

PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by July 31, 2021.²
2. On August 14, 2021, Appellant requested and was granted the 60-day extension for its Long-Term Care Annual Disclosure Report.³
3. On August 25, 2021, HCAI assessed a penalty against Appellant in the amount of \$1,400 for Burbank Congregate Living Facility's late extension request for its Long-Term Care Annual Disclosure Report.⁴
4. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated September 14, 2021 and received by the HCAI Hearing Office on September 23, 2021.
5. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letter.⁵
6. The hearing was conducted electronically using video and teleconferencing.
7. 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.
8. Appellant submitted written statements to the Hearing Office and HCAI at the time of appeal. The written statements were found to be authentic and relevant and admitted to the record.

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² Health & Saf. Code, § 128755(b).

³ Exhibit 7.

⁴ Health & Saf. Code, § 128770.

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

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128740 to file its report by July 31, 2021.⁶ Penalties accrued from August 1, 2021 until August 14, 2021 when the extension was requested and granted.⁷
2. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for 14 days for the Burbank Congregate Living's report, resulting in a penalty amount of \$1,400.⁸
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."⁹
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. Appellant must rely on a small cadre of administrative staff who each perform multiple functions as a small six-bed facility with only 10-20 total staff, including nursing staff who provide patient care and not administrative services. However, Appellant's representative is the sole System for Integrated Electronic Reporting and Auditing ("SIERA") user for the facility and the primary responsible party for HCAI reports. During the period in question, Appellant's representative was off work and quarantined while caring for close family members who were infected with COVID-19. During the time Appellant's representative was quarantined, he called and left voicemails for HCAI staff to ask if an extension was available for the report. Unfortunately, these voicemails did not result in a call-back prior to the report deadline and Appellant was

⁶ See also Cal. Code Regs. tit. 22, § 97051.

⁷ Cal. Code Regs. tit. 22, § 97051.

⁸ Health & Saf. Code, § 128770(a).

⁹ Health & Saf. Code, § 128770(c).

unaware of the process as he had never requested an extension previously. Appellant's representative requested the available extension as soon as he learned how to do so and immediately began working with their accountant and report preparer to ensure the report was filed prior to the expiration of the extension.

7. Appellant's representative further testified that due to its small number of administrative staff, Appellant contracts with an accounting firm for their taxes and a report preparer for their HCAI reports and that Appellant must coordinate information sharing between the two contractors and was unable to do so while its representative was quarantined and caring for sick family members. Furthermore, Appellant experienced delays in getting its financial information from its accounting firm due to COVID-19 impacts to their accountant. However, the primary reason for the delay was the lack of understanding of how to request the extension which was not resolved until the message was routed to HCAI staff who contacted Appellant's representative and explained the process.

8. These facts were substantiated by oral statements made under oath by Mr. Agazaryan at the hearing.

9. Mr. Christensen further testified that the HCAI staff who received Appellant's representative's messages believed the report he was requesting the extension for was the Annual Utilization Report of Long-Term Care Facilities which does not have penalties for late filing and is handled by different HCAI staff.¹⁰ As a result, the message was not relayed to Mr. Christensen's team immediately which resulted in a delayed response by HCAI staff to Appellant's representative so that Appellant was able to request and be granted an extension.

10. HCAI's exhibit 10 shows that Appellant filed its one previous report in a timely manner and did not request any extensions.

DISCUSSION AND LEGAL CONCLUSIONS

1. The issue here is whether Appellant had good cause, as required by Health and Safety

¹⁰ Health & Saf. Code § 128285(a).

Code section 128770, for failing to request the extension for the Long-Term Care Annual Disclosure Report for Burbank Congregate Living Facility by July 31, 2021, 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.”¹¹ 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.¹²

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.¹³ 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.¹⁴

3. A party’s diligence is a factor in determining good cause for an extension or a delay.¹⁵ Here, the substantiated facts show that Appellant operates a small six-bed congregate living facility which has between 10-20 staff, the majority of whom are nursing staff, not administrative staff. Appellant experienced severe impacts at the time the report at issue was coming due from the COVID-19 pandemic which resulted in Appellant’s representative and sole SIERA user quarantining with sick family members whom he was caring for. Appellant had timely filed its one previous report and not requested extensions, supporting the assertion that it was unfamiliar

¹¹ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

¹² *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].

¹³ 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.

¹⁴ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

¹⁵ *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.

with how to request an extension using SIERA. Additionally, Appellant’s representative did leave voicemails for HCAI staff prior to the report deadline to ascertain how to request an extension, however the voicemails were received by HCAI staff who work on the Annual Utilization Report of Long-Term Care Facilities, which does not have penalties for late filing and is handled by different HCAI staff. Appellant did not learn how to request an extension until after the deadline due to a delayed response from HCAI staff due to a misunderstanding regarding the type of report at issue. However, once Appellant became aware of the process, an extension was immediately requested and granted.

4. No testimony was received which discussed the complexity of requesting an extension using SIERA, however a review of the SIERA frequently asked questions on HCAI’s website did not provide guidance.¹⁶

5. These facts demonstrate that Appellant was impacted by circumstances clearly outside its control and acted with due diligence under the circumstances and with reasonable haste to request the extension for the report at issue. Therefore, the substantiated facts show good cause for waiver of the penalties.

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¹⁶ Department of Health Care Access and Information, SIERA Frequently Asked Questions <https://siera.hcai.ca.gov/FAQ.aspx#> [as of February 22, 2022].

PROPOSED ORDER

The assessed penalties are waived for good cause.

Dated: March 4, 2022

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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: 3/11/2022

//original signed//

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