

PROCEDURAL FINDINGS

1. On August 12, 2021, HCAI assessed a penalty against Appellant in the amount of \$400 for the late extension request of Baypoint Healthcare Center's Long-Term Care Annual Disclosure Report.²
2. Appellant appealed the penalties by submitting a Request for Administrative Hearing form dated September 15, 2021 and received via e-mail by the HCAI Hearing Office on September 15, 2021 after being forwarded from another HCAI email address, "OSHPD SIERA Mail".
3. The Hearing Office did not determine whether 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 with a signature upon delivery on August 13, 2021.³
4. On December 7, 2021, the Hearing Office transmitted the Scheduling Notice to both Appellant and HCAI's representative via e-mail. This notified the parties that the hearing was scheduled to be conducted electronically on Tuesday, February 8, 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, which was one of the email addresses which was used by Appellant's representative to submit the form to the "OSHPD SIERA Mail." All email addresses included by Appellant at the time of its appeal were included using the CC line.
5. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 8 were found to be authentic and relevant and admitted to the record.
6. Appellant submitted a written statement with its appeal. Appellant's written statement was found to be authentic and relevant and admitted to the record.

² Health & Saf. Code, § 128770, and exhibit 6.

³ Exhibit 7 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 11:00 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 January 28, 2022, and the Hearing Office sent a further reminder email during the scheduled hearing at approximately 10:43 a.m., and an emailed written notice of the closing of the hearing record at approximately 11:00 a.m. Appellant was advised in the Scheduling Notice and again in the February 8th emails 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 Baypoint Healthcare Center'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. On August 4, 2021, Appellant requested and was granted the 60-day extension for the report at issue.⁷ Penalties accrued from July 31, 2021 until August 4, 2021 when the extension was requested.
5. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for 4 days, resulting in a penalty amount of \$400.⁸
6. These facts, substantiated by written exhibits offered by HCAI, were not contested by Appellant.

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

⁵ Exhibits 1, 2, and 3.

⁶ Exhibit 4.

⁷ Exhibit 5 and Cal. Code Regs. tit. 22, § 97051.

⁸ Exhibit 6. See also Cal. Code Regs. tit. 22, § 97052, and Health & Saf. Code, § 128770(a).

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.”⁹
8. Appellant submitted a written statement with its appeal it believes shows good cause why its report was not submitted in a timely manner.
9. Appellant’s written statement stated that “we do have the evidence that we sent it on a timely manner from 01-01-2020 to 12-31-2020.” Appellant attached its report submission confirmation for its Annual Utilization Report of Long-Term Care Facilities which was due on February 16, 2021 and was submitted by Appellant on January 29, 2021.
10. These facts, taken from a written statement offered by Appellant, were not contested by HCAI.
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 8 shows that Appellant does have a history of filing required reports on time. 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 the Long-Term Care Annual Disclosure Report for Baypoint Healthcare Center by July 31, 2021, and whether the penalty should be waived or reduced.
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.”¹⁰ Good cause must be directly related to the specific legal requirement

⁹ Health & Saf. Code, § 128770(c).

¹⁰ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

which the party failed to perform and should be outside the reasonable control of the party.¹¹ 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.¹² 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.¹³

3. Appellant alleged that it filed the report at issue timely. However, the report it attached to its appeal was an Annual Utilization Report of Long-Term Care Facilities¹⁴ which was due on February 16, 2021 and was submitted by Appellant on January 29, 2021, not the report at issue. Appellant's representative did not allege any other basis for good cause.

4. A party's diligence is a factor in determining good cause for an extension or a delay.¹⁵ Here, Appellant failed to request an extension timely despite multiple reminders of the upcoming deadline sent by HCAI. No facts were presented 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.

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¹¹ *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].

¹² 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.

¹³ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

¹⁴ Health & Saf. Code, § 127285(a).

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.

PROPOSED ORDER

The assessed penalty is upheld.

Dated: February 22, 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: 3/1/2022

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