

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

In the Matter of the Penalty Issued to:

**GEORGE MARK CHILDREN’S
HOUSE**

Appellant.

HCAI No. 22-003-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, August 3, 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.

George Mark Children’s House, owner and operator of George Mark Children’s House,² collectively “Appellant,” was represented by Linda Ashcraft-Hudak, Chief Executive Officer, and Salina Patel, Director of Nursing.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, August 3, 2022, at 11:00 a.m. PDT.

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=020001282> [as of August 3, 2022].

PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by January 29, 2022.³
2. On February 11, 2022, HCAI assessed a penalty against Appellant in the amount of \$400 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 February 24, 2022, postmarked February 24, 2022, and received by the HCAI Hearing Office via email on February 24, 2022.
4. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter.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 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 as well as Exhibits A and B. The documents were found to be authentic and relevant and admitted to the record as Exhibits A through C.

FACTUAL FINDINGS

1. Due to the ending of the COVID-19 emergency extensions on June 30, 2021, the initial due dates for the report at issue were not extended as in 2020 and 2021.⁶ Appellant was therefore required under Health and Safety Code section 128740 to file its report or request an extension by October 31, 2021.⁷

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

⁴ Health & Saf. Code, § 128770. *See also* exhibit 11.

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

⁶ Executive Order N-08-21 (June 11, 2021) rescinded the extension to cost report deadlines first granted by Executive Order N-55-20 (April 22, 2020).

⁷ *See also* Cal. Code Regs. tit. 22, § 97051 and exhibit 1. The facility uses a June 30th fiscal year, so the due dates do not align with the more typical calendar year filing dates.

2. On October 19, 2021, Appellant requested and received its first extension. Following exhaustion of the extension, Appellant was required Health and Safety Code section 128740 to file its report by December 30, 2021.⁸
3. On December 7, 2021, Appellant requested and received its final extension. Following exhaustion of the extension, Appellant was required Health and Safety Code section 128740 to file its report by January 29, 2021.⁹
4. Penalties accrued from Saturday, January 29, 2022 until Tuesday, February 2, 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 four days for the late filing of the report at issue, resulting in a penalty amount of \$400.¹¹
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 extension for its reports was not requested in a timely manner.
8. Ms. Ashcraft-Hudak testified on behalf of Appellant that as a non-profit pediatric palliative care center, Appellant has historically had to operate with minimum administrative staffing. During 2020 and 2021, there was complete turn-over of the finance office staff twice due to employees quitting. Theresa Cruz resigned from her position in or around May 2020 to accept another employment position in New York and Appellant hired Trevor Koga. Mr. Koga quit in or around August of 2021, prior to completing the documents required for Independent Audit of Annual Financial Statements (“Audit”) that all non-profit corporations must complete and before starting to prepare the report at issue. Appellant was able to contact its former finance manager, Ms. Cruz, for assistance. Although Ms. Cruz had not worked for the Appellant

⁸ Exhibits 2 and 3.

⁹ Exhibits 4 and 5.

¹⁰ Exhibit 10.

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

for nearly two years, Ms. Cruz agreed to work for the Appellant remotely on a part-time basis while she continued to be employed by her new employer in New York. Ms. Cruz was able to complete the payroll and general ledger work while Appellant continued their recruiting efforts to hire a new accountant. Appellant explained the difficulties they experienced in recruiting applicants were both a lack of applicants and applicants who were inexperienced with Audits and HCAI reports, however, it was able to hire a new accountant, Christina Thomas, in or around November of 2021. Ms. Thomas was not experienced with preparing the Audit nor preparing the report at issue. Ms. Cruz was able to train the new accountant and assist with preparing documents for the Audit, but the Audit was not completed until December 13, 2021, approximately 47 days before the report at issue was due.¹² Several of the report fields require financial information from the Audit and tax returns. Once the Audit was completed, Appellant began preparing the report at issue. However, several administrative staff in both human resources and finance contracted COVID-19 during December 2021 and January 2022, including Ms. Cruz and her three children.¹³ In addition, Appellant was in the process of transitioning to a new record keeping system.

9. These facts were substantiated by oral statements made under oath by Ms. Ashcraft-Hudak at the hearing as well as written exhibits.

10. HCAI's exhibit 12 shows that Appellant filed its previous five 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

¹² See also exhibit B.

¹³ See also exhibit A.

¹⁴ Health & Saf. Code, § 128770(c).

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 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 The substantiated facts show that the facility experienced turnover in positions directly related to the preparation of the report at issue in both 2020 and 2021. Due to a lack of applicants Appellant experienced a vacancy lasting approximately three months between August and November of 2021. Appellant hired a former employee to work remotely part-time on top of her new full-time job to fill the vacancy until a new accountant could be hired. In addition, Appellant requested its first available extension. However, the vacancy delayed the preparation of the Audit, which was not completed by the outside accountant until December 13, 2021. The Appellant requested its final extension to attempt to complete the report at issue in a timely manner. In addition, the substantiated facts show that key personnel were directly impacted by

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.

COVID-19 infections for a period of several weeks between the return of the Audit and the due date of the report at issue. Staff being out sick is both unexpected and clearly outside of Appellant's control and Appellant did not receive an additional extension due to the COVID-19 pandemic as was available in 2020 and 2021.

4. Appellant took reasonable steps to deal with each issue it encountered and requested its available extensions in an effort to keep with the timeline to submit the report at issue in a timely manner. Despite a series of staffing issues outside of Appellant's control which spanned more than 20 weeks, the report at issue was submitted four days late, demonstrating Appellant's due diligence and reasonable haste.

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 \$400 penalty.

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PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: October 3, 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: 10/24/2022

//original signed//

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