



## PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by August 2, 2022.<sup>3</sup>
2. On October 14, 2022, HCAI assessed a penalty against Appellant for the late filing of its Long-Term Care Annual Disclosure Report for a total of \$5,500.<sup>4</sup>
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated December 17, 2022 and received by the Hearing Office via regular mail on January 30, 2023.
4. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter.<sup>5</sup>
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.
8. Appellant has a previous related appeal, OSHPD Appeal No. 21-034-LTC, in which the penalty was waived for good cause primarily due to impacts from COVID-19.

## 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.<sup>6</sup> Appellant was therefore

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

<sup>4</sup> Health & Saf. Code, § 128770. *See also* exhibit 10.

<sup>5</sup> Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

<sup>6</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 Executive Order N-08-21 (June 11, 2021) rescinded the extension to cost report deadlines first granted by Executive Order N-55-20 (April 22, 2020) for reports with initial due dates after June 30, 2021.

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.<sup>7</sup>

2. Reminder emails were sent to Janet@BlossomRidgeLongTermCare.com on April 5, 2022; April 20, 2022; and April 29, 2022.<sup>8</sup> In addition, an emailed delinquency notification was sent on Tuesday, May 3, 2022.<sup>9</sup>

3. On Wednesday, May 4, 2022, Appellant requested and received both its available extensions.<sup>10</sup> Following exhaustion of the extensions, the report at issue was due on Tuesday, August 2, 2022.

4. Reminder emails were sent to Janet@BlossomRidgeLongTermCare.com on July 8, 2022 and August 1, 2022.<sup>11</sup> In addition, an emailed delinquency notification was sent on Friday, August 5, 2022.<sup>12</sup>

5. HCAI mailed Appellant an Initial Delinquency notice using Global Logistics Services overnight mail dated Thursday, August 4, 2022 which was delivered on Saturday, August 9, 2022 at or around 1:28 p.m.<sup>13</sup>

6. HCAI mailed Appellant a Final Notice of Delinquency using Global Logistics Services overnight mail dated Tuesday, September 6, 2022 which was delivered on Wednesