



administrator of VFP Homes.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Thursday, November 17, 2022, at 10:56 a.m. PST.

### PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Reports were due by June 29, 2022.<sup>4</sup>
2. On July 14, 2022, HCAI assessed a penalty against Appellant for each facility in the amount of \$1,200 for the late extension requests of its Long-Term Care Annual Disclosure Reports for a total of \$2,400.<sup>5</sup>
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated July 27, 2022 and received by the Hearing Office via email on July 28, 2022.
4. Appellant requested the consolidation of the two appeals at the time of appeal. No party objected to the consolidation request and the consolidation was approved by the Hearing Office.
5. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter.<sup>6</sup>
6. The hearing was conducted electronically using video and teleconferencing.
7. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 22 were found to be authentic and relevant and admitted to the record.
8. Appellant submitted a written statement to the Hearing Office and HCAI at the time of appeal as well as Exhibits A through E. The documents were found to be authentic and relevant and admitted to the record.

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<sup>4</sup> Health & Saf. Code, § 128755(b) and Exhibits 1 and 12.

<sup>5</sup> Health & Saf. Code, § 128770. *See also* exhibits 9 and 20.

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

## FACTUAL FINDINGS

1. Due to the ending of the COVID-19 emergency extensions on June 30, 2021, the initial due dates for the reports at issue were not extended as in 2020 and 2021.<sup>7</sup> Appellant was therefore required under Health and Safety Code section 128740 to file its reports or request extensions by April 30, 2022.<sup>8</sup>
2. On February 15, 2022, Appellant requested and received its first extension for both facilities. Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file its reports by June 29, 2022.<sup>9</sup>
3. Penalties accrued from Wednesday, June 29, 2022 until Monday, July 11, 2022 when Appellant requested the final extension for both reports 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 twelve days for the late extension requests of the reports at issue, resulting in a penalty amount of \$1,200 each and a total of \$2,400.<sup>11</sup>
5. Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file its reports by August 10, 2022.<sup>12</sup>
6. The report for Parkside Congregate Living was filed on August 17, 2022.<sup>13</sup>
7. The report for VFP Homes was filed on August 15, 2022.<sup>14</sup>
8. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

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<sup>7</sup> 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) for reports with initial due dates after June 30, 2021.

<sup>8</sup> *See also* Cal. Code Regs. tit. 22, § 97051 and exhibits 1 and 12.

<sup>9</sup> Exhibits 2 and 13.

<sup>10</sup> Exhibit 10.

<sup>11</sup> Health & Saf. Code, § 128770(a) and Exhibits 9 and 20.

<sup>12</sup> Exhibits 8 and 20.

<sup>13</sup> Exhibit 11.

<sup>14</sup> Exhibit 22.

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. Bella-Dela Rosa testified on behalf of Appellant that as the primary responsible party for the filing of the reports at issue she was aware of the deadlines and was preparing to file both reports upon her return from a trip. However, while on a cruise in the Bahamas, her husband received a cancer diagnosis.<sup>15</sup> Due to the medical issues and COVID restrictions, they were unable to immediately travel back to California and were forced to stay in Florida for several weeks where he underwent a chest tube placement and a pleural biopsy.<sup>16</sup> They returned to California and her husband had tests performed on or around May 17, 2022 which confirmed stage four metastatic lung cancer and she went out on extended family leave to care for her husband until his death.

11. Ms. Bella-Dela Rosa further testified that during the time they were on the cruise, during his stay at the hospital in Florida, upon his transfer to a California-based hospital, and transition to hospice care, she was on extended family medical leave and did not have access to the data required to prepare the reports at issue. Ms. Bella-Dela Rosa testified that her priority was her family and that she did not think of all the deadlines that she had to meet. She further testified that both facilities are small six-bed congregate living health facilities with limited administrative staffing. At each facility, a staff member handles the monthly accounting. However, Ms. Bella-Dela Rosa is the sole responsible party for preparing the HCAI reports for both facilities on an annual basis.

12. These facts were substantiated by oral statements made under oath by Ms. Bella-Dela Rosa at the hearing as well as written exhibits.

13. HCAI's exhibits 11 and 22 show that Appellant filed its previous reports for both facilities in a timely manner.

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<sup>15</sup> See also exhibits A and B. Medical records are protected from disclosure under the Public Records Act section 6254 subsection (c).

<sup>16</sup> See also exhibits B and D. Medical records are protected from disclosure under the Public Records Act section 6254 subsection (c).

## 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 the extension or file two Long-Term Care Annual Disclosure Reports for its facilities by June 29, 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.”<sup>17</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>18</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>19</sup> 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.<sup>20</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>21</sup>
3. A party’s diligence is a factor in determining good cause for an extension or a delay.<sup>22</sup> The substantiated facts show that Appellant timely requested the first extension for both reports

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<sup>17</sup> Health & Saf. Code, § 128770(c).

<sup>18</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

<sup>19</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].

<sup>20</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>21</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

<sup>22</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.

at issue. However, the primary responsible party received her husband's cancer diagnosis a few weeks prior to the expiration of the extension and was on emergency family medical leave through the due date of the reports at issue. The terminal diagnosis of an immediate family member is both unexpected and clearly outside of Appellant's control. The substantiated facts also show that even if another employee had requested the second extension for both reports, the responsible party would have been unable to file the reports timely due to the same emergency family medical leave and the facilities still would have incurred penalties. Additionally, the substantiated facts show that Ms. Bella-Dela Rosa did not have time to transition her duties to another employee.

4. Both facilities are six-bed congregate living health facilities with limited administrative staffing. Additionally, the circumstances which directly contributed to the late extension requests for the reports at issue are unique and unexpected.

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 \$2,400 penalty.

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