

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

In the Matter of the Penalty Issued to:

**MONTROSE COMFORT LIVING
AND CARE, INC.**

Appellant.

HCAI No. 22-015-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 Tuesday, December 6, 2022, beginning at 10:32 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.

Montrose Comfort Living and Care, Inc., owner and operator of Montrose Comfort Living and Care², collectively “Appellant,” was represented by Susana Glover, owner of Montrose Comfort Living and Care, Inc. and Greg Glover, husband of Susana Glover.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, December 6, 2022, at 11:00 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=630014730> [as of December 6, 2022].

PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by April 30, 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 \$8,800.⁴
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated September 28, 2022 and received by the Hearing Office via email on October 18, 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 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 was 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 December 31, 2021 report or request an extension by April 30, 2022.⁷

³ Health & Saf. Code, § 128755(b) and Exhibits 1, 2, 3, and 4.

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) 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 exhibit 1.

2. Reminder emails were sent to MontroseComfortLiving@gmail.com on April 5, 2022, April 20, 2022, and April 29, 2022.⁸ In addition, an emailed delinquency notification was sent on Tuesday, May 3, 2022.⁹
3. HCAI mailed Appellant an Initial Delinquency notice using Global Logistics Services overnight mail dated Wednesday, May 4, 2022 which was delivered on Saturday, May 7, 2022 at or around 10:22 a.m.¹⁰ The notice was shipped to “Levon Kechedjian or Current Administrator, Montrose Comfort Living and Care, Inc.”.¹¹
4. HCAI mailed Appellant a Final Notice of Delinquency using Global Logistics Services overnight mail dated Tuesday, May 31, 2022 which was delivered on Saturday, June 4, 2022 at or around 10:26 a.m.¹². The notice was shipped to “Levon Kechedjian or Current Administrator, Montrose Comfort Living and Care, Inc.”.¹³
5. Penalties accrued from Sunday, May 1, 2022 until Wednesday, July 27, 2022 when Appellant requested the extensions for the report at issue.¹⁴
6. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for eighty-eight days for the late extension request of the report at issue, resulting in a penalty amount of \$8,800.¹⁵
7. Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128740 to file its report by Tuesday, October 25, 2022.¹⁶
8. The report was filed on Monday, October 17, 2022.¹⁷
9. Mr. Christensen further testified that facilities are required by regulation to update their primary contact person with HCAI within 15 days of a change.¹⁸

⁸ Exhibits 1, 2, and 3.

⁹ Exhibit 4.

¹⁰ Exhibits 5 and 6.

¹¹ Exhibit 6.

¹² Exhibits 7 and 8.

¹³ Exhibit 8.

¹⁴ Exhibit 9.

¹⁵ Health & Saf. Code, § 128770(a) and Exhibit 10.

¹⁶ Exhibit 9.

¹⁷ Exhibit 12.

¹⁸ Cal. Code Regs. tit. 22, § 97041.1(b).

10. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

11. Appellant submitted Exhibits A through C prior to the hearing as well as a written statement with its appeal marked Exhibit D and made oral statements of facts it believes show good cause why the extension for its report was not requested in a timely manner.

12. Ms. Glover testified on behalf of Appellant that Montrose Comfort Living and Care was not in operation when she purchased it from the previous owners, Levon Apikyan and Levon Kechedjian on March 31, 2021.¹⁹ Operations under her ownership started on April 16, 2021. All mail, bills, and correspondence addressed to the previous owners were forwarded to them and not opened by Appellant.²⁰

13. Ms. Glover further testified that she is a registered nurse who has acted in a supervisory role in a facility but has never owned a facility before or been responsible for compliance and reporting. Additionally, she testified that she eventually gained access to the MontroseComfortLiving@gmail.com mailbox, but that there were issues with the password that had to be worked through with the previous owner. In addition, she testified that when she initially took ownership of the facility, the phones were disconnected and needed to be fixed along with other communications issues such as lack of access to the established email for the business.

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

15. HCAI's exhibits 12 show that this was Appellant's initial report as it was licensed by the Department of Public Health in 2017 but did not have patients until 2021.

DISCUSSION AND LEGAL CONCLUSIONS

1. The issue here is whether Appellant had good cause, as required by Health and Safety

¹⁹ Exhibits A, B, and C.

²⁰ Exhibit D.

Code section 128770, for failing to request the extension or file 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.”²¹ 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.”²² 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.²³ 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.²⁴ 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.²⁵

3. The substantiated facts show that Ms. Glover purchased the stock for the facility from the previous owners on or around March 31, 2021 and was the first to admit patients to the facility beginning on or around April 16, 2021. The substantiated facts show that Ms. Glover did not immediately have access to the facility email, but she was unable to provide a date by which access was granted. The substantiated facts also show that approximately twelve months elapsed between the initiation of the stock transfer and the due date of the report at issue.

²¹ Health & Saf. Code, § 128770(c).

²² *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

²³ *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].

²⁴ 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.

²⁵ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

4. While the substantiated facts show that Ms. Glover was unaware of the HCAI reporting requirements, she did not demonstrate that Appellant took steps during the intervening months to become educated on the state requirements or update the primary contact information with HCAI as required by regulation.²⁶ In addition, the substantiated facts show that she contacted the previous owner regarding the delinquency notices but did not open them despite being shipped to “Levon Kechedjian *or Current Administrator*, Montrose Comfort Living and Care, Inc.” (Italics added).

5. Mere ignorance is not a strong showing of good cause.²⁷ The Appellant’s prompt response upon learning of the program was prudent but does not show good cause for its failure to file its report or request a timely extension alone. A party’s diligence is a factor in determining good cause for an extension or a delay.²⁸ While Ms. Glover explained some of the difficulties encountered following the stock transfer, she did not explain why she remained unaware of the program twelve months later or what actions Appellant took during that time to stay apprised of statutory and regulatory requirements related to the operation of the facility.

6. These facts do not demonstrate that Appellant was impacted by circumstances clearly outside its control nor that it acted with due diligence under the circumstances. Therefore, the substantiated facts do not show good cause for reduction or waiver of the \$8,800 penalty.

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²⁶ Cal. Code Regs. tit. 22, § 97041.1(b).

²⁷ *Tsingaris v. State of California* (1979) 91 Cal.App.3d 312, 314.

²⁸ *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.

PROPOSED ORDER

The assessed penalty is upheld.

Dated: January 6, 2023

//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: 2/8/2023

//original signed//

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