

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

In the Matter of the Penalty Issued to:

**VISTA DEL SOL CARE CENTER**

Appellant.

HCAI No. 21-045-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, July 13, 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.

Vista Del Sol LTC, Inc. owner of Vista Del Sol Care Center,<sup>2</sup> collectively “Appellant,” was represented by Eddie Uppal, 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, July 13, 2022, at 10:50 a.m. PDT.

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

<sup>2</sup> Department of Public Health, Cal Health Find Database <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=910000089> [as of July 13, 2022].

## PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by October 29, 2021.<sup>3</sup> Appellant submitted its report on November 1, 2021.<sup>4</sup>
2. On November 8, 2021, HCAI assessed a penalty against Appellant in the amount of \$300 for the late filing of its Long-Term Care Annual Disclosure Report.<sup>5</sup>
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 22, 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>6</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 9 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.<sup>7</sup> Following exhaustion of the extension, Appellant was required

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<sup>3</sup> Health & Saf. Code, § 128755(b) and Exhibit 3.

<sup>4</sup> Exhibit 6.

<sup>5</sup> Health & Saf. Code, § 128770. *See also* exhibit 7.

<sup>6</sup> Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

<sup>7</sup> Executive Order N-08-21 (June 11, 2021).

under Health and Safety Code section 128740 to file its report or request an extension by July 31, 2021.<sup>8</sup>

2. On March 31, 2021, Appellant requested and received both extensions. Following exhaustion of the extensions, Appellant was required Health and Safety Code section 128740 to file its report by October 29, 2021.<sup>9</sup>

3. Penalties accrued from October 30, 2021 until November 1, 2021 when Appellant filed the report at issue.<sup>10</sup>

4. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for three days for the late filing of the report at issue, resulting in a penalty amount of \$300.<sup>11</sup>

5. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

6. Under questioning, Mr. Christensen testified that the report at issue was due on Friday, October 29, 2021 and that the next business day was Monday, November 1, 2021, the date the report at issue was submitted. He further testified that the government code allows for submission on the next business day when the report is due on a weekend or holiday, but as the report was due on a normal business day that code section did not apply, and penalties accrued over the weekend.<sup>12</sup>

7. 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.

8. Mr. Uppal testified on behalf of Appellant that the labor turnover data submitted to Axiom could not be correct. The COVID-19 pandemic affected labor turnover for several reasons. First, the facility had to hire temporary staff to fill in when people were infected. They need to calculate how many employees, both permanent and temporary, worked during each

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<sup>8</sup> See also Cal. Code Regs. tit. 22, § 97051.

<sup>9</sup> Exhibits 1 and 2.

<sup>10</sup> Exhibit 6.

<sup>11</sup> Health & Saf. Code, § 128770(a) and Exhibit 7.

<sup>12</sup> See Gov. Code, § 6707.

month, and the different categories. Normally, you would count how many employees were at the beginning of the year, how many employees were still there at the end of the year, and how many W-2 forms were issued during the year. Due to the COVID-19 pandemic however, the old protocols were insufficient to gather accurate data. Appellant’s staff worked to obtain corrected data, which took a few days. The report was submitted as soon as the data was corrected and the report was finalized, three days late.<sup>13</sup>

9. These facts were substantiated by oral statements made under oath by Mr. Uppal at the hearing.

10. HCAI’s exhibit 13 shows that Appellant filed its July 29, 2019 report one week late and its July 29, 2016 report nineteen days late.

## 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.”<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

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<sup>13</sup> See also exhibit A.

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

<sup>15</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 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].

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> The substantiated facts show that the report at issue was late because Appellant needed to ensure the information submitted was accurate and correct. Specifically, the labor turnover data was inaccurate due to the COVID-19 pandemic, which caused labor shortages due to infections and quarantine protocols and required Appellant to hire temporary staff intermittently, which complicated the tracking of temporary employees for labor turnover data. However, that data was within Appellant's control and while the substantiated facts demonstrate that this was due to the COVID-19 pandemic, Appellant already received an additional extension due to impacts of the COVID-19 pandemic. The changes to the data tracking took three or four days to resolve, but Appellant knew or should have known that the staffing issues it was experiencing were going to affect the labor turnover calculations and might require additional time to resolve prior to submission.

4. The substantiated facts also show that the report at issue was submitted three calendar days and one business day late. However, Government Code section 6707 already provides for extensions if the due date falls on the weekend. The substantiated facts also show that the penalties were properly assessed in accordance with the applicable statutes and regulations.

5. These facts do not 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 do not show good cause for waiver or reduction of the \$300 penalty.

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<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.

PROPOSED ORDER

The assessed penalty is upheld.

Dated: September 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: 9/23/3033

*//original signed//*

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