

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

In the Matter of the Penalty Issued to:

VALMONT CARE CENTER

Appellant.

HCAI No. 21-032-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, July 27, 2022, beginning at 1:32 p.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.

Valmont Care Center, owner and operator of Valmont Care Center,² collectively “Appellant,” was represented by Robert Agaverdian, co-owner and registered nurse, Greg Enezliyan, administrative manager, and Arsen Andreasyan, co-owner and Chief Financial Officer.

Both documentary and testamentary evidence was received. The matter was submitted

¹ Stats. 2021, ch. 143, §§ 30, 31.

² Department of Public Health, Cal Health Find Database
<https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=070000096> [as of July 20, 2022].

for decision and the record was closed on Wednesday, July 27, 2022, at 1:55 p.m. PDT.

PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by July 31, 2021.³ Appellant was granted the available extensions on September 24, 2021.⁴
2. On October 4, 2021, HCAI assessed a penalty against Appellant in the amount of \$5,500 for the late filing of its Long-Term Care Annual Disclosure Report.⁵
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 4, 2021, postmarked on an unknown date as it was received by the Information Services Decision, and received by the HCAI Hearing Office on November 10, 2021.
4. On January 19, 2022, 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 Wednesday, April 20, 2022, beginning at 10:30 a.m. PDT. The email address used for Appellant was the email address indicated on the Request for Administrative Hearing form.
5. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter.⁶
6. Appellant failed to appear for its scheduled hearing on Wednesday, April 20, 2022. The Hearing Officer and HCAI's representative were available to conduct the scheduled hearing from 10:30 a.m. until 11:52 a.m. In addition to the email on January 19, 2022, a copy of the Scheduling Notice was included with HCAI's exhibits which were sent via e-mail on April 8, 2022, and the Hearing Office sent a reminder email during the scheduled hearing at approximately 10:37 a.m., and an emailed written notice of the closing of the hearing record at

³ Health & Saf. Code, § 128755(b) and Exhibits 1, 2, 3, 4.

⁴ Exhibit 9.

⁵ Health & Saf. Code, § 128770. *See also* exhibit 11.

⁶ Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

approximately 10:51 a.m. Appellant was advised in the Scheduling Notice and again in the April 20th emails that a failure to appear could result in a decision against it.

7. Appellant's representative, Mr. Agaverdian, emailed Mr. Christensen on April 26, 2022 stating that he had fallen and had to be hospitalized. He requested that the hearing be rescheduled. Mr. Christensen forwarded this email to the Hearing Office, and I requested a declaration under penalty of perjury or a doctor's note stating he was unavailable the time of the scheduled hearing.

8. On or around May 2, 2022, Appellant emailed information regarding medical tests which took place on or around April 13, 2022. On or around May 3, 2022, I emailed Appellant requesting documentation during the time of the scheduled hearing, April 20, 2022. On or around May 5, 2022, Mr. Agaverdian stated in an email that he was off work for two weeks due to his injury and undergoing pain management.

9. A hearing slot became available for July 27, 2022 at 1:30 p.m. PDT. Both parties agreed to the new hearing time.

10. The hearing was conducted electronically using video and teleconferencing.

11. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 14 were found to be authentic and relevant and admitted to the record.

12. Appellant submitted a written statement to the Hearing Office and HCAI at the time of appeal. The written statement was found to be authentic and relevant and admitted to the record as Exhibit A.

FACTUAL FINDINGS

1. Due to the COVID-19 emergency, the initial due dates for the report at issue were extended by three months.⁷ Following exhaustion of the extension, Appellant was required

⁷ Executive Order N-08-21 (June 11, 2021).

under Health and Safety Code section 128740 to file its report or request an extension by July 31, 2021.⁸

2. Automated reminder emails were sent to Appellant's email address on July 6, 2022, July 21, 2022, and July 30, 2022.⁹ Additionally, an automatic delinquency email was sent to Appellant's email address on August 3, 2021.¹⁰

3. HCAI mailed an Initial Delinquency Letter dated August 9, 2021 to Appellant using Global Logistics Services overnight mail.¹¹ The letter was delivered on Wednesday, August 11, 2021.¹²

4. HCAI mailed a Final Delinquency Letter dated September 2, 2021 to Appellant using Global Logistics Services overnight mail.¹³ The letter was delivered on Wednesday, September 8, 2021.

