

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

In the Matter of the Penalty Issued to:

SOUTHERN INYO HOSPITAL

Appellant.

HCAI No. 23-001-HQF

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, April 4, 2023, beginning at 1:31 p.m. PDT.

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.

Southern Inyo Health Care District (“District”), owner and operator of Southern Inyo Hospital², collectively “Appellant,” was represented by Vera Strider, Director of Patient Financial Services and Scott Jackson, consultant.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, April 4, 2023, at 1:53 p.m. PDT.

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=240000102> [as of April 4, 2023].

PROCEDURAL FINDINGS

1. On January 18, 2023, HCAI assessed a penalty against Appellant for the late filing of Southern Inyo Hospital's Hospital Quarterly Financial Utilization Report for \$2,300.³
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated January 30, 2023 and received by the Hearing Office via e-mail on January 31, 2023.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the Notice of Penalty.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 statement was found to be authentic and relevant and admitted to the record.

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128740 to file or request an extension for the Hospital Quarterly Financial and Utilization Report for the Report Period Ending ("RPE") date September 30, 2022 by November 14, 2022.⁵
2. Automated reminder emails were sent to vstrider@sihd.org on Friday, November 4, 2022 and Sunday, November 13, 2022.⁶

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³ Health & Saf. Code, § 128770. *See also* exhibit 20.

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

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⁵ *See also* Cal. Code Regs. tit. 22, § 97051 and exhibit 1.

⁶ Exhibits 1 and 2.

3. Appellant requested and received its only available extension on Monday, November 14, 2022. Following exhaustion of the extension, the report at issue was due by December 14, 2022.⁷
4. Automated reminder emails were sent to vstrider@sihd.org on Sunday, December 4, 2022 and Tuesday, December 13, 2022.⁸
5. HCAI mailed Appellant the Notice of Delinquency using Global Logistics Services overnight mail dated Thursday, December 22, 2022 which was delivered on Wednesday, December 28, 2022.⁹ In addition, an emailed delinquency notification was sent on Tuesday, January 3, 2023.¹⁰
6. Penalties accrued from Thursday, December 15, 2022 until Friday, January 6, 2023 when Appellant filed the report at issue.¹¹ In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for twenty-three days for the late filing of the report at issue, resulting in a penalty amount of \$2,300.¹²
7. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.
8. Appellant submitted a written statement with its appeal marked Exhibit A and made oral statements of facts it believes show good cause why the reports were not filed in a timely manner.
9. Ms. Strider testified that the HCAI reports were previously done with the assistance of a consultant, Mr. Jackson and staff who no longer work for Appellant. One previous staff member left on or around April 22, 2022 and the CFO Controller left in or around July of 2022. Mr. Jackson had prepared four quarterly reports for Appellant in 2021 and early 2022. Additionally, Southern Inyo Hospital's quarterly data was skewed due to an underpayment received from the California Department of Health Care Services ("DHCS") for \$1.9 million in July 2022. Because

⁷ Exhibit 3.

⁸ Exhibits 4 and 5.

⁹ Exhibits 8 and 9.

¹⁰ Exhibit 10.

¹¹ Exhibit 12.

¹² Health & Saf. Code, § 128770(a) and exhibit 13.

the payment was received during a different quarter, it had to be manually processed in the Electronic Medical Records (“EMR”) software. This resulted in several errors when Appellant attempted to submit the report at issue which caused the System for Integrated Electronic Reporting and Auditing (“SIERA”) to automatically reject the report submission multiple times. Ms. Strider also emailed HCAI for assistance several times before the report was due and during the delinquency period attempting to get assistance with resolving the errors.¹³

10. On November 14, 2022, Ms. Strider attempted to submit the report at issue and encountered an error in SIERA which stated that values needed to be entered in numeric format without decimals on several lines, but no decimals appeared to be in the fields. She emailed HCAI staff for assistance and was advised they had also encountered the error the previous week. HCAI staff instructed Appellant to log out and log back into SIERA and then delete and re-key the data fields that showed the error. Ms. Strider followed the staff instructions to resolve the errors. The errors did not resolve, so she requested and was granted the sole 30-day extension available by regulation.¹⁴

11. On December 14, 2022, Ms. Strider emailed requesting a further extension as she had been out of the office with flu and COVID-19 for almost two weeks during the extension period. Additionally, the Skilled Nursing Facility operated by the District had been shut down due to an outbreak of COVID-19 and ancillary services were operating on an emergency basis only. During the shutdown, Ms. Strider was unable to work on the report because the EMR system computer is shut down at the end of each workday and to access the EMR system remotely requires the on-site computer to be powered on to establish a VPN connection required for the off-site computer to connect to the EMR system through a secured connection. Unfortunately, HCAI was unable to grant a second extension as the report type at issue has just one 30-day extension available by regulation.¹⁵

12. On December 21, 2022, Ms. Strider again attempted to submit the report at issue. She received a different error about the substantive content of the report at issue and reached out to

¹³ Exhibits 3, 6, 7, and 11.

