

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

In the Matter of the Penalty Issued to:

THE ROYAL HOME

Appellant.

HCAI No. 21-038-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 1, 2022, beginning at 10:30 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.

Stephen Carter, owner and operator of The Royal Home, “Appellant,” was represented by Stephen Carter, owner and administrator, and Michael Lesnick, consultant from 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 1, 2022, at 11:07 a.m. PDT.

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¹ Stats. 2021, ch. 143, §§ 30, 31.

PROCEDURAL FINDINGS

1. On November 22, 2021 HCAI assessed a penalty against Appellant for the late filing of its Long-Term Care Annual Disclosure Report in the amount of \$2,100.²
2. Appellant appealed the penalties by submitting a Request for Administrative Hearing form dated December 6, 2021 and received via email by the HCAI Hearing Office on December 6, 2021.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letter.³
4. The hearing was conducted electronically using video and teleconferencing.
5. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 12 were found to be authentic and relevant and admitted to the record.
6. Appellant submitted a written statement to the Hearing Office and HCAI at the time of appeal as well as Exhibits A and B prior to the hearing. The written statement and Exhibits A and B were found to be authentic and relevant and admitted to the record.

FACTUAL FINDINGS

1. Due to the COVID-19 pandemic emergency, the initial due date for the report at issue was extended by three months.⁴ Following exhaustion of this extension, Appellant was required under Health and Safety Code section 128740 to file its report or request an extension by July 31, 2021.
2. Appellant requested and was granted both its available extensions on or around April 6, 2021.⁵

² Health & Saf. Code, § 128770. *See also* exhibit 10.

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

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

⁵ Exhibits 1 and 2.

3. Following exhaustion of these extensions, Appellant was required under Health and Safety Code section 128740 to file its reports by October 29, 2021.
4. HCAI mailed Appellant an Initial Delinquency Letter dated November 1, 2021 using Global Logistics Services overnight mail.⁶ The letter was delivered on Tuesday, November 9, 2021.⁷
5. Penalties accrued from October 30, 2021 until November 19, 2021 when Appellant filed the report at issue.⁸
6. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for twenty-one days for a total of \$2,100.⁹
7. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.
8. Appellant submitted a written statement with its appeal as well as two declarations which were marked Exhibits A and B and made oral statements of facts it believes show good cause why the report was not filed in a timely manner.
9. Mr. Lesnick, on behalf of Appellant, testified that The Royal Home is a small 19-bed skilled nursing facility which serves essentially a 100% Medi-Cal patient population. Axiom has been Appellant's report preparer for two years. Axiom worked with an employee of Appellant, Theresa East, who was the sole employee with access to the data Axiom needed to prepare the report. Ms. East sent some of the needed data to Axiom on or about March 29, 2021, but the data was incomplete. Ms. East was coordinating with the Certified Public Accountant ("CPA") for help in gathering the data Axiom needed to prepare the report. An employee of Axiom requested the available extensions on April 6, 2021 to give Ms. East time to provide the data. However, Ms. East resigned with barely a few days' notice in or around April 2021. Mr. Carter immediately began searching for a replacement for Ms. East and hired Deichin Salih on or about June 8 or 9, 2021, causing a staffing shortage for approximately two months. However, Ms.

⁶ Exhibits 7 and 8.

⁷ *Ibid.*

⁸ Exhibits 9 and 10.

⁹ Health & Saf. Code, § 128770(a) and Exhibit 10.

Salih needed training and access to the facility's financial and scheduling software systems and the System for Integrated Electronic Reporting and Auditing ("SIERA") to perform the functions Ms. East performed for Appellant, which ranged from payroll, accounts payable, accounts receivable, placing vendor orders, staff scheduling, and COVID-19 procedures monitoring. Mr. Carter had to prioritize patient care and the immediate needs of monthly payroll plus accounts receivable and payable in order to keep the facility functioning. The data gathering and analysis for the report preparation was delayed due to the need to train Ms. Salih in the business operations of the facility. In addition, once the information was provided to Axiom, internal reviews identified several issues that needed to be fixed prior to finalizing and submitting the report, especially as the Medi-Cal portion of the report cannot be amended after submission.

