

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

In the Matter of the Penalty Issued to:

**DYCORA TRANSITIONAL
HEALTH - CLOVEIS, DYCORA
TRANSITIONAL HEALTH –
FOWLER, DYCORA
TRANSITIONAL HEALTH –
FRESNO, ET AL.**

Appellant.

HCAI No. 21-037C-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, June 15, 2022, beginning at 11:02 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 Dycora Transitional Health - Clovis, Dycora Transitional Health - Fowler, Dycora Transitional Health - Fresno, Dycora Transitional Health - Galt, Dycora Transitional Health - Manchester, Dycora Transitional Health - Memory Care of Fresno, Dycora Transitional Health - Quail Lake, Dycora Transitional Health - Reedley, Dycora Transitional Health - Sanger, Dycora Transitional Health - San Jose, and Dycora Transitional Health - Weber Oaks, collectively “Appellant,” was represented by Joe McFadden,

¹ Stats. 2021, ch. 143, §§ 30, 31.

consultant, Axiom Healthcare Group (“Axiom”).

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, June 15, 2022, at 11:26 a.m. PDT.

PROCEDURAL FINDINGS

1. Between November 10, 2021, and November 13, 2021 HCAI assessed penalties against Appellant in amounts of \$700 each for the late filing of ten Long-Term Care Annual Disclosure Reports and \$4,400 for the late filing of one Long-Term Care Annual Disclosure Report.²

2. Appellant appealed the penalties by submitting a Request for Administrative Hearing form dated November 23, 2021 and received by the HCAI Hearing Office via regular mail 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 eleven facilities at the time of appeal due to sharing the same operator and the same fact pattern applying to all facilities. No objection was received, and the request was granted.

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

6. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 21 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.

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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.

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 April 5, 2021 for ten facilities, all except Dycora Transitional Health – San Jose (hereafter “San Jose”).⁵
2. Following exhaustion of these extensions, Appellant was required under Health and Safety Code section 128740 to file ten reports by October 29, 2021.
3. One of the two available extensions for San Jose was requested on July 15, 2021 by the previous report preparer, Mueller Prost.⁶ Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file that facility’s report by September 29, 2021. The final 30-day extension was never requested.⁷
4. HCAI mailed Appellant one Initial Delinquency Letter dated October 4, 2021 for San Jose to Appellant using Global Logistics Services overnight mail.⁸ The letter was delivered on Wednesday, October 6, 2021.⁹
5. Ten of the reports at issue, all except San Jose, were filed on November 5, 2021. Penalties for those ten reports accrued from October 30, 2021 until November 5, 2021.¹⁰
6. San Jose’s report was filed on November 12, 2021.¹¹ Penalties accrued from September 30, 2021 until November 12, 2021.
7. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for the eleven reports at issue for the following amounts:¹²
 - a. Dycora Transitional Health – Clovis - \$700

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

⁵ Exhibits 1 and 2.

⁶ Exhibit 4.

⁷ Exhibits 5, 6, 7, 8, and 9.

⁸ Exhibits 9 and 10.

⁹ *Ibid.*

¹⁰ Exhibit 19.

¹¹ *Ibid.*

¹² Health & Saf. Code, § 128770(a) and Exhibit 19.

- b. Dycora Transitional Health – Fowler - \$700
- c. Dycora Transitional Health – Fresno - \$700
- d. Dycora Transitional Health – Galt - \$700
- e. Dycora Transitional Health – Manchester - \$700
- f. Dycora Transitional Health – Memory Care of Fresno - \$700
- g. Dycora Transitional Health – Quail Lake - \$700
- h. Dycora Transitional Health – Reedley - \$700
- i. Dycora Transitional Health – Sanger - \$700
- j. Dycora Transitional Health – San Jose - \$4,400
- k. Dycora Transitional Health – Weber Oaks - \$700

8. The total of the penalties taken together and considered is \$11,400.

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 appeal¹³ 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. McFadden, on behalf of Appellant, testified that the eleven facilities all experienced a change of ownership in or around April 2021. The licenses show different dates for the change of ownership due to processing time for their paperwork. Additionally, following the change in ownership, Axiom was hired to be the report preparer. Neither the current owner nor Axiom were in control of any of the facilities during the period covered by the reports at issue, January 1 through December 31, 2020. Appellant was prepared to file the reports at issue, and Axiom was quickly retained to prepare the reports for all the facilities at issue. Extensions were requested while Appellant tried to work through a large amount of staff turnover and difficulties in gathering the data necessary to file the reports. Federal Medicare Cost Reports were due at the end of July in 2021. Those reports were prepared and filed for all facilities except San Jose, which is not a Medicare-certified facility. The Medicare Cost Reports provided much of the data

¹³ Exhibit A.

for the reports at issue for the facilities, which made preparing the other ten reports at issue easier.

12. Mr. McFadden further testified that the previous report preparer requested one of the two available extensions for San Jose in or around July of 2021. He was unsure as to why the second extension was not requested by either the previous report preparer or Appellant's staff. In addition to San Jose failing to request their second extension, it needed an additional 14 days to finalize report data and submit its report. Whereas the other facilities needed just seven additional days to finalize their report data and submit their reports. Therefore, the penalties for San Jose were higher than the other facilities because its final 30-day extension was not requested in addition to needing 14 days compared to the other facilities seven days to finalize the report data and submit the reports.

13. These facts were substantiated by oral statements made under oath by Mr. McFadden at the hearing.

14. Mr. Christensen further testified that he did not prepare an exhibit documenting Appellant's filing history due to the change of ownership and report preparer.

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 ten Long-Term Care Annual Disclosure Reports by October 29, 2021 and one by September 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."¹⁴ In *Waters v. Superior Court*, the California Supreme Court stated that, "good cause may be equated to a good reason for a party's

¹⁴ Health & Saf. Code, § 128770(c).

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

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 neither the current owner nor Axiom were in control of or the responsible party for any of the facilities during the period covered by the reports at issue, January 1 through December 31, 2020. However, the Appellant was the owner on the due dates of the reports at issue and for a period of approximately six months prior to the due dates with the extensions available. The evidence showed that both extensions were requested for all facilities except San Jose on April 5, 2021, showing that Appellant was aware of the upcoming due dates. However, Appellant’s representative was unable to explain why the final extension for San Jose was not requested. Regardless, financial information should have been reviewed during the purchase process. While this financial information would not provide all the information for the reports at issue, Appellant should have had some of the information Axiom

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.

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.

required to prepare the reports and had several months to provide the rest of the information required. In addition, the substantiated facts show that sufficient information for each facility, except San Jose which is not a Medicare facility, was available to file the Medicare Cost Reports at the end of July 2021.

4. The substantiated facts also show that Appellant was impacted by high staff turnover following the change of ownership which resulted in information gaps when gathering the data to prepare the reports, especially in or around April of 2021. However, the evidence did not show that the turnover was unexpected or outside the control of Appellant. Nor did the substantiated facts show that the staff turnover continued for an extended period or that vacancies were unable to be filled in a reasonable timeframe or were otherwise disruptive to operations for the months between the filing of the Medicare Cost Reports in July 2021 and the due dates for the reports at issue.

5. These facts do not demonstrate that Appellant was impacted by circumstances clearly outside its control nor that Appellant acted with due diligence under the circumstances. Therefore, the substantiated facts do not show good cause for waiver of the \$11,400 combined penalties assessed.

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PROPOSED ORDER

The assessed penalties are upheld.

Dated: August 1, 2022

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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: 8/3/2022

//original signed//

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