

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

In the Matter of the Penalty Issued to:

PIERCE CONGREGATE LIVING

Appellant.

HCAI No. 20-028-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 Wednesday, March 2, 2022, beginning at 10:33 a.m. PST.

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

Pierce Congregate Living, LLC, owner and operator of Pierce Congregate Living, “Appellant,” was represented by Davit Zargaryan, administrator, co-owner, and counsel.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, March 2, 2022, at 10:55 a.m. PST.

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¹ Stats. 2021, ch. 143, §§ 30, 31.

PROCEDURAL FINDINGS

1. On September 23, 2021, HCAI assessed a penalty against Appellant in the amount of \$2,000 for Pierce Congregate Living's late filing of its Long-Term Care Annual Disclosure Report.²
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated October 1, 2021 and received by the HCAI Hearing Office on October 8, 2021.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letter.
4. The hearing was conducted electronically using video and teleconferencing.
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 to the Hearing Office and HCAI in advance of the hearing. The written statement was found to be authentic and relevant and admitted to the record as Exhibit 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."³ 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

FACTUAL FINDINGS

1. Appellant was granted a license to operate a six-bed long-term care facility by the Department of Public Health on June 4, 2020.⁴

² Health & Saf. Code, § 128770. See also exhibit 6.

³ Health & Saf. Code, § 128770(c).

⁴ Department of Public Health, California Health Facilities Database Facility Lookup <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/SearchResult.aspx> [as of March 9, 2022].

2. HCAI mailed Appellant a new facility questionnaire requesting the information required to be provided to HCAI by regulation on October 14, 2020.⁵
3. Appellant's first Long-Term Care Annual Disclosure Report was due by July 31, 2021.⁶
4. Appellant was required under Health and Safety Code section 128740 to file the report at issue by July 31, 2021.⁷
5. On Tuesday, August 10, 2021, HCAI mailed Appellant an Initial Delinquency Notice dated August 9, 2021 which was delivered by Global Logistics Services on Sunday, August 15, 2021.⁸
6. On Friday, August 20, 2021, Appellant contacted HCAI.⁹
7. On Friday, August 20, 2021, Appellant filed the report at issue.¹⁰
8. Penalties accrued from August 1, 2021 until August 20, 2021 when the report was filed.¹¹
9. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for 20 days for Pierce Congregate Living's report, resulting in a penalty amount of \$2,000.¹²
10. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.
11. Appellant's representative testified that it never received the New Facility Questionnaire which HCAI mailed to its business address. As a result, Appellant did not register in the System for Integrated Electronic Reporting and Auditing ("SIERA") and thus did not receive reminder emails from HCAI regarding the report at issue. Appellant filed the Annual Utilization Report of Long-Term Care Facilities required annually by February 15 under Health & Safety Code § 127285(a) with HCAI but did not file the report at issue timely. After receiving the Initial Delinquency Notice, Appellant's representative contacted HCAI and upon realizing that another

⁵ Exhibit 1 and Cal. Code Regs. tit. 22, § 97008.

⁶ Health & Saf. Code, § 128755(b).

⁷ *See also* Cal. Code Regs. tit. 22, § 97051.

⁸ Exhibits 2 and 3.

⁹ Exhibit 4.

¹⁰ Exhibit 5.

¹¹ Cal. Code Regs. tit. 22, § 97051.

¹² Health & Saf. Code, § 128770(a).

report was due, requested an extension by phone and prepared and filed the report at issue the same day.

12. These facts were substantiated by oral statements made under oath by Mr. Zargaryan at the hearing.

13. Mr. Christensen further testified that the New Facility Questionnaire was sent to Appellant using regular mail. In addition, he testified that extension requests are supposed to be requested using SIERA, but that if an extension request is received by email or telephone that staff will assist facilities with the extension request as a courtesy. This information is detailed in the letter which accompanied the New Facility Questionnaire as well as in regulation.¹³

14. Mr. Zargaryan further testified that he does not recall how Appellant learned of the requirement to file the Annual Utilization Report of Long-Term Care Facilities. He testified that Appellant received multiple correspondences from HCAI and he believed Appellant had acted on all of them.

15. HCAI's exhibit 8 shows that Appellant has no additional filing history.

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 Long-Term Care Annual Disclosure Report for Pierce Congregate Living 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."¹⁴ Good cause must be directly related to the specific legal requirement

¹³ Exhibit 1. *See also* Cal. Code Regs. tit. 22, § 97051.

¹⁴ *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.¹⁵ 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.¹⁶ 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.¹⁷

3. Mere ignorance is not a strong showing of good cause.¹⁸ A party's diligence is a factor in determining good cause for an extension or a delay.¹⁹ Here, the substantiated facts show that Appellant operates a newly opened six-bed congregate living facility. The substantiated facts show that Appellant was unaware of the requirement to file the report at issue despite filing a different report with HCAI, and Appellant argued that this should relieve them of the penalty assessed. However, the responsibility is on Appellant, who entered a highly regulated field of business, to provide HCAI the information and reports required, regardless of any courtesy notices that HCAI might send.²⁰ These requirements have been in place for decades and are generally known in the industry.²¹ In addition, the requirements are clearly outlined in statute and regulation, and available on HCAI's website as well.²² The failure by the Appellant to obtain specific information as to HCAI's reporting requirements indicates a lack of due diligence

¹⁵ *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].

¹⁶ 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.

¹⁷ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

¹⁸ *Tsingaris v. State of California* (1979) 91 Cal.App.3d 312, 314.

¹⁹ *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.

²⁰ Cal. Code Regs. tit. 22, §§ 97008, 97041.1.

²¹ The reporting requirement for the type of report at issue has been in place since 1977. Department of Health Care Access and Information, Accounting and Reporting Manual for Long-Term Care Facilities, General Information, page 3 <https://hcai.ca.gov/wp-content/uploads/2020/10/General-Information-1.pdf> [as of March 9, 2022].

²² Department of Health Care Access and Information, Submit Financial Data (SIERA), <https://hcai.ca.gov/data-and-reports/submit-data/financial-reporting/> [as of March 9, 2022].

that undermines a claim of good cause.

4. Appellant was required to provide operating and contact information to HCAI within seven days after the effective date of its license, and update HCAI within 15 days of any change to the SIERA primary contact person to ensure that Appellant could be contacted and would receive all courtesy notices regarding its reports.²³ No facts were submitted that Appellant complied with either requirement, and as Appellant had not registered in SIERA the substantiated facts show they had not complied with the second requirement.

5. Furthermore, Congregate Living Health Facilities are defined as a residential home with a capacity of no more than six beds, which provide inpatient care, including 24-hour skilled nursing and supportive care.²⁴ As a result, Appellant should have received the Initial Delinquency Notice the same day it was delivered Sunday, August 15, 2021. However, the substantiated facts show that it took Appellant five business days after delivery of the Initial Delinquency Notice to contact HCAI and file the report at issue, a delay solely within the control of Appellant.

6. These facts do not demonstrate that Appellant was impacted by circumstances clearly outside its control nor that it acted with due diligence under the circumstances. Therefore, the substantiated facts do not show good cause for waiver of the penalty.

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²³ Cal. Code Regs. tit. 22, §§ 97008, 97041.1.

²⁴ Health & Saf. Code, § 1250(i)(1).

PROPOSED ORDER

The assessed penalty is upheld.

Dated: March 25, 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