

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

In the Matter of the Penalty Issued to:

**COLUSA MEDICAL CENTER**

Appellant.

HCAI No. 21-004-HAF

**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, August 3, 2021, beginning at 10:53 a.m.

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

Colusa Medical Center, LLC, owner and operator of Colusa Medical Center, collectively “Appellant,” was represented by John Lovrich, Chief Financial Officer.

Both documentary and testamentary evidence was received. The record was closed on Tuesday, August 3, 2021, at 11:13 a.m.

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

## PROCEDURAL FINDINGS

1. On January 20, 2021, HCAI assessed a penalty against Appellant in the amount of \$7,500 for Colusa Medical Center's late extension request for its Hospital Annual Disclosure Report.<sup>2</sup>
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated January 28, 2021 and received by the Hearing Office on February 10, 2021.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letter.<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 16 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. On January 24, 2020, a representative for Appellant requested both 30 and 60-day extensions for Colusa Medical Center's Hospital Annual Disclosure Report.
2. On July 7, 2020, HCAI issued a three-month emergency extension to health facilities due to the COVID-19 pandemic.<sup>4</sup>
3. Following, exhaustion of the extensions, Appellant was required under Health and Safety Code section 128740 to file its report by October 29, 2020.<sup>5</sup> Penalties accrued from October 30, 2020 until January 12, 2021, when the report was filed.

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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> Governor's Exec. Order No. N-55-20 (April 22, 2020).

<sup>5</sup> *See also* Cal. Code Regs. tit. 22, § 97051.

4. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for 75 days for the late filing of Colusa Medical Center's Hospital Annual Disclosure Report, resulting in a penalty amount of \$7,500.<sup>6</sup>

5. On or around October 20, 2020, Matt Faulkner at Wipfli Financial, the new report filer, became associated with Colusa Medical Center in HCAI's System for Integrated Electronic Reporting and Auditing ("SIERA").

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>7</sup>

8. Appellant 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 there was an ownership change in 2018. Specifically, Colusa Medical Center was closed for a period and reopened in 2018 under new management. Following the ownership change, there were significant difficulties in hiring and retaining qualified staff. Appellant has had three different administrators plus administrative staff turnover at the hospital during this time. As a small, rural hospital, Appellant is losing money and unable to pay penalties in addition to its operating expenses.

10. During this time Appellant was heavily impacted by the COVID-19 pandemic. Mail services at the hospital were disrupted due to COVID-19 and staffing shortages. Appellant shares nursing staff with another hospital, Glenn Medical center. The unprecedented patient load and staffing issues were so severe that Glenn Medical Center required assistance from the Army medical teams, which also affected Appellant due to the shared nursing staff.

11. There were two firms retained to complete reports, John W. Trudell Accountancy Corp. ("JWT") was the previous report filer. Wipfli Financial was retained as a report preparer because JWT did not appear to be making satisfactory progress on the report. Wipfli Financial

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

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

was asked to complete the report due to JWT's lack of progress, but this transition was delayed and complicated by the COVID-19 impacts as well as staffing vacancies and turnover.

12. Appellant has taken steps to ensure this does not happen again. Appellant consolidated all report preparation and services with Wipfli Financial. In addition, the current Administrator has been in place for over a year and other staff turnover has been stabilized.

13. These facts were substantiated by oral statements made under oath by Mr. Lovrich at the hearing.

14. HCAI's exhibits 15 and 16 show 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 Hospital Annual Disclosure Report for Colusa Medical Center 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>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

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<sup>8</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 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].

unavailability of records may constitute good cause.<sup>10</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>11</sup>

3. Appellant asserts the report at issue was late due to a combination of impacts from the COVID-19 pandemic and its recent reopening under new management along with associated staffing difficulties. The substantiated facts show that Appellant was heavily impacted by COVID-19, so much so that its sister hospital required assistance from Army medical teams to handle the patient influx and mitigate staffing shortages which affected both hospitals. This clearly goes beyond the impacts the three-month extension the Governor's Executive Order was intended to address both in scope and time. Furthermore, these impacts were clearly outside the reasonable control of Appellant.

4. A party's diligence is a factor in determining good cause for an extension or a delay.<sup>12</sup> Despite the impacts of the COVID-19 pandemic and its staffing shortages, Appellant attempted to complete its reports timely and in fact was able to complete its quarterly reports timely with the COVID-19 extensions. However, the report at issue contains additional metrics as an annual report and became due at a time that was further complicated by the transition between report preparers. Furthermore, since its reopening in 2018, Appellant has filed all its other reports timely, demonstrating that it is aware of its statutory reporting obligations and has processes in place to ensure they are submitted timely under normal circumstances.

5. These facts taken together demonstrate that circumstances outside of Appellant's control related to the COVID-19 pandemic contributed to the late filing, and 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 penalty.

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<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.

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

<sup>12</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

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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