

PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by April 30, 2022.³
2. On June 16, 2022, HCAI assessed a penalty against Appellant in the amount of \$3,800 for the late extension request of its Long-Term Care Annual Disclosure Report.⁴
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated June 22, 2022 and received by the HCAI Hearing Office via email on June 23, 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. The document was found to be authentic and relevant and admitted to the record as Exhibit A.

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 Saturday, April 30, 2022.⁷

//

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) terminated the extension to cost report deadlines first granted by Executive Order N-55-20 (April 22, 2020) for reports due after June 30, 2021.

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

2. HCAI mailed Appellant an Initial Notice of Delinquency dated May 4, 2022 which was delivered using Global Logistics Services on May 9, 2022.⁸
3. HCAI mailed Appellant a Final Notice of Delinquency dated May 31, 2022 which was delivered using Global Logistics Services on June 6, 2022.⁹
4. On June 7, 2022, Appellant requested and received both available extensions. Following exhaustion of the extensions, Appellant was required Health and Safety Code section 128740 to file its report by September 5, 2022.¹⁰
5. Penalties accrued from Sunday, May 1, 2022 until Tuesday, June 7, 2022 when Appellant requested the extensions for the report at issue.¹¹
6. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for thirty-eight days for the late extension request of the report at issue, resulting in a penalty amount of \$3,800.¹²
7. The report at issue was filed prior to the expiration of the extensions.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.
10. Ms. Parriott testified on behalf of Appellant that the previous administrator, Cheryl Cole and former owner, Timothy Stewart, were being sent all the emails related to the report at issue. Unfortunately, Ms. Cole unexpectedly passed away and no other staff had access to her emails. After Ms. Cole's death, Mr. Stewart started the process of selling the building.¹⁴ The change of

//

//

⁸ Exhibits 5 and 6.

⁹ Exhibits 7 and 8.

¹⁰ Exhibit 9.

¹¹ Exhibit 9.

¹² Health & Saf. Code, § 128770(a) and Exhibit 10.

¹³ Exhibit 12.

¹⁴ *See also* exhibit A.

ownership was confirmed by the Department of Public Health on or around June 17, 2022.¹⁵ Ms. Parriott officially started as the administrator on August 1, 2022 after a transition period in which she received some training from the outgoing administrator, Mr. Daniel Funk. Mr. Funk received the delinquency letter and instructed her in the process to request an extension. Unfortunately, as Ms. Cole was still the administrator and contact in the System for Integrated Electronic Reporting and Auditing (“SIERA”), Ms. Parriott was unable to request the extension through SIERA and instead had to call HCAI staff and request both an extension and a SIERA account. Mr. Stewart had previously handled all the reports as he is also a Certified Public Accountant.

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

12. 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 request an extension or files its Long-Term Care Annual Disclosure Report for its facility by April 30, 2022, 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.”¹⁶ 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.”¹⁷ Good cause must be directly related to the specific legal requirement which the party failed to perform and

¹⁵ Department of Public Health, Cal Health Find Database <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=110001250> [as of September 21, 2022].

¹⁶ Health & Saf. Code, § 128770(c).

¹⁷ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

should be outside the reasonable control of the party.¹⁸ 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.¹⁹ 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.²⁰

3. A party's diligence is a factor in determining good cause for an extension or a delay.²¹ The substantiated facts show that the previous administrator died, which might constitute good cause. However, following her death, Mr. Stewart did not take steps to add another contact in SIERA and relied solely upon himself to file the reports and extensions timely. Facilities are required to update their primary contact information in SIERA within fifteen days.²² Appellant did not provide specific details as to when the previous administrator passed, but Department of Public Health records showed that Ms. Cole was replaced by David Hibarger as administrator on or around November 1, 2019, well before the due date of the report at issue.

4. Furthermore, HCAI's exhibit 12 shows that Mr. Stewart filed the report at issue prior to the expiration of the extension requested by Ms. Parriott. No substantiated facts explain why he did not receive or respond to the reminder emails, only that Ms. Parriott was unaware of the due date of the report at issue because Mr. Stewart did not add her or other staff as users in SIERA. Nor do the substantiated facts explain why Mr. Funk did not respond to the initial delinquency letter mailed to Appellant on May 4, 2022 and received by the facility on May 9, 2022.

¹⁸ *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].

¹⁹ 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.

²⁰ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

²¹ *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.

²² Cal. Code Regs. tit. 22, § 97041.1.

5. These facts do not demonstrate that Appellant was impacted by circumstances clearly outside its control or that it acted with due diligence under the circumstances. Therefore, the substantiated facts do not show good cause for waiver of the \$3,800 penalty.

PROPOSED ORDER

The assessed penalty is upheld.

Dated: October 24, 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: 10/24/2022

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