5. Penalties accrued from August 1, 2021 until September 24, 2021 when Appellant attempted to submit the report at issue. An HCAI employee granted the available extensions to Appellant to ensure penalties did not continue to accrue while Appellant fixed the issues with the report at issue.¹⁴

6. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for fifty-five days for the late extension request for the report at issue, resulting in a penalty amount of \$5,500.¹⁵

7. HCAI's exhibit 13 shows the licensing information from Department of Public Health. The facility was licensed in July of 2019 but did not immediately take in patients.

8. HCAI's exhibit 14 shows that the report at issue was Appellant's first report as the facility was new and did not have patients until the last two months of 2020. Additionally, exhibit 14 shows that the report at issue was filed prior to the expiration of the extensions.

⁸ See also Cal. Code Regs. tit. 22, § 97051.

⁹ Exhibits 1, 2, and 3.

¹⁰ Exhibit 4.

¹¹ Exhibits 5 and 6.

¹² *Ibid.*

¹³ Exhibits 7 and 8.

¹⁴ Exhibits 9 and 10.

¹⁵ Health & Saf. Code, § 128770(a) and Exhibit 11.

9. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.
10. 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.
11. Mr. Agaverdian testified that as a new facility they did not understand the paperwork and requirements. He further testified that prior to purchasing the facility with Mr. Andreasyan, he worked at hospitals and bigger facilities where administrative staff handled any reporting requirements. He stated they understand the requirements now and have submitted their next report early and will continue to stay on top of the paperwork and regulatory requirements through internal processes. The focus was initially on patient care and getting the facility up and running but going forward all requirements will be met timely.
12. Mr. Andreasyan testified that it was the first year and they did not understand the requirements. He further testified that the name change from OSHPD to HCAI confused them and they thought the letters might be junk mail. He further stated that as a brand-new facility they do not have the money to pay such a large fine.
13. Ms. Tran testified in response to questions that the facility did complete its new facility questionnaire and she uploaded it to the System for Integrated Electronic Reporting and Auditing (“SIERA”) on or about July 8, 2020.

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 its facility by October 29, 2021, and whether the penalty should be reduced or waived.
2. 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.”¹⁶ In *Waters v. Superior Court*, the

¹⁶ Health & Saf. Code, § 128770(c).

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.”¹⁷ 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.¹⁸ 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.¹⁹ 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.²⁰

3. Mere ignorance is not a strong showing of good cause.²¹ A party’s diligence is a factor in determining good cause for an extension or a delay.²² The substantiated facts show that the facility was licensed in 2019 and the first patients were admitted near the end of 2020. The substantiated facts also show that Appellant received the new facility questionnaire, completed it, returned it to HCAI, and it was uploaded to SIERA on or about July 8, 2020. Appellant knew or should have known about the filing requirements after receipt of the new facility questionnaire. In addition, Appellant received automated reminder emails from SIERA which identified the report deadline, informed Appellant of available extensions, and informed Appellant of the penalties which would accrue if the report at issue was not filed timely. No substantiated facts demonstrate that Appellant took reasonable steps to understand the reporting requirements.

¹⁷ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

¹⁸ *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].

¹⁹ 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.

²⁰ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

²¹ *Tsingaris v. State of California* (1979) 91 Cal.App.3d 312,314.

²² *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 waived for good cause.

Dated: September 9, 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: 9/23/2022 _____ //original signed//
ELIZABETH A. LANDSBERG
Director
Department of Health Care Access and Information