¹⁴ Exhibit 3.

¹⁵ Exhibit 6. *See also* Cal. Code Regs. tit. 22, § 97051.

HCAI via email for assistance. HCAI staff looked at the draft report and identified two potential issues that might be causing the error. Ms. Strider was instructed that “Line 800 is not only the sum of Lines 750-795 but must also equate to Line 400 + Line 500 - Line 620.”¹⁶

13. On January 4, 2023, Ms. Strider again attempted to submit the report at issue. She received the same fatal error and was prevented from submitting the report by SIERA despite making changes to the indicated lines of the report.¹⁷ She made further adjustments to the report and successfully submitted the report using SIERA on January 6, 2023.

14. Ms. Strider further testified that the EMR system has not met Appellant’s needs and expectations. She stated that it cannot perform all the functions they need and there have been issues with the system crashing and data retrieval. Appellant will be changing software providers as soon as the current contract ends in 2024. In addition, Mr. Jackson has been retained to continue as a consultant to assist with report preparation going forward to ensure that future reports will be filed timely.

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

16. HCAI’s exhibit 15 show that Appellant’s previous reports were filed timely prior to 2021.

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 Hospital Quarterly Financial Utilization Report for Southern Inyo Hospital by December 14, 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.”¹⁸ In *Waters v. Superior Court*, the California Supreme Court stated that, “good cause may be equated to a good reason for a party’s

¹⁶ Exhibit 7.

¹⁷ Exhibit 11.

¹⁸ Health & Saf. Code, § 128770(c).

failure to perform that specific requirement from which he seeks to be excused.”¹⁹ 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.²⁰ 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.²¹ 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.²²

3. The exhibits showed that HCAI staff and Appellant both experienced an error with SIERA which was unable to be resolved on November 14, 2022. This caused Appellant to request its sole 30-day extension. However, according to regulation a seven-day extension can be given if SIERA is inaccessible for four hours or more.²³ Appellant did not request this extension, but as both HCAI staff and Appellant experienced similar issues with SIERA rejecting fields for containing decimals which did not actually contain decimals, good cause exists for a reduction of the penalty by \$700.

4. The testimony demonstrated that Ms. Strider was unable to work for approximately two weeks during the time of the extension due to illness. In addition, Appellant had to shut down parts of its facilities due to a COVID-19 outbreak during the extension period. However, circumstances such as that are why the extension is available and these unforeseen circumstances were covered by the extension period. On the other hand, Appellant did not control when DHCS

¹⁹ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

²⁰ *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].

²¹ 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.

²² *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

²³ Cal. Code Regs. tit. 22, § 97051.

processed and paid the Medi-Cal underpayment which caused difficulties with reconciling the financial portions of the report because the expenses and payments were in different quarters. Appellant also has taken steps to obtain new EMR software at the expiration of the current contract due to limitations and issues which further complicated the preparation of the report at issue.

5. A party's diligence is a factor in determining good cause for an extension or a delay.²⁴ Appellant's extension was requested timely, and a second extension was requested but unavailable by regulation. Due to an error within SIERA, Appellant was unaware of the substantive errors in the report at issue until its second submission attempt on December 21, 2022. Furthermore, Appellant also communicated with HCAI multiple times prior to the due date and during the delinquency period as it attempted to correct the errors in the report. Written exhibits showed that Appellant attempted to submit the report at least three different times during the fifteen business days the report was delinquent: December 21, 2022; January 4, 2023; and January 6, 2023. These facts demonstrate Appellant's commitment to fulfilling its statutory obligations in a timely manner. However, Appellant offered no testimony or documentary evidence of due diligence between the period of December 21, 2022 and January 4, 2023, a period of eight business days.

6. These substantiated facts demonstrate that Appellant was impacted by circumstances outside its control and that it acted with due diligence under the circumstances during the delinquency period except the eight business days between December 21, 2022, and January 4, 2023. Therefore, good cause exists for reduction of the \$2,300 penalty. \$800 of the penalty is upheld.

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²⁴ *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 penalties are reduced for good cause. \$800 of the penalty is upheld.

Dated: May 22, 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: May 24, 2023

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