

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

In the Matter of the Penalty Issued to:

**WINDSOR POST ACUTE
HEALTHCARE CENTER OF
MODESTO, WINDSOR POST
ACUTE CARE CENTER OF
HAYWARD, ET AL.**

Appellant.

HCAI No. 21-036C-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, May 18, 2022, beginning at 10:03 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.

Various corporations, owners and operators of Windsor Country Drive Care Center, Windsor Hampton Care Center, Windsor Cypress Gardens, Windsor El Camino Care Center, Windsor Elk Grove Care and Rehab Center, Windsor Park Care Center of Fremont, Windsor Gardens Convalescent Center of Hawthorne, Windsor Gardens Care Center of Fullerton, Windsor Gardens Care Center of Hayward, Windsor Post Acute Care Center of Hayward, Windsor Gardens of Long Beach, Windsor Elmhaven Care Center, Windsor Gardens

¹ Stats. 2021, ch. 143, §§ 30, 31.

Convalescent Hospital, Windsor Post-Acute Healthcare of Modesto, Windsor Gardens Healthcare Center of the Valley, Windsor Monterey Care Center, Windsor Convalescent Center of North Long Beach, Windsor Care Center of Petaluma, Windsor Care Center of Sacramento, Windsor The Ridge Rehabilitation Center, Windsor Gardens Convalescent Center of San Diego, Windsor Palms Care Center of Artesia, Windsor Skyline Care Center, Windsor Terrace Healthcare Center, Windsor Vallejo Nursing and Rehab Center, Windsor Rosewood Care Center, Golden Hill Subacute and Rehab Center, Windsor Gardens Rehab Center of Salinas, Windsor Terrace of Westlake Village, collectively “Appellant,” was represented by Michael Lesnick, Ernesto Valle, and Cathy Storr, consultants, Axiom Healthcare Group (“Axiom”).

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, May 18, 2022, at 10:30 a.m. PDT.

PROCEDURAL FINDINGS

1. Between November 10, 2021, and December 13, 2021 HCAI assessed penalties against Appellant in various amounts for late filing of twenty-nine Long-Term Care Annual Disclosure Reports.²
2. Appellant appealed the penalties by submitting a Request for Administrative Hearing form dated November 29, 2021 and received via email by the HCAI Hearing Office on November 30, 2021.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letter.³
4. Appellant requested consolidation of the appeals of 29 facilities at the time of appeal due to the same fact pattern applying to all 29 facilities. No objection was received, and the request was granted.
5. The hearing was conducted electronically using video and teleconferencing.

² Health & Saf. Code, § 128770. *See also* exhibits 13, 15, 17, 19, 21, 23, 25, 27.

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

6. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 28 were found to be authentic and relevant and admitted to the record.

7. 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.

FACTUAL FINDINGS

1. Due to the COVID-19 emergency, the initial due dates for the reports at issue were extended by three months.⁴ 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. Appellant requested and was granted its available extensions on June 9, 2021 and July 15, 2021.⁵

2. Following exhaustion of these extensions, Appellant was required under Health and Safety Code section 128740 to file its reports by October 29, 2021.

3. On or about October 21, 2021, Cathy Storr of Axiom emailed HCAI to inform Mr. Christensen that Tristan Buensuceso, Appellant's report preparer, passed away unexpectedly on or about October 17, 2021 and that Axiom was being retained to finish the reports. Ms. Storr asked that Axiom be granted permissions to file the cost reports in HCAI's System for Integrated Electronic Reporting and Auditing ("SIERA") for thirty-three facilities whose reports were due on October 29, 2021. Ms. Storr also indicated that some of the reports would likely be late due to the circumstances surrounding Mr. Buensuceso's death.⁶

4. HCAI mailed Appellant twenty-nine Initial Delinquency Letters dated November 2, 2021 to Appellant using Global Logistics Services overnight mail.⁷ The letters were delivered on Wednesday, November 3, 2021 and Thursday, November 4, 2021.⁸

⁴ Executive Order N-08-21 (June 11, 2021).

⁵ Exhibits 1 and 2.

⁶ Exhibit 5.

⁷ Exhibits 8 and 9.

