

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

In the Matter of the Penalty Issued to:

**GLADSTONE CARE AND  
REHABILITATION CENTER**

Appellant.

HCAI No. 21-041-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, June 15, 2022, beginning at 10:31 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.

JAEWOOD Healthcare, LLC, owner and operator of Gladstone Care and rehabilitation Center, 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, June 15, 2022, at 10:47 a.m. PDT.

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

## PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by October 29, 2021.<sup>2</sup>
2. On November 10, 2021, HCAI assessed a penalty against Appellant in the amount of \$1,100 for late filing of its Long-Term Care Annual Disclosure Report.<sup>3</sup>
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 23, 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.<sup>4</sup>
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.<sup>5</sup> Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file its report by July 31, 2021.<sup>6</sup>

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<sup>2</sup> Health & Saf. Code, § 128755(b).

<sup>3</sup> Health & Saf. Code, § 128770. *See also* exhibit 10.

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

<sup>5</sup> Executive Order N-08-21 (June 11, 2021).

<sup>6</sup> *See also* Cal. Code Regs. tit. 22, § 97051.

2. On March 29, 2021, Appellant requested and received 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.<sup>7</sup>
3. On March 30, 2021, Appellant requested and received 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.<sup>8</sup>
4. HCAI mailed Appellant an Initial Delinquency Letter dated November 1, 2021 to Appellant using Global Logistics Services overnight mail.<sup>9</sup> The letter was delivered on Wednesday, November 3, 2021.<sup>10</sup>
5. Penalties accrued from October 30, 2021 until November 9, 2021 when Appellant filed the report at issue.<sup>11</sup>
6. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for eleven days for the late filing of the report at issue, resulting in a penalty amount of \$1,100.<sup>12</sup>
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 ownership on or around June 1, 2019. Axiom prepared the financials for both the prior owner and the new owner. The new owner requested a change in fiscal year from June 30<sup>th</sup> to December 31<sup>st</sup> each year along with the change of ownership in order to put this facility on the same reporting schedule as other facilities it owned. This change was requested for both federal

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<sup>7</sup> Exhibit 1.

<sup>8</sup> Exhibit 2.

<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.

and state reports and the California Department of Public Health (“CDPH”) processed the ownership and fiscal year change in a letter dated February 23, 2021. In contrast, the United States Centers for Medicare and Medicaid Services (“CMS”) sent Appellant a letter approving the change of ownership and fiscal year change dated August 4, 2021. As a result, Appellant filed its federal report for 2021 with a fiscal year end of June 30, 2021. This resulted in the due date for the report at issue moving up by six months almost two months into the typical report preparation time-period and having federal and state reports due on different timelines and with different fiscal year ends. Appellant was unsure if HCAI was expecting the report at issue to be filed on the new fiscal year even though this did not match the fiscal year for CMS. Once Axiom was aware that the report at issue would be due on a different timeline from the federal report, staff worked quickly to gather the necessary information and prepare the report at issue which was filed with an eleven-day delay.

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

11. Ms. Tran testified that while the change of ownership happened on or around June 1, 2019, HCAI was not aware of the change of ownership until January 29, 2020, and the California Department of Public Health did not approve the change of ownership until on or around February 23, 2021.<sup>13</sup>

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,

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<sup>13</sup> Exhibit 2.

and the penalty may be reduced or waived for good cause.”<sup>14</sup> 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.”<sup>15</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>16</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>17</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>18</sup>

3. A party’s diligence is a factor in determining good cause for an extension or a delay.<sup>19</sup> While the substantiated facts show that the owner of the facility changed in 2019, the process for updating the owner on the license and updating the fiscal year to a calendar year-end took approximately 19 months, during which reports were timely filed based on the June fiscal-year end due date. Both Appellant and HCAI had to wait for the process at CDPH to complete. Appellant then had to act quickly to comply with the new due date which was six months earlier than previous report deadlines.

4. HCAI’s exhibits showed that Appellant became aware of the approval by CDPH to change its ownership and fiscal year at some point between February 23, 2021 and

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<sup>14</sup> Health & Saf. Code, § 128770(c).

<sup>15</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

<sup>16</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>17</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>18</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

<sup>19</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.

March 29, 2021, which was no earlier than two months into the new fiscal year. This gave Appellant approximately two months less time than allowed by statute<sup>20</sup> to prepare and file the report at issue, yet the report was filed eleven days late, demonstrating reasonable haste by Appellant. The processing delay and timing of the approval was outside of Appellant's control. Furthermore, the substantiated facts also show that Appellant had previously filed its reports timely through the change of ownership and change of fiscal year process, demonstrating Appellant's commitment to fulfilling its statutory obligations in a timely manner.

5. These facts demonstrate that Appellant was impacted by circumstances clearly outside its control and that it acted with due diligence under the circumstances. Therefore, the substantiated facts show good cause for waiver of the \$1,100 penalty.

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<sup>20</sup> Health & Saf. Code § 128755(b).

PROPOSED ORDER

The assessed penalty is waived for good cause.

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