL HOME**

Appellant.

HCAI No. 20-003-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 Tuesday, July 27, 2021, beginning at 10:41 a.m.

HCAI was represented by Ty Christensen, Manager, Accounting and Reporting Systems Section.

Stephen Carter, owner and operator of The Royal Home, collectively “Appellant,” was represented by Michael Lesnick, consultant, and Ernesto Valle, consultant, Axiom Healthcare Group (“Axiom”).

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, July 27, 2021, at 11:26 a.m.

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<sup>1</sup> Stats. 2021, ch. 143, §§ 30, 31.

## PROCEDURAL FINDINGS

1. On April 6, 2020, Appellant requested and was granted both the 30 and 60-day extensions for its Long-Term Care Annual Disclosure Report.<sup>2</sup> Following exhaustion of the extensions, Appellant's report was due by July 29, 2020.
2. Due to the emergency measures arising from the COVID-19 pandemic, HCAI, in accordance with the Governor's Executive orders, granted an emergency extension until October 29, 2020.<sup>3</sup>
3. On December 11, 2020, Appellant submitted its Long-Term Care Annual Disclosure Report.
4. On January 20, 2021, HCAI assessed a penalty against Appellant in the amount of \$4,300 for The Royal Home's delinquent Long-Term Care Annual Disclosure Report.<sup>4</sup>
5. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated February 1, 2021 and received by the HCAI Hearing Office on February 4, 2021.
6. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letter.<sup>5</sup>
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 13 were found to be authentic and relevant and admitted to the record.
9. Appellant submitted written statements and Exhibit A to the Hearing Office and HCAI at the time of appeal. 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> Exhibits 1 and 2.

<sup>3</sup> Governor's Exec. Order No. N-55-20 (April 22, 2020). *See also* Exhibit 4.

<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 April 6, 2020, Appellant requested both the 30-day and 60-day extensions for its upcoming report.<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 report by October 29, 2020.<sup>8</sup> Penalties accrued from October 30, 2020 until December 11, 2020 when the report was filed.
2. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for 43 days for the Royal Home's report, resulting in a penalty amount of \$4,300.<sup>9</sup>
3. 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>10</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 caused massive disruption to Appellant specifically and the nursing home profession more generally. As a small 19-bed facility which primarily cares for Medi-Cal patients, Appellant has lost money consistently over the last few years and cannot pay for the fines. Furthermore, the pandemic impacted Appellant heavily, causing massive disruptions for administrative staff, nursing staff, and patients. The transition from office to home-based work for the few staff who could disrupted basic communications and access to data and documents. These disruptions extended

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

<sup>7</sup> Governor's Exec. Order No. 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(c).

far beyond the initial peak of COVID-19 emergency orders which granted 90-days of emergency extension for Appellant.

7. Appellant further testified that Axiom was hired to prepare and submit reports on behalf of Appellant beginning with the report at issue. Previously, an outside Certified Public Accountant, James (Jim) Saurenmann, timely prepared reports for Appellant. Mr. Saurenmann had discussed retiring for a few years and had stopped taking new clients prior to filing Appellant's 2018 report. Mr. Saurenmann recommended Axiom Healthcare Group to Appellant; however, a clear retirement date or transition timeline was not communicated to Appellant or to Axiom Healthcare Group. Mr. Saurenmann apparently had no plans to file the report at issue, but Appellant was unaware of this until it requested a status update. A consultant for Appellant requested the extensions prior to the peak of the pandemic due solely to the upcoming transition of report preparers.

8. In addition, Mr. Saurenmann had previously reviewed the accounts at the facility on a quarterly basis to ensure that any discrepancies were dealt with at the earliest possible time. As he prepared to retire, he stopped those quarterly visits. At the same time, the pandemic started to impact Appellant more heavily, causing massive disruptions for administrative staff, nursing staff, and patients. This caused errors in some of the accounting which needed to be investigated and corrected prior to filing.

9. Appellant's representative further testified that while amended reports can technically be filed with HCAI, the Long-Term Care Annual Disclosure Report is a dual-purpose report which also is used by the Department of Health Care Services for Medi-Cal reimbursement and rate setting. Amendments to the Medi-Cal report are not allowed. Analysis of the data prior to the filing of the report at issue showed several potential errors that had to be investigated and corrected prior to filing.<sup>11</sup> All of these steps were complicated by the ongoing COVID-19 pandemic causing delays at each step of the process.

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

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<sup>11</sup> Exhibit A detailed a number of specific errors.

11. HCAI's exhibit 13 shows that Appellant does 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 Long-Term Care Annual Disclosure Report for the Royal Home 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>12</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>13</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>14</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>15</sup>

3. Appellant asserts the report was filed late due to the combination of effects from the COVID-19 pandemic and the changes to the report preparer due to the sudden retirement of their previous report preparer. Appellant received an automatic 90-day extension due to the impacts

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<sup>12</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

<sup>13</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>14</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, 2020]. See also *Waters, supra*, 58 Cal.2d 885, 893.

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

of COVID-19 pandemic, but this does not mean ongoing impacts after the expiration of that extension do not constitute good cause for the late filing of the report at issue. Appellant, like many nursing homes and hospitals, experienced impacts of the COVID-19 pandemic that far exceeded the time period of the extension the Governor ordered.

4. A party's diligence is a factor in determining good cause for an extension or a delay.<sup>16</sup> Here, it is unclear exactly when Appellant's previous CPA closed his office, either due to COVID-19 or his retirement, and facts were not entered to the record regarding how long Appellant attempted to contact their old CPA prior to retaining Axiom to complete its report. However, the substantiated facts show that Appellant experienced severe impacts from COVID-19 pandemic which far exceeded the summer months. As a small 19-bed facility which primarily cares for Medi-Cal patients, Appellant experienced massive disruptions for its limited administrative staff and nursing staff. The transition from office to home-based work for the administrative staff disrupted basic communications and access to data and documents. This, along with delays in obtaining previous records from Mr. Saurenmann, caused errors which Axiom needed to investigate and correct prior to filing the report at issue. Despite these numerous external factors, Appellant and Axiom acted immediately to prepare and submit the report within weeks.

5. These facts demonstrate that Appellant acted with due diligence under the circumstances and with reasonable haste to provide the late report. Therefore, the substantiated facts show good cause for waiver of the penalties.

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<sup>16</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: November 24, 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: 11/29/2021

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