

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

In the Matter of the Penalty Issued to:

**SONOMA SPECIALTY HOSPITAL**

Appellant.

HCAI No. 21-013-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, November 2, 2021, beginning at 10:36 a.m.

HCAI was represented by Ty Christensen, Health Program Audit Manager II, and Tina Tran, Associate Governmental Programs Analyst, Accounting and Reporting Systems Section.

Sonoma Specialty Hospital, LLC, owner and operator of Sonoma Specialty Hospital, collectively “Appellant,” was represented by John Lovrich, consultant, Scott Jackson, consultant, and Tammy Thompson, Vice President.

Both documentary and testamentary evidence was received. The record was closed on Tuesday, November 2, 2021, at 11:13 a.m.

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

## PROCEDURAL FINDINGS

1. On March 22, 2021, HCAI assessed a penalty against Appellant in the amount of \$40,500 for Sonoma Specialty Hospital's delinquent Hospital Annual Disclosure Report.<sup>2</sup>
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated April 1, 2021 and received by the Hearing Office on April 9, 2021.
3. Appellant submitted its appeal 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 as well as written exhibits to the Hearing Office and HCAI in advance of the hearing. Exhibits A through D as well as the written statement were found to be authentic and relevant and admitted to the record.

## FACTUAL FINDINGS

1. On or around April 1, 2019, a change of ownership resulted in a segment Hospital Annual Disclosure Report with a report period end date of June 30, 2019 with an initial due date of October 31, 2019.
2. On July 17, 2019, Appellant requested and was granted both the 60-day and 30-day extensions through HCAI's System for Integrated Electronic Reporting and Auditing ("SIERA").

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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.

3. Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128740 to file its report by January 29, 2020.<sup>4</sup> Penalties accrued from January 30, 2020, until March 9, 2021, when the report was filed.
4. In accordance with its regulations,<sup>5</sup> HCAI mailed an Initial Delinquency Letter dated February 3, 2020, which was delivered to Appellant on February 5, 2020.
5. HCAI mailed Appellant a Final Delinquency Letter dated March 3, 2020. It was delivered to Appellant on March 4, 2020.
6. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for 405 days for the late filing of Sonoma Specialty Hospital's Hospital Annual Disclosure Report, resulting in a penalty amount of \$40,500.<sup>6</sup>
7. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.
8. 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>
9. Appellant made oral statements of facts it believes show good cause why its report was not submitted in a timely manner.
10. Appellant's representative testified that it received a notice from OSHPD, now HCAI, stating that OSHPD temporarily suspended penalty assessments due to the Governor's Emergency Orders related to the COVID-19 pandemic.<sup>8</sup> Appellant further received communications granting additional extensions due to the COVID-19 emergency measures, however Appellant's penalty was not reduced. Palm Drive Healthcare District, the previous owners, filed a Hospital Annual Disclosure Report for the period July 1, 2018, through March 31, 2019, leaving a 3-month gap until the fiscal year end of June 30, 2019. Reminder emails for the report at issue were sent to staff who are no longer with the facility, however Appellant acknowledged that contact information should have been updated in SIERA. On January 12,

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

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

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

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

<sup>8</sup> Governor's Exec. Order No. N-55-20 (April 22, 2020).

2021, Appellant's representative contacted program staff, including Ms. Tran, who informed him that the split segment for the annual report covering April 1, 2019, through June 30, 2019, had not been filed and the new owner was responsible for filing the report. Until the report was filed penalties would continue to accrue.

11. The facility changed management services on September 10, 2018, while the previous owners were going through bankruptcy. The bankruptcy court approved the ownership change on April 1, 2019, however, litigation continued regarding when divisions of hospital responsibilities were being turned over. Due to the transition of management companies as well as facility ownership, correspondence was being sent to multiple locations and contacts and there was confusion between the new and old management and owner responsibilities due to the bankruptcy proceedings and ongoing litigation.

12. Ms. Thompson testified that there were multiple staffing and administrative issues during the bankruptcy and transition of ownership of the hospital. As well, the evacuation of the hospital during the Kincade Fire on or around October and November of 2019 caused additional operational disruptions. Throughout these events, patient care has been the primary concern and focus of hospital management. However, the combined disruptions to operations and financial hardships of the Kincade fire and the COVID-19 pandemic along with the hospital bankruptcy and subsequent litigation due to the bankruptcy, the hospital would be further impacted by the large amount of the penalty assessed by statute.

13. These facts were substantiated by oral statements made under oath by Mr. Jackson and Ms. Thompson at the hearing.

14. HCAI's exhibit 15 shows that Appellant filed its subsequent Hospital Annual Disclosure Report in a timely manner. Exhibit 16 shows that Appellant had some difficulties with filing several Hospital Quarterly Financial Utilization Reports timely.

## 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 Sonoma Specialty Hospital by January 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 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 report at issue was late due to its change of ownership due to bankruptcy proceedings and ongoing litigation, the Kincade Fire and associated evacuations, and impacts from the COVID-19 pandemic. The substantiated facts show that those events occurred almost sequentially and were clearly outside the control of Appellant. However, Appellant’s representatives did not provide further facts or statements specific to the time-period following the COVID-19 emergency extensions they should have received. While the bankruptcy litigation was ongoing at the time of the hearing, it was clear that the new owners were responsible for the filing of reports and there was sufficient time to transition administrative

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<sup>9</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 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].

<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.

duties even with the additional impacts of the Kincade Fire and the COVID-19 pandemic.

4. A party's diligence is a factor in determining good cause for an extension or a delay.<sup>13</sup> Following the change of ownership and natural disasters, Appellant did not detail specific steps that it took to ascertain the status of the report at issue despite filing several Hospital Quarterly Financial Utilization Reports in the interim. While a different representative for Appellant prepared and filed those reports, Appellant did not provide evidence which supports good cause for remaining unaware of the outstanding report. Appellant did file its subsequent Hospital Annual Disclosure Report timely and indicated it has taken steps to consolidate reporting to ensure the timely filing of its reports going forward.

5. Due to the proximity of the ownership change and litigation, the Kincade Fire which caused the hospital to evacuate, and the initial state of emergency due to the COVID-19 pandemic and the extensions and penalty waivers that were granted, Appellant has shown good cause for waiver of the penalties up until July 31, 2020. Appellant did not demonstrate good cause for waiver of any portion of the penalty between August 1, 2020, and when the report at issue was filed, March 9, 2021, or 220 days.

6. These facts taken together demonstrate that Appellant was subject to litigation and natural disasters which were outside the reasonable control of Appellant for a period during which penalties were accruing, but it did not act with due diligence under the circumstances and with reasonable haste to provide the late report during the entire period. Therefore, the substantiated facts show good cause for reduction of the penalty from \$40,500 to \$22,000.

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<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.

PROPOSED ORDER

The assessed penalties are reduced for good cause. \$22,000 of the penalties are upheld.

Dated: December 10, 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: 12/16/2021

//original signed//

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