10. Mr. Carter testified that Ms. East was responsible for payroll processing; staffing and recruitment; accounts payable; coordinating with the CPA regarding accounting and bookkeeping; Resident Trust Fund Bank Account management; staff scheduling; placing vendor orders; invoicing and accounts receivable; bank deposits; overseeing nurse staffing; monitoring the new COVID-19 procedures for compliance; and other daily tasks. Furthermore, Ms. East was the only person with knowledge of and access to the data and documents required for cost report preparation. Mr. Carter further testified that Ms. East quit with very little notice due to a personal emergency and agreed to stay just long enough to finish the current payroll. He immediately looked for a replacement for Ms. East, but due to her short notice prior to resigning there was no opportunity to do any kind of hand off between Mr. Carter or the new employee, Ms. Salih. All tasks of hiring, training, resetting systems access, and coordination with the CPA were further complicated by the COVID-19 pandemic. As a result, Ms. Salih was not hired until early June. In the meantime, access to facility accounts and systems was disrupted and Mr. Carter had to prioritize administrative tasks which were vital to patient care such as scheduling, staffing, payroll, and accounting tasks. Once Ms. Salih was hired, she needed to be trained on many of the systems as well as the HCAI reports as she did not have prior cost report experience.

11. Mr. Carter further testified that the facility is the smallest freestanding long-term care facility in the state of California and serves a 100% Medicaid population and that they are

consequently very strongly impacted by the economies of scale when compared to chains and larger facilities. The facility was started by his family and has been open for over five decades, but the costs of COVID-19 related measures as well as inflation and the stagnation of Medicaid reimbursement rates have strained their finances and they are currently operating on a month-to-month basis. He does not have the funds to hire additional administrative staff, nor to pay the fines as the facility's net income has operated at a loss the last several years.

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

13. Mr. Christensen further testified that Appellant's filing history was timely except the report it filed in 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 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."¹⁰ 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."¹¹ 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.¹² Good cause is sometimes defined as circumstances beyond the party's control, and not related to the party's own negligent act or

¹⁰ Health & Saf. Code, § 128770(c).

¹¹ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

¹² *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].

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.¹³ 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.¹⁴

3. A party's diligence is a factor in determining good cause for an extension or a delay.¹⁵ The substantiated facts demonstrate that accurate and correct information was unavailable in time to submit the report by the deadline. The question is whether this delay was within the control of Appellant. Here, the substantiated facts show that Appellant's responsible party, Ms. East, quit with very little notice due to a personal emergency. Just prior to resigning Ms. East did provide partial data to Axiom to prepare the report at issue, however the data she provided was incomplete. The personal emergency of Ms. East and the unexpected staffing crisis could not be anticipated by Appellant and was clearly outside the control of Appellant. Mr. Carter took over what duties he could and immediately searched for and hired replacement staff for Ms. East, but it took approximately two months to hire a replacement for Ms. East. In addition, he was inexperienced with the HCAI reports as well due to the reports being prepared by outside contractors.

4. Access to SIERA and the facility's internal financial and scheduling software had to be reset to allow Mr. Carter, and eventually Ms. Salih to gain access to the facility's data and to provide the necessary data to both the CPA and Axiom for them to prepare the report at issue. Until access to the software was reset the information necessary to prepare the report at issue was temporarily inaccessible. Once access was obtained, administrative tasks which were vital to patient care were prioritized such as accounts payable to ensure that necessary supplies and personal protective equipment were ordered and available; staff payroll; and the scheduling of

¹³ 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.

¹⁴ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

¹⁵ *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.

nurses and staff. Appellant's staff was overwhelmed trying to keep up on vital administrative tasks until Ms. East's replacement was hired two months later and had to be trained on multiple responsibilities. Mr. Carter was unable to train the new employee on what data was required for preparation of the report at issue as Ms. East was the sole employee with the primary responsibility to work on the HCAI reports and left without a handoff of her responsibilities to Mr. Carter or another facility employee. Mr. Carter and the new employee had to work with the CPA and Axiom to determine what data was necessary for them to prepare the report at issue. Based on the substantiated facts, it took approximately seven weeks to get the information to Axiom, for Axiom to prepare the report, obtain information for corrections, and file the report.

5. Due to the complexity of the report type, facilities have four months after the close of their fiscal year to prepare the report, plus 90 days of extensions. From the time Appellant began working with Axiom to the time the report was filed, seven weeks elapsed. The substantiated facts show that the delay in beginning to prepare the report was due to the disruption in access to the facility accounts and information, the difficulty in hiring a replacement due to the COVID-19 pandemic, and the multiple tasks and responsibilities that Mr. Carter had to assume in order to keep the facility open. 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 report at issue. Therefore, the substantiated facts show good cause for waiver of the penalty assessed.

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PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: September 23, 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: 10/3/2022

//original signed//

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