

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

In the Matter of the Penalty Issued to:

MILPITAS CARE CENTER, INC.

Appellant.

HCAI No. 22-016-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 13, 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.

ASM Family Foundation, owner and operator of Milpitas Care Center, Inc.,² collectively “Appellant,” was represented by Helen Macatangay, Chief Executive Officer.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, December 13, 2022, at 10:57 a.m. PST.

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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=070000047> [as of December 13, 2022].

PROCEDURAL FINDINGS

1. On September 15, 2022, HCAI assessed a penalty against Appellant for the late filing of its Long-Term Care Annual Disclosure Report for \$4,200.³
2. 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.
3. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter.⁴
4. The hearing was conducted electronically using video and teleconferencing.
5. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 15 were found to be authentic and relevant and admitted to the record.
6. 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.
7. Appellant has one previous related appeal, HCAI No. 22-010-LTC, in which its assessed penalties were reduced from \$7,800 to \$2,200.

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 2021.⁵ Appellant was therefore required under Health and Safety Code section 128740 to file its Report Period Ending (“RPE”) date December 31, 2021 report by July 29, 2022.⁶

³ Health & Saf. Code, § 128770. *See also* exhibit 13.

⁴ Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

⁵ 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.

⁶ *See also* Cal. Code Regs. tit. 22, § 97051 and exhibit 3.

2. On March 21, 2022, Appellant requested and was granted its first extension. Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file its report or request an extension by June 30, 2022.⁷
3. On June 23, 2022, Appellant requested and was granted its final extension. Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file its report by July 29, 2022.⁸
4. Automated reminder emails were sent to asmfamilyfoundation@gmail.com on or around July 4, 2022, July 19, 2022, and July 28, 2022.⁹ In addition, an emailed delinquency notification was sent on Monday, August 1, 2022.¹⁰
5. HCAI mailed Appellant an Initial Delinquency notice using Global Logistics Services overnight mail dated Thursday, August 4, 2022 which was delivered on or around Wednesday, August 10, 2022 at 11:36 a.m.¹¹
6. HCAI mailed Appellant a Final Notice of Delinquency using Global Logistics Services overnight mail dated Tuesday, August 30, 2022 which was delivered on or around Tuesday, September 6, 2022 at 12:25 p.m.¹² .
7. Penalties accrued from Saturday, July 30, 2022 until Friday, September 9, 2022 when Appellant filed the report at issue.¹³
8. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for forty-two days for the late filing of the report at issue, resulting in a penalty amount of \$4,200.¹⁴
9. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

⁷ Exhibit 1.

⁸ Exhibit 2.

⁹ Exhibits 4,5, and 6.

¹⁰ Exhibit 7.

¹¹ Exhibits 8 and 9.

¹² Exhibits 10 and 11.

¹³ Exhibit 12.

¹⁴ Health & Saf. Code, § 128770(a) and Exhibit 13.

10. Appellant submitted a written statement with its appeal marked Exhibit A and made oral statements of facts it believes show good cause why the extension for its report was not requested in a timely manner.

11. Ms. Macatangay testified on behalf of Appellant that due to issues with the previous report preparer, Appellant found it necessary to hire a new report preparer. Appellant hired Mr. Roberts prior to the extension request filed on June 23, 2022, but Ms. Macatangay stated that she did not remember the exact date as her sister, the office manager, handled that transition. In addition, Ms. Macatangay testified that there were issues with the paperwork due to the change of ownership in June of 2020 which delayed the preparation of the report. Furthermore, Ms. Macatangay stated that the facility is still struggling with impacts of COVID such as staff turnover and the inability to fill vacancies even with offering bonuses and pay raises.

12. Ms. Macatangay further testified that Appellant has experienced financial difficulties due to the change in ownership. Ms. Macatangay believes the previous owner applied for small business and COVID loans prior to the 2020 sale, but that money was not passed along to be used for the facility, nor were tax documents provided as part of the sale process. In addition, the previous owner's decision to let the facility license lapse resulted in expenses and delayed or denied reimbursements for Appellant.

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

14. HCAI's exhibit 15 showed that this was Appellant's second report, and it does not have a history of filing timely.

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 its Long-Term Care Annual Disclosure Report for its facility by July 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.”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 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. The substantiated facts show that due to issues with the previous report preparer, Appellant hired a new report preparer at an unknown date between March 21, 2022, and June 23, 2022. In addition, testimony indicated there were multiple issues with the financial and tax paperwork due to the change in ownership in or around June of 2020 which delayed the preparation of the report at issue but was unable to indicate specific difficulties which were in the control of the previous owner as the change in ownership took place prior to the report period at issue in this hearing. Furthermore, testimony showed that the facility is still struggling with impacts of COVID such as staff turnover and the inability to fill staff vacancies. The facility has also experienced financial difficulties due to the change of ownership as the previous owner applied for small business and COVID loans, that were not passed along to be used for the

¹⁵ Health & Saf. Code, § 128770(c).

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, 2022]. See also *Waters, supra*, 58 Cal.2d 885, 893.

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

facility, nor were tax documents provided. In addition, the previous owner's decision to let the facility license lapse resulted in expenses and delayed or denied reimbursements for Appellant.

4. A party's diligence is a factor in determining good cause for an extension or a delay.²⁰ While Ms. Macatangay testified that Appellant is experiencing ongoing difficulties related to COVID and financial difficulties arising from the actions of the previous owner, Appellant did not provide substantiated facts which demonstrated steps that Appellant took to file timely. The actions taken were general hiring and retention actions combined with changing report preparers. However, the decision to change report preparers was within the control of Appellant and does not constitute good cause alone. In addition, testimony indicated there were multiple issues with the financial and tax paperwork due to the change in ownership in or around June of 2020 which delayed the preparation of the report at issue but the change in ownership took place prior to the report period at issue in this hearing. Similarly, the financial hardship caused by the previous owner impacts Appellant but is an issue that should be resolved through the remedies related to the sale process and does not constitute good cause for a waiver or reduction of the penalties assessed.

5. 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 \$4,200 penalty.

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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.

PROPOSED ORDER

The assessed penalty is upheld.

Dated: January 27, 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