

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

In the Matter of the Penalty Issued to:

**MIRACLE MILE HEALTHCARE
CENTER**

Appellant.

HCAI No. 21-042-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 22, 2022, beginning at 10:44 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.

Miracle Mile Healthcare Center LLC, owner and operator of Miracle Mile Healthcare 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 22, 2022, at 11:00 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 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.³
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.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 as Exhibit A.

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 report by July 31, 2021.⁶

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² Health & Saf. Code, § 128755(b).

³ Health & Saf. Code, § 128770. *See also* exhibit 11.

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 March 11, 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, 2021.⁷
3. On July 7, 2021, Appellant requested and received its second and final 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 1, 2021 to Appellant using Global Logistics Services overnight mail.⁹ The letter was delivered on Wednesday, November 3, 2021.¹⁰
5. On Thursday, November 4, 2021, the new administrator for Appellant emailed HCAI requesting login information for the System for Integrated Electronic Reporting and Auditing (“SIERA”). Ms. Tran updated the user profile and performed a password reset on their behalf on Monday, November 8, 2021.¹¹
6. Penalties accrued from October 30, 2021 until November 9, 2021 when Appellant filed the report at issue.¹²
7. 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 \$1,100.¹³
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.

⁷ Exhibit 1.

⁸ Exhibit 2.

⁹ Exhibits 7 and 8.

¹⁰ *Ibid.*

¹¹ Exhibit 9.

¹² Exhibit 10.

¹³ Health & Saf. Code, § 128770(a) and Exhibit 11.

10. Mr. McFadden testified on behalf of Appellant that the facility experienced a change in ownership which was approved by the Department of Public Health on or around August 12, 2020. An employee requested the extensions on behalf of Appellant, but this facility had difficulty with their COVID related expenses. The financials had to be revised prior to submitting the report at issue because the line items for expenses were not categorized by department or nursing license. The entire chain of 27 facilities had difficulties with COVID expense reporting because tracking these expenses was a new requirement. Staff were learning how to report these expenses during the reporting period. In addition, one month of payroll was on the balance sheet and was not categorized in expenses correctly. This resulted in delays while these issues were worked through.

11. The new administrator requested SIERA access on or about Thursday, November 4, 2021 and was granted access on Monday, November 8, 2021. The report at issue was filed the following day.

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

13. Due to the change in the facility's ownership, HCAI did not submit the facility's filing history as an exhibit.

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

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 While the substantiated facts show that the owner of the facility changed in 2020, the new owner and administrator knew or should have known the due date for the report at issue as it owns other facilities and there was no change of fiscal year for the facility. As a chain with experience in the industry, the report requirements and preparation timeline were known. The substantiated facts show the difficulties centered around incorrectly attributed COVID expenses and a missing payroll from 2020. It was unclear whether the payroll was from before or after the change of ownership, but the financials should have been reviewed as part of the purchase process. Additionally, Appellant was the owner and operator of the facilities for over a year prior to the deadline and had ample time to rectify any issues prior to the deadline. The difficulties with COVID expenses were accounted for by the three-month extension granted by the Governor.

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.

4. 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. Appellant requested SIERA access for the facility after the deadline and did not substantiate facts which show good cause for that delay, however the four calendar-day delay between the request for account reset and the granting of access was outside of Appellant’s control. Therefore, due to circumstances outside Appellant’s control, a reduction of four days is granted for good cause.

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 reduction of the penalty. \$700 of the penalty is upheld.

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PROPOSED ORDER

The assessed penalty is reduced for good cause. \$700 of the penalty is upheld

Dated: August 1, 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: 8/3/2022

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