

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

In the Matter of the Penalty Issued to:

MILPITAS CARE CENTER

Appellant.

HCAI No. 22-010-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, September 27, 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.

ASM Family Foundation, (“ASM Family”) owner and operator of Milpitas Care Center,² collectively “Appellant,” was represented by Helen Macatangay, Chief Executive Officer.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, September 27, 2022, at 11:03 a.m. PDT.

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¹ Stats. 2021, ch. 143, §§ 30, 31.

² Department of Public Health, Cal Health Find Database <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=070000047> [as of September 27, 2022].

PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by October 29, 2021.³
2. On May 17, 2022, HCAI assessed a penalty against Appellant in the amount of \$7,800 for the late filing of its Long-Term Care Annual Disclosure Report.⁴
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated May 23, 2022 and received by the HCAI Hearing Office on June 24, 2022.
4. Appellant submitted its appeal within the required fifteen business days from receipt of the Notice of Penalty.⁵
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 14 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 document was found to be authentic and relevant and admitted to the record as Exhibit A.

FACTUAL FINDINGS

1. Due to the COVID-19 emergency extensions, the initial due date for the report at issue was extended from April 30, 2021 to July 31, 2021.⁶ Appellant was therefore required under Health and Safety Code section 128740 to file its report or request an extension by July 31, 2021.⁷

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³ Health & Saf. Code, § 128755(b) and Exhibit 3.

⁴ Health & Saf. Code, § 128770. *See also* exhibit 10.

⁵ Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

⁶ Executive Order N-08-21 (June 11, 2021) continued the extension to cost report deadlines first granted by Executive Order N-55-20 (April 22, 2020) for reports with initial due dates before June 30, 2021.

⁷ *See also* Cal. Code Regs. tit. 22, § 97051 and exhibit 1.

2. On March 6, 2021, Appellant requested and received its first extension. Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file its report by September 29, 2021.⁸
3. On September 2, 2021, Appellant requested and received its final extension. Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file its report by October 29, 2021.⁹
4. Penalties accrued from Friday, October 29, 2021 until Saturday, January 15, 2022 when Appellant filed the report at issue.¹⁰
5. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for seventy-eight days for the late filing of the report at issue, resulting in a penalty amount of \$7,800.¹¹
6. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.
7. Appellant submitted a written statement with its appeal and made oral statements of facts it believes show good cause why the report was not filed in a timely manner.
8. Ms. Macatangay testified on behalf of Appellant that she was approached by the former owner of Milpitas Care Center, United Family Medical Supply, Inc. (“United Family”), to purchase the facility in or around May of 2020. The purchase of the business was finalized on or about June 15, 2020, but United Family retained property ownership. Ms. Macatangay is a registered nurse and her sister, Adelona Perry, is the business office manager. Ms. Perry started as the business office manager on or about August 1, 2020. The sale of the business required ASM Family and United Family to each provide half of the information required to complete the report at issue. Following the sale of the business Ms. Macatangay stated she was dealing with renovations and improvements to the facility related to preexisting lawsuits and other issues created while the business was under the management of United Family. Additionally, United

⁸ Exhibit 2.

⁹ Exhibit 3.

¹⁰ Exhibit 10.

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

Family was slow to provide the information needed for the half of the report period during which they operated the facility. Furthermore, Ms. Macatangay used the consultant United Family had utilized, Linda Johnson, to file the report at issue but have since hired a new consultant due to the issues they encountered while trying to prepare their half of the report.

9. After completing the renovations, the facility experienced a COVID-19 outbreak which lasted nearly three months. Beginning on or about December 21, 2020 and lasting through mid-February of 2021, the facility experienced “critical staffing shortages” and the death of twelve of the thirty-two nursing home residents from COVID-19.¹² During the staffing shortage, Appellant offered bonuses and COVID-19 pay incentives however, the staffing shortage was so severe and persistent that the facility requested assistance from the State. Additionally, Ms. Macatangay and Ms. Perry both contracted COVID-19 themselves and both have been experiencing long-COVID-19 symptoms which caused them to miss work for medical appointments between March and July of 2021. Furthermore, the administrator of the facility also contracted COVID-19 and Ms. Macatangay had to cover their duties as well as her own while they recovered from COVID-19.

10. Ms. Macatangay further testified that after completion of the business purchase, United Family surrendered the license to the facility rather than initiating a transfer of ownership. In or around November of 2021, Ms. Macatangay was required to apply for a new license for the facility which was granted by the Department of Public Health on or around November 29, 2021. The Department of Public Health shows that ASM Family became the licensee effective on or around July 14, 2021, approximately one year after the business purchase was completed.

11. These facts were substantiated by oral statements made under oath by Ms. Macatangay at the hearing as well as written exhibits.

12. HCAI’s exhibit 14 shows that Appellant is a new licensee and the report at issue was its first report.

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¹² See also exhibit 11 and exhibit A.

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.”¹³ 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.”¹⁴ 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.¹⁵ 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.¹⁶ 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.¹⁷
3. A party’s diligence is a factor in determining good cause for an extension or a delay.¹⁸ The substantiated facts show that Appellant experienced a COVID-19 outbreak lasting approximately fifty-six days. During the outbreak, twelve of the thirty-two residents died.

¹³ Health & Saf. Code, § 128770(c).

¹⁴ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

¹⁵ *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].

¹⁶ 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.

¹⁷ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

¹⁸ *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.

Appellant has experienced ongoing staffing shortages despite offering pay incentives and bonuses; and required assistance from the State to continue to care for its residents during the COVID-19 outbreak.

4. Appellant further testified that it had difficulty obtaining information from United Family to complete the report at issue, but access to that information should have been obtained prior to the completion of the business purchase or in the six months remaining before the fiscal year end. However, Appellant also had to reapply for the license that United Family surrendered to continue operating the facility. As insufficient details were provided on these last two events, the substantiated facts do not support a reduction or waiver for good cause based on these events.

5. The substantiated facts demonstrate that Appellant was impacted by circumstances clearly outside its control related to the COVID-19 outbreak and that it acted with due diligence under the circumstances. However, as the substantiated facts show approximately fifty-six days of COVID-19 impacts, the Appellant did not show good cause for a full waiver. Therefore, the substantiated facts show good cause for reduction of the \$7,800 penalty by \$5,600. \$2,200 of the penalty is upheld.

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PROPOSED ORDER

The assessed penalty is reduced for good cause. \$2,200 of the penalty is upheld.

Dated: November 18, 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: 11/23/2022

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