

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

In the Matter of the Penalty Issued to:

**CORBIN CONGREGATE HOME,
FAMILY CIRCLE, FENTON VILLA,
HEALTHY LIFE CONGREGATE
CARE, HOME OF COMPASSION
NO. 2, LA TUNA HOME, POTTER
CARE, LLC, ET AL.**

Appellant.

HCAI No. 21-031C-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 23, 2022, beginning at 10:31 a.m. PDT.

HCAI was represented by Ty Christensen, Manager, Accounting and Reporting Systems Section. Tina Tran, Associate Governmental Program Analyst, Accounting and Reporting Systems Section was also present on behalf of HCAI.

Yaakov Feingold and Elisha Kamornick, through multiple for-profit corporations, owners and operators of: Corbin Congregate Home; Family Circle Congregate Living Health Facility; Fenton Villa; Healthy Life Congregate Care; Home of Compassion No. 2; La Tuna Home (also partially owned by Lourish Rama); Potter Care, LLC; Pure Heart Congregate Living Facility; Royal Haven, LLC (also partially owned by Lourish Rama); Valley Living Center, Inc.; and Valley View Congregate Living Facility, Inc., collectively “Appellant,” was represented by

¹ Stats. 2021, ch. 143, §§ 30, 31.

Elisha Kamornick, Chief Executive Officer and Meir Finck, Accountant, AMF Financial Services.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, March 23, 2022, at 10:59 a.m. PDT.

PROCEDURAL FINDINGS

1. Appellant's eleven Long-Term Care Annual Disclosure Reports were due by September 29, 2021.²
2. On October 5, 2021, Appellant requested and was granted the 60-day extensions for its eleven Long-Term Care Annual Disclosure Reports.³
3. On October 26, 2021, HCAI assessed a penalty against Appellant in the amount of \$600 each for the eleven late extension requests for its Long-Term Care Annual Disclosure Reports.⁴
4. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 7, 2021 and received by the HCAI Hearing Office on November 9, 2021.
5. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letter.⁵
6. Appellant requested consolidation of the appeals of Corbin Congregate Home; Family Circle Congregate Living Health Facility; Fenton Villa; Healthy Life Congregate Care, Inc.; Home of Compassion No. 2; La Tuna Home; Potter Care; Pure Heart Congregate Living Facility; Royal Haven; Valley Living Center; and Valley View Congregate Living Facility, Inc. at the time of appeal. The Hearing Office granted the request for consolidation. The hearing was conducted electronically using video and teleconferencing.

² Health & Saf. Code, § 128755(b).

³ Exhibit 10.

⁴ Health & Saf. Code, § 128770.

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

7. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 13 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.

9. Appellant has one related appeal: 20-037C-LTC. Appellant received a \$700 penalty each for its late extension request for each facility. The total of \$7,700 penalties assessed were waived for good cause.

FACTUAL FINDINGS

1. Due to the COVID-19 emergency, the initial due dates for the reports at issue were extended by three months.⁶ Following exhaustion of this extension, Appellant was required under Health and Safety Code section 128740 to file its reports or request an extension by July 31, 2021.⁷ Appellant requested and was granted its 60-day extension for all the facilities at issue on July 30, 2021.⁸

2. Following the first extension, Appellant was required under Health and Safety Code section 128740 to file its reports or request its final extension by September 29, 2021.⁹ Penalties accrued from September 30, 2021 until October 5, 2021 when the extension was requested and granted.¹⁰

3. HCAI mailed Appellant Initial Delinquency Letters dated October 5, 2021 to each facility using Global Logistics Services overnight mail.¹¹ The various letters were all delivered on Thursday, October 7, 2021.

⁶ Executive Order N-08-21 (June 11, 2021).

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

⁸ Exhibit 3.

⁹ *See also* Cal. Code Regs. tit. 22, § 97051.

¹⁰ Cal. Code Regs. tit. 22, § 97051.

¹¹ Exhibits 8 and 9.

4. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for six days for each of the eleven reports, resulting in a penalty amount of \$600 each for the Long-Term Care Annual Disclosure Reports for the following facilities:

- a. Corbin Congregate Home;
- b. Family Circle Congregate Living Health Facility;
- c. Fenton Villa;
- d. Healthy Life Congregate Care;
- e. Home of Compassion No. 2;
- f. La Tuna Home;
- g. Potter Care, LLC;
- h. Pure Heart Congregate Living Facility;
- i. Royal Haven, LLC;
- j. Valley Living Center, Inc.; and
- k. Valley View Congregate Living Facility, Inc.¹²

5. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

6. 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.”¹³

7. Appellant submitted a written statement with its appeal and made oral statements of facts it believes show good cause why the extension for its reports was not requested in a timely manner.

