

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

In the Matter of the Penalty Issued to:

MADRONE HOSPICE, INC.

Appellant.

HCAI No. 22-014-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, November 30, 2022, beginning at 10:30 a.m. PST.

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.

Madrone Hospice, Inc., owner and operator of Madrone House², collectively “Appellant,” was represented by Christopher Clothier, Executive Director of Madrone Hospice Inc.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, November 30, 2022, at 10:52 a.m. PST.

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=230000728> [as of November 30, 2022].

PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Reports were due by July 31, 2022.³
2. On September 15, 2022, HCAI assessed a penalty against Appellant for the late extension request of its Long-Term Care Annual Disclosure Report for a total of \$1,000.⁴
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated September 26, 2022 and received by the Hearing Office via email on September 26, 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 10 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 Exhibit A. The documents were found to be authentic and relevant and admitted to the record.

FACTUAL FINDINGS

1. Due to the ending of the COVID-19 emergency extensions on June 30, 2021, the initial due date 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 Period Ending ("RPE") date March 31, 2022 report or request an extension by July 31, 2022.⁷

³ Health & Saf. Code, § 128755(b) and Exhibits 1 and 12.

⁴ Health & Saf. Code, § 128770. *See also* exhibits 9 and 20.

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) for reports with initial due dates after June 30, 2021.

⁷ *See also* Cal. Code Regs. tit. 22, § 97051 and exhibits 1 and 10.

2. HCAI mailed Appellant an Initial Delinquency letter using Global Logistics Services overnight mail dated Thursday, August 4, 2022 which was delivered on Tuesday, August 9, 2022 at or around 4:48 p.m.⁸
3. Appellant contacted HCAI to update its primary contact to Mr. Clother on August 10, 2022.⁹ He also requested and received the available extensions for the report at issue.
4. Penalties accrued from Sunday, July 31, 2022 until Wednesday, August 10, 2022 when Appellant requested the extensions for 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 ten days for the late extension request of the report at issue, resulting in a penalty amount of \$1,000.¹¹
6. Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128740 to file its report by Tuesday, November 8, 2022.¹²
7. The report was filed on Friday, September 2, 2022.¹³
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 report was not requested in a timely manner.
10. Mr. Clother testified on behalf of Appellant that as the primary responsible party for the filing of the reports at issue, Lauri Hunner, the previous executive director, was diagnosed with a terminal illness in the fall of 2021 and died in or around December of 2021.¹⁴ Mr. Clother was installed as Executive Director in or around April of 2022. Ms. Hunner's illness and death did not enable her to transition her role to anyone and the full list of her responsibilities was not communicated to any other staff. Ms. Hunner's email account remained active for a period of

⁸ Exhibits 5 and 6.

⁹ Exhibit 7.

¹⁰ Exhibit 10.

¹¹ Health & Saf. Code, § 128770(a) and Exhibit 9.

¹² Exhibits 8 and 20.

¹³ Exhibit 22.

¹⁴ *See also* exhibits A and B.

time, but as her position remained vacant for several months, there was no one to receive the reminder emails from HCAI regarding the report at issue.

11. Mr. Clothier further testified that Lynn Grenvik, the Administrator and Director of Nursing from December 2009 until May of 2022, facilitated his transition as Executive Director during the approximately one month prior to her departure. However, Ms. Grenvik did not know of the upcoming deadline for the report at issue either. Mr. Clothier learned of the report when the Initial Delinquency letter was given to him shortly after its delivery. Mr. Clothier then contacted Ms. Tran and spoke with her on the telephone regarding the report at issue.

12. Mr. Clothier further testified that prior to his appointment as Executive Director of Madrone Hospice Inc., he worked at a nonprofit agency that provided residential and educational opportunities to people with disabilities. The prior position was subject to various regulatory oversight but was not subject to HCAI reporting and he had no previous knowledge of the reporting deadlines for HCAI.

13. These facts were substantiated by oral statements made under oath by Mr. Clothier at the hearing as well as written exhibits.

14. HCAI's exhibits 10 show that Appellant filed its previous 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 the extension or file its Long-Term Care Annual Disclosure Report for its facility by July 31, 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."¹⁵ In *Waters v. Superior Court*, the California Supreme Court stated that, "good cause may be equated to a good reason for a party's

¹⁵ Health & Saf. Code, § 128770(c).

failure to perform that specific requirement from which he seeks to be excused.”¹⁶ 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.¹⁷ 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.¹⁸ 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.¹⁹

3. A party’s diligence is a factor in determining good cause for an extension or a delay.²⁰ The substantiated facts show that Appellant’s previous responsible party, Ms. Hunner, became ill in the fall of 2021, died in or around December of 2021, and the board of directors was unable to fill her position until April of 2022. The substantiated facts also show that Ms. Hunner did not have the ability to transition her responsibilities to another employee due to the speed of her illness and death. Ms. Hunner’s illness and death were clearly outside the control of Appellant. Appellant was able to fill her position in approximately four months, however, the Administrator and Director of Nursing left after a one-month transition period with Mr. Clother.

4. The Initial Delinquency letter delivery delay of five days was also outside the control of Appellant. The substantiated facts show that the notice was delivered to the front desk of the facility at approximately 4:58 p.m. and that Appellant requested the available extensions the

¹⁶ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

¹⁷ *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].

¹⁸ 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.

¹⁹ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

²⁰ *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.

following day during HCAI's normal business hours. Finally, the substantiated facts show that Mr. Clothier submitted the report at issue prior to the expiration of the extensions.

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 \$1,000 penalty.

PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: December 16, 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: 12/24/2022

//original signed//

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