⁸ *Ibid.*

5. The reports at issue were filed as Axiom was able to complete them. Penalties accrued from October 30, 2021 up until December 7, 2021 when Appellant filed the last report at issue.⁹

6. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for the twenty-nine reports at issue for the following amounts:¹⁰

- a. Windsor Country Drive Care Center - \$500
- b. Windsor Hampton Care Center - \$500
- c. Windsor Cypress Gardens - \$500
- d. Windsor El Camino Care Center - \$500
- e. Windsor Elk Grove Care and Rehab Center - \$600
- f. Windsor Park Care Center of Fremont - \$1,200
- g. Windsor Gardens Convalescent Center of Hawthorne - \$1,200
- h. Windsor Gardens Care Center of Fullerton - \$1,300
- i. Windsor Gardens Care Center of Hayward - \$1,300
- j. Windsor Post Acute Care Center of Hayward - \$1,300
- k. Windsor Gardens of Long Beach - \$1,300
- l. Windsor Elmhaven Care Center - \$1,400
- m. Windsor Gardens Convalescent Hospital - \$1,400
- n. Windsor Post-Acute Healthcare of Modesto - \$1,700
- o. Windsor Gardens Healthcare Center of the Valley - \$1,800
- p. Windsor Monterey Care Center - \$2,000
- q. Windsor Convalescent Center of North Long Beach - \$2,100
- r. Windsor Care Center of Petaluma - \$3,100
- s. Windsor Care Center of Sacramento - \$3,100
- t. Windsor The Ridge Rehabilitation Center - \$3,100
- u. Windsor Gardens Convalescent Center of San Diego - \$3,200
- v. Windsor Palms Care Center of Artesia - \$3,200

⁹ Exhibit 12.

¹⁰ Health & Saf. Code, § 128770(a) and Exhibits 13, 15, 17, 19, 21, 23, 25, and 27.

- w. Windsor Skyline Care Center - \$3,300
- x. Windsor Terrace Healthcare Center - \$3,400
- y. Windsor Vallejo Nursing and Rehab Center - \$3,400
- z. Windsor Rosewood Care Center - \$3,600
- aa. Golden Hill Subacute and Rehab Center - \$3,800
- bb. Windsor Gardens Rehab Center of Salinas - \$3,900
- cc. Windsor Terrace of Westlake Village - \$3,900

7. The total of the penalties taken together and considered is \$61,600.

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

9. 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.

10. Mr. Lesnick, on behalf of Appellant, testified that its employee, Mr. Tristan Buensuceso, the report preparer for Appellant for approximately twelve years, was unexpectedly placed in hospice care on or about October 12, 2021 and passed away on or about October 17, 2021. Axiom was immediately retained by Appellant to finish thirty-three reports on behalf of Appellant. Four reports were able to be completed prior to the deadline, and the remaining reports were completed and submitted over the course of the next thirty-nine days.

11. Mr. Lesnick testified that Mr. Buensuceso was working from home due to the COVID-19 pandemic. He consulted with Axiom on or about October 1, 2021 to ask questions regarding some reporting. At the time, he did not make any managers or employees of the facilities aware of his serious health condition. Shortly before Mr. Buensuceso passed away, his wife contacted Appellant to inform his supervisor that he was being placed on hospice care. Appellant immediately contacted Axiom to arrange for them to complete the remaining reports. Due to Mr. Buensuceso's telework arrangement, Appellant had to coordinate with his wife to pick up his computer and files before Axiom could begin working on the reports. Axiom was able to

complete and submit some reports prior to the deadline, but many reports were late and submitted as they were completed over the course of the next thirty-nine days.

12. These facts were substantiated by oral statements made under oath by Mr. Lesnick and Ms. Storr at the hearing.

13. Mr. Christensen further testified that he did not prepare an exhibit documenting Appellant's filing history due to the large number of facilities at issue, but that he reviewed the filing history and reports for all the facilities at issue had been timely filed previously.

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 twenty-nine Long-Term Care Annual Disclosure Reports 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."¹¹ 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."¹² 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.¹³ 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

¹¹ Health & Saf. Code, § 128770(c).

¹² *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

¹³ *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].

constitute good cause.¹⁴ 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.¹⁵

3. A party's diligence is a factor in determining good cause for an extension or a delay.¹⁶ Here, the substantiated facts show that Appellant's responsible party was working on completing and filing more than thirty-three reports on behalf of Appellant. The exhibits show Mr. Buensuceso timely filed several reports not at issue and timely requested extensions for the reports at issue.¹⁷ Unfortunately, shortly before the deadline Appellant was informed by Mr. Buensuceso's wife that he was being placed on hospice care and he died just a few days later. Once Appellant was made aware of Mr. Buensuceso's terminal illness by his wife, Appellant immediately arranged to get Mr. Buensuceso's work computer and files from his home and contracted with Axiom to complete the reports at issue as well as four others which were filed by Axiom prior to the deadline. Axiom submitted the reports at issue as they were completed, and the substantiated facts show that they were submitted in a steady progression which shows clear and consistent effort to submit the reports at issue with reasonable haste.

4. 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 file the reports at issue. Therefore, the substantiated facts show good cause for waiver of the \$61,600 penalties assessed.

//
//
//
//

¹⁴ 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.

¹⁵ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

¹⁶ *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.

¹⁷ Exhibits 1, 2, 3, 4, 6, and 7.

PROPOSED ORDER

The assessed penalties are waived for good cause.

Dated: June 24, 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 26, 2022

//original signed//

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