8. Mr. Finck testified on behalf of Appellant that the impact of the COVID-19 pandemic caused massive disruption to Appellant specifically and the nursing home profession more generally. Congregate living health facilities are residential homes with a capacity of no more than eighteen beds that provide inpatient skilled nursing care on a recurring, intermittent,

¹² Health & Saf. Code, § 128770(a) and Exhibit 11.

¹³ Health & Saf. Code, § 128770(c).

extended, or continuous basis.¹⁴ They are typically six-bed facilities which share a small cadre of administrative staff who each perform multiple functions among multiple facilities. Staffing shortages were exacerbated by the COVID-19 pandemic and prior to the period in question the previous Chief Financial Officer (“CFO”) resigned, and Mr. Kamornick hired Mr. Finck to complete the reports due in 2020. During the period in question, Appellant’s newly hired financial controller and billing director, Joseph Percal, contracted the Delta variant of COVID-19 and was off work with no notice recovering and then quarantining. While sick with COVID-19, Mr. Percal was largely out of communication and unable to come in to work. When the outside accountant, Mr. Finck, was made aware of Mr. Percal’s illness, he immediately contacted HCAI via email and requested the final extension on behalf of Appellant. Mr. Percal began working with Mr. Finck upon his return to ensure that all the reports at issue were filed prior to the expiration of the extension. At the same time, Mr. Finck was managing other clients’ tax filings by the October 15, 2021 tax deadline.

9. Mr. Kamornick testified that due to its small number of administrative staff, Appellant contracts with Mr. Finck of AMF Financial Services and that Mr. Percal must coordinate information sharing between the facilities and Mr. Finck, and he was unable to do so while sick and quarantined. Furthermore, in the last two years, he stated that there was more staff turnover in all areas than in the seven previous years combined. Throughout the pandemic, resident care had to take priority, and typical processes and procedures were already stressed by the staff turnover and staff absences at all levels. On the administrative financial side, Mr. Percal supervises data entry personnel, but Mr. Percal and Mr. Finck are the sole personnel who prepare and file the combined Medi-Cal and HCAI reports.

10. These facts were substantiated by oral statements made under oath by Mr. Finck and Mr. Kamornick at the hearing.

11. Appellant has one related appeal: 20-037C-LTC. Appellant received a \$700 penalty each for its late extension request for each facility. The total of \$7,700 penalties assessed were waived for good cause because their CFO quit unexpectedly and without making arrangements

¹⁴ Health & Saf. Code §1250(i).

for the reports to be completed. Appellant subsequently hired AMF Financial Services to complete the reports due in 2020.

12. HCAI's exhibit 13 shows that Appellant has filed its previous reports for each facility prior to 2020 in a timely manner.

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 request the final extensions for the Long-Term Care Annual Disclosure Report for its eleven facilities by September 29, 2021, and whether the penalty should be reduced or waived.

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."¹⁵ 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.¹⁶ 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.¹⁷ 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.¹⁸

¹⁵ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

¹⁶ *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].

¹⁷ 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.

¹⁸ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

3. 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 series of small six-bed congregate living facilities which has limited administrative staff. Appellant experienced severe impacts at the time the reports at issue were coming due from the COVID-19 pandemic as staffing shortages, additional operating requirements, and staff illnesses stretched resources thin, particularly when Appellant's responsible party contracted the Delta variant of COVID-19 and was off work with no notice. However, once Mr. Finck was made aware of Mr. Percal's illness, he immediately requested the final extension for all the reports at issue on behalf of Appellant, a delay of only six days.

4. The substantiated facts also show that Appellant had filed its reports timely and requested extensions timely prior to 2020. On or around July 30, 2021, Appellant requested a timely extension for its reports. However, circumstances later overwhelmed Appellant when its responsible party contracted COVID-19 and was unavailable to complete the reports at issue, or to request an extension in a timely manner. Appellant hired Mr. Percal and continued its relationship with AMF Financial Services in an attempt to ensure that issues did not occur with its report submissions. Furthermore, Appellant submitted the reports at issue prior to the expiration of the final extension. These facts clearly demonstrate Appellant's commitment to fulfilling its statutory obligations in a timely manner.

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 reports at issue. Therefore, the substantiated facts show good cause for waiver of the \$600 penalty assessed against each facility for a total of \$6,600.

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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.

PROPOSED ORDER

The assessed penalties are waived for good cause.

Dated: April 29, 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: May 15, 2022

//original signed//

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