

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

In the Matter of the Penalty Issued to:

**BLOSSOM RIDGE LONG TERM  
CARE FACILITY**

Appellant.

HCAI No. 21-034-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”),<sup>1</sup> State of California, on Wednesday, May 4, 2022, beginning at 10:33 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.

Blossom Ridge Long Term Care Corporations, owners and operators of Blossom Ridge Long Term Care Facility, collectively “Appellant,” was represented by Janet Agustin, Administrator and owner.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, May 4, 2022, at 10:57 a.m. PDT.

//

---

<sup>1</sup> Stats. 2021, ch. 143, §§ 30, 31.

## PROCEDURAL FINDINGS

1. On October 26, 2021, HCAI assessed a penalty against Appellant in the amount of \$8,600 for late extension request for its Long-Term Care Annual Disclosure Report.<sup>2</sup>
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 1, 2021, postmarked November 16, 2021, and received by the HCAI Hearing Office on November 22, 2021.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letter.<sup>3</sup>
4. Following the extensions, Appellant's Long-Term Care Annual Disclosure Report was due by December 24, 2021.<sup>4</sup> Appellant filed the report at issue on February 14, 2022.<sup>5</sup>
5. On March 9, 2022, HCAI assessed a penalty against Appellant in the amount of \$5,200 for late filing of its Long-Term Care Annual Disclosure Report.<sup>6</sup> The total of the penalties taken together is \$13,800.
6. The hearing was conducted electronically using video and teleconferencing.
7. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 24 were found to be authentic and relevant and admitted to the record.
8. 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.

//

//

//

//

//

---

<sup>2</sup> Health & Saf. Code, § 128770. *See also* exhibit 11.

<sup>3</sup> Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

<sup>4</sup> Health & Saf. Code, § 128755(b).

<sup>5</sup> Exhibit 21.

<sup>6</sup> Health & Saf. Code, § 128770. *See also* exhibit 22.

## FACTUAL FINDINGS

1. Due to the COVID-19 public health emergency beginning in March of 2020, the initial due dates for Long-Term Care Annual Disclosure reports were extended in accordance with Governor Newsom's emergency orders by three months in both 2020 and 2021.<sup>7</sup> For the report at issue, following exhaustion of the 2021 extension, Appellant was required under Health and Safety Code section 128740 to file its reports or request an extension by July 31, 2021.<sup>8</sup>
2. HCAI mailed Appellant an Initial Delinquency Letter dated August 6, 2021 to Appellant using Global Logistics Services overnight mail.<sup>9</sup> The letter was delivered on Tuesday, August 10, 2021.<sup>10</sup>
3. Penalties accrued from August 1, 2021 until October 25, 2021 when Appellant requested and was granted both its 60-day and 30-day extensions.<sup>11</sup>
4. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for eighty-six days for the late extension request of the report at issue, resulting in a penalty amount of \$8,600.<sup>12</sup>
5. Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128740 to file its report by December 24, 2021.<sup>13</sup> Penalties accrued from December 25, 2021 until February 14, 2022 when the report at issue was filed.<sup>14</sup>
6. HCAI mailed Appellant an Initial Delinquency Letter dated December 27, 2021 to Appellant using Global Logistics Services overnight mail.<sup>15</sup> The letter was delivered on Wednesday, December 29, 2021.<sup>16</sup>

---

<sup>7</sup> Executive Order N-08-21 (June 11, 2021). *See also* Executive Order N-55-20 (April 22, 2020).

<sup>8</sup> *See also* Cal. Code Regs. tit. 22, § 97051.

<sup>9</sup> Exhibits 5 and 6.

<sup>10</sup> *Ibid.*

<sup>11</sup> Exhibit 11.

<sup>12</sup> Health & Saf. Code, § 128770(a) and Exhibit 11.

<sup>13</sup> *See also* Cal. Code Regs. tit. 22, § 97051.

<sup>14</sup> Cal. Code Regs. tit. 22, § 97051. *See also* exhibit 21.

<sup>15</sup> Exhibits 18 and 19.

<sup>16</sup> *Ibid.*

7. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for fifty-two days for the report, resulting in a penalty amount of \$5,200 for the late filing of the Long-Term Care Annual Disclosure Report at issue.<sup>17</sup>

8. The total of the penalties taken together and considered today is \$13,800.

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. Ms. Agustin 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, extended, or continuous basis.<sup>18</sup> Appellant is a six-bed residential-style facility and Ms. Agustin is the sole administrative staff. The COVID-19 pandemic caused staffing shortages and Ms. Agustin had to prioritize patient care over preparing the report at issue. During the period in question, Appellant's nursing staff was greatly reduced due to illness and quarantine requirements caused by the COVID-19 pandemic. In addition, Appellant was granted a waiver to operate with nine beds instead of six for COVID-19 surge capacity. Ms. Agustin was often working double shifts, assisting the nursing staff on the floor with patients, and sleeping at the facility during the period in question.

