

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

In the Matter of the Penalty Issued to:

PULSE HEALTH FACILITY

Appellant.

HCAI No. 21-025-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”),¹ State of California, on Tuesday, February 15, 2022, beginning at 10:30 a.m.

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

Pulse Health Facility, Inc., owner and operator of Pulse Health Facility, “Appellant,” represented by Alex Agazaryan, Administrator, failed to appear.

Documentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, February 15, 2022, at 10:59 a.m.

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¹ Stats. 2021, ch. 143, §§ 30, 31.

PROCEDURAL FINDINGS

1. On September 10, 2021, HCAI assessed a penalty against Appellant in the amount of \$3,000 for the late extension request of Pulse Health Facility's Long-Term Care Annual Disclosure Report.²
2. Appellant appealed the penalties by submitting a Request for Administrative Hearing form dated September 14, 2021, postmarked September 15, 2021, and received by the HCAI Hearing Office on September 23, 2021.
3. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter which was delivered to Appellant's place of business by General Logistics Services on September 13, 2021.³
4. On December 7, 2021, the Hearing Office transmitted the Scheduling Notice to both Appellant and HCAI's representatives via e-mail. This notified the parties that the hearing was scheduled to be conducted electronically on Tuesday, February 15, 2022, beginning at 10:30 a.m. The email address used for Appellant was the email address indicated on the Request for Administrative Hearing form. Appellant's representative, Mr. Agazaryan, appeared on behalf of Burbank Congregate Living Facility, HCAI Appeal Number 20-024-LTC, on Tuesday, January 25, 2022. Correspondence in that appeal used the same email address as in this case, demonstrating that Appellant's representative did receive emails at that address.
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 a written statement with its appeal. The letter appeared to be signed by Appellant's designated representative, Mr. Agazaryan. Appellant's written statement was the sole evidence submitted due to Appellant's failure to appear.

² Health & Saf. Code, § 128770, and exhibit 8.

³ Exhibit 9 and Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

7. Appellant failed to appear at the scheduled hearing. The Hearing Officer and HCAI's representative were available to conduct the scheduled hearing from 10:30 a.m. until 10:59 a.m. In addition to the email on December 7, 2021, a copy of the Scheduling Notice was included with HCAI's exhibits which were sent via e-mail on February 4, 2022, and the Hearing Office sent a further reminder email during the scheduled hearing at approximately 10:40 a.m., and an emailed written notice of the closing of the hearing record at approximately 10:59 a.m. Appellant was advised in the Scheduling Notice sent on December 7, 2021 and again in a reminder email sent February 15, 2022 that a failure to appear could result in a decision against it.

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128740 to file Pulse Health Facility's Long-Term Care Annual Report by July 31, 2021.⁴
2. HCAI sent automated reminder emails to Appellant's designated representative on July 6, 2021, July 21, 2021, and July 30, 2021.⁵
3. HCAI sent a delinquent report reminder to Appellant's designated representative on August 3, 2021.⁶
4. HCAI mailed a delinquent report reminder to Appellant on August 9, 2021.⁷ It was delivered to Appellant's place of business on August 11, 2021.⁸
5. On August 30, 2021, Appellant requested and was granted a 60-day extension for the report at issue.⁹ Penalties accrued from July 31, 2021 until August 30, 2021 when the extension was requested.

⁴ See also Cal. Code Regs. tit. 22, § 97051.

⁵ Exhibits 1, 2, and 3.

⁶ Exhibit 4.

⁷ Exhibit 5.

⁸ Exhibit 6.

⁹ Exhibit 7 and Cal. Code Regs. tit. 22, § 97051.

6. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for 30 days, resulting in a penalty amount of \$3,000.¹⁰
7. These facts, substantiated by written exhibits offered by HCAI, were not contested by Appellant.
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.”¹¹
9. Appellant submitted a written statement with its appeal it believes shows good cause why its extension was not requested in a timely manner.
10. Appellant’s written statement declared that its administrator “was caring for close family members who had COVID-19,” the accountant “was backed up due to the COVID-19 pandemic” the administrator “was also unable to access the financial report on the OSHPD portal and was unable to connect with any live person at OSHPD over the phone for assistance.” Finally, Appellant’s written statement asserted that the “facility underwent an unscheduled 3-day re-licensing survey by CDPH” and that Appellant’s representative “had a prebooked and prepaid family vacation out of the country between August 20 and August 25.”
11. This decision is based solely on the documentary evidence as Appellant failed to appear for its scheduled hearing or request a continuance.
12. HCAI’s exhibit 10 confirmed that the report at issue was in fact Appellant’s first report for the facility. Furthermore, Appellant’s filing history shows that they did file the report at issue prior to 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 timely request the extension for its Long-Term Care Annual Disclosure Report by July 31, 2021, and whether the penalty should be waived or reduced.

¹⁰ Exhibit 8. *See also* Cal. Code Regs. tit. 22, § 97052, and Health & Saf. Code, § 128770(a).

¹¹ Health & Saf. Code, § 128770(c).

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.”¹² 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.¹³ 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.¹⁴ 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.¹⁵

3. Appellant has the burden of proof to establish good cause and by failing to appear, it failed to substantiate any facts which establish good cause to reduce or waive the penalty for the report at issue. The facts alleged in Appellant’s written statement were not substantiated under oath.

4. A party’s diligence is a factor in determining good cause for an extension or a delay.¹⁶ No facts were substantiated demonstrating that Appellant acted with due diligence for the late extension request.

5. It was not substantiated that circumstances outside of Appellant’s control contributed to the late extension request, or that Appellant acted with due diligence under the circumstances. Therefore, there is no good cause for waiver or reduction of the penalty.

¹² *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

¹³ *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].

¹⁴ 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 4, 2021]. See also *Waters, supra*, 58 Cal.2d 885, 893.

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

¹⁶ *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 penalty is upheld.

Dated: March 18, 2022

//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: 3/28/2022

//original signed//

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