

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

In the Matter of the Penalty Issued to:

BROOKDALE CARMEL VALLEY

Appellant.

HCAI No. 21-040-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 11, 2022, beginning at 10:32 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.

S-H OpCo Carmel Valley, LLC, owner and operator of Torrey Pines Senior Living, successor in name to Brookdale Carmel Valley, collectively “Appellant,” was represented by Joe McFadden, 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 11, 2022, at 10:50 a.m. PDT.

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¹ Stats. 2021, ch. 143, §§ 30, 31.

PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by October 29, 2021.²
2. On November 9, 2021, HCAI assessed a penalty against Appellant in the amount of \$700 for late filing of its Long-Term Care Annual Disclosure Report.³
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 25, 2021, postmarked November 23, 2021, and received by the HCAI Hearing Office on November 30, 2021.
4. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter.⁴
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 12 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 report at issue were extended by three months.⁵ Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file its reports by July 31, 2021.⁶

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² Health & Saf. Code, § 128755(b).

³ Health & Saf. Code, § 128770. *See also* exhibit 10.

⁴ Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

⁵ Executive Order N-08-21 (June 11, 2021).

⁶ *See also* Cal. Code Regs. tit. 22, § 97051.

2. On January 11, 2021, Appellant requested its first extension. Following exhaustion of this extension, Appellant was required Health and Safety Code section 128740 to file its reports or request its final extension by September 29, 2021.⁷

3. On May 12, 2021, Appellant requested its second extension. Following exhaustion of this extension, Appellant was required Health and Safety Code section 128740 to file its report by October 29, 2021.⁸

4. HCAI mailed Appellant an Initial Delinquency Letter dated November 3, 2021 to Appellant using Global Logistics Services overnight mail.⁹ The letter was delivered on Thursday, November 4, 2021.¹⁰

5. Penalties accrued from October 30, 2021 until November 5, 2021 when Appellant filed the report at issue.¹¹

6. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for seven days for the late filing of the report at issue, resulting in a penalty amount of \$700.¹²

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 and made oral statements of facts it believes show good cause why the extension for its reports was not requested in a timely manner.

9. Mr. McFadden testified on behalf of Appellant that the facility experienced a change in management companies on or around March 1, 2021 and that the previous management company, BKD Twenty-one Management Company, Inc. (“Brookdale”), should have filed the report at issue. The new management company was an existing client of Axiom and contacted Mr. McFadden in mid-May to ask for assistance with preparing reports for several other

⁷ Exhibit 1.

⁸ Exhibit 2.

⁹ Exhibits 5 and 6.

¹⁰ *Ibid.*

¹¹ Exhibit 11.

¹² Health & Saf. Code, § 128770(a) and Exhibit 11.

facilities, but not the report at issue. The prior operator, Brookdale, filed the federal Medicare Cost Report for the facility, but failed to prepare and file the report at issue. On or about October 25, 2021, the new management company realized the report at issue had still not been filed by Brookdale and the deadline was quickly approaching and contacted Axiom to request assistance with preparing and filing the report at issue. While the report was unable to be filed timely due to the failure of Brookdale to communicate that they were unable or unwilling to prepare the report at issue, Axiom worked quickly to gather the necessary information and prepare the report at issue which was filed with only a seven-day delay.

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

11. Mr. Christensen further testified that Brookdale contracted with Walters Accounting to prepare and file previous reports and that a staff member for Walters Accounting timely requested the extensions granted by HCAI for the report at issue.¹³

12. HCAI's exhibit 12 shows that Appellant has filed its previous reports in a timely manner.

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."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 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

¹³ Exhibit 2.

¹⁴ Health & Saf. Code, § 128770(c).

¹⁵ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

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 While the substantiated facts show that the management company of the facility and the report preparer changed, the owner of the facility has not experienced any change which would relieve it is responsibility for the report at issue and the changes to the management company and report preparer were within the control of Appellant. Furthermore, Appellant had from March 1, 2021 until October 29, 2021, nearly eight months, to coordinate any information sharing or report preparation as part of the transition between the two management companies. Appellant's representative did not present facts that show Appellant exercised due diligence in ensuring that the previous management company was working on the report and would file the report at issue prior to the deadline. Nor did Appellant's representative present facts which demonstrate that the change of management companies and report preparers was sufficiently disruptive to constitute other good cause for the delay in the filing of the report. While the substantiated facts show that Axiom prepared and filed the report at issue with haste, that does not excuse the delay within the control of Appellant in obtaining a new report preparer.

4. While the substantiated facts also show that Appellant had previously filed its reports

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.

timely and requested extensions timely, these facts demonstrate Appellant's historical commitment to fulfilling its statutory obligations in a timely manner and are insufficient to demonstrate due diligence for the report at issue.

5. These facts do not demonstrate that Appellant was impacted by circumstances clearly outside its control nor that it acted with due diligence under the circumstances. Therefore, the substantiated facts do not show good cause for reduction or waiver of the \$700 penalty.

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PROPOSED ORDER

The assessed penalty is upheld.

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: 6/26/2022

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