12. Ms. Agustin testified that she is the sole administrative staff and new to the industry, preparing and filing her first report with HCAI in 2020 in the midst of the COVID-19 pandemic. Appellant contracts with an accounting firm, but Ms. Agustin prepares the reports based on the accountant's work. Unfortunately, she was unable to work on the report at issue for several months due to the overwhelming number of patients and staffing issues due to the COVID-19

---

<sup>17</sup> Health & Saf. Code, § 128770(a) and Exhibit 22.

<sup>18</sup> Health & Saf. Code §1250(i).

pandemic. Throughout the pandemic, resident care had to take priority, and typical processes and procedures were already stressed by the staff absences at all levels in addition to adding additional patients. She further testified that the facility accepts patients being released from a nearby hospital and does not perform billing like a traditional long-term care facility which necessitates additional steps to complete the reports for HCAI each year. In addition to accepting additional patients at the request of the hospital due to the COVID-19 pandemic, patients were transferred to the care of the facility while still requiring additional specialized care, such as being on a ventilator. Ms. Agustin also testified that they are currently down to seven patients from their surge of nine due to discharges and hope to be back down to six, their normal capacity, shortly, but that they had nine patients during the timeframe that the penalties accrued on the report at issue.

13. These facts were substantiated by oral statements made under oath by Ms. Agustin at the hearing.

14. HCAI's exhibit 24 shows that Appellant only has one prior report for the report period end date of December 31, 2019 which was filed on December 7, 2020. Appellant has no other prior filing history as the facility received its license from the California Department of Public Health on November 15, 2018 and only began accepting patients in 2019 so that its first report was due by October 29, 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 request the extensions for the Long-Term Care Annual Disclosure Report by July 31, 2021 or file the report at issue by December 24, 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."<sup>19</sup> In *Waters v. Superior Court*, the

---

<sup>19</sup> 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.”<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

3. A party’s diligence is a factor in determining good cause for an extension or a delay.<sup>24</sup> Here, the substantiated facts show that Appellant operates a six-bed congregate living facility which accepted its first patients in 2019, has an administrative staff of one, Ms. Agustin, and contracts with an outside accountant to manage their billing. Furthermore, Appellant experienced severe ongoing 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 throughout 2020 and 2021. During the period in question, three additional patients, some of whom required additional specialized care, were taken in to clear bed space in the hospital for COVID-19 patients. The patient surge was in place during the entirety of the time that the penalties at issue accrued and Appellant’s responsible party was

---

<sup>20</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

<sup>21</sup> *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].

<sup>22</sup> 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.

<sup>23</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

<sup>24</sup> *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.

needed to assist nurses with patient care.

4. The substantiated facts also show that Appellant is relatively new to the industry and was unfamiliar with the process to request extensions and was still learning to prepare and file the reports during years where the COVID-19 pandemic placed extraordinary strain on the long-term care industry. The World Health Organization declared a global health emergency on January 30, 2020,<sup>25</sup> and California followed with a statewide emergency declaration on March 4, 2020<sup>26</sup> and a series of executive orders which at various points closed schools, non-essential businesses, and implemented emergency stay-at-home orders. Throughout 2020 and 2021, the California Governor signed multiple emergency orders, including two which provided authorized HCAI to provide automatic extensions for the reports due to HCAI in both 2020 and 2021.<sup>27</sup> However, the substantiated facts show that in this case, the automatic extensions were insufficient to address the impacts of the COVID-19 pandemic which were clearly outside the control of Appellant.

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 and file the report at issue. Therefore, the substantiated facts show good cause for waiver of the \$8,600 and \$5,200 penalties assessed for a total of \$13,800.

//  
//  
//  
//  
//  
//  
//

---

<sup>25</sup> World Health Organization Transcript, Coronavirus Emergency Committee Second Meeting (January 30, 2020) [https://www.who.int/docs/default-source/coronaviruse/transcripts/ihr-emergency-committee-for-pneumonia-due-to-the-novel-coronavirus-2019-ncov-press-briefing-transcript-30012020.pdf?sfvrsn=c9463ac1\\_2](https://www.who.int/docs/default-source/coronaviruse/transcripts/ihr-emergency-committee-for-pneumonia-due-to-the-novel-coronavirus-2019-ncov-press-briefing-transcript-30012020.pdf?sfvrsn=c9463ac1_2) [as of June 2, 2022].

<sup>26</sup> Governor's Emergency Proclamation (March 4, 2020) <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf> [as of June 2, 2022].

<sup>27</sup> Executive Order No. N-55-20 (April 22, 2020) and Executive Order N-08-21 (June 11, 2021).

PROPOSED ORDER

The assessed penalties are waived for good cause.

Dated: June 2, 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: June 20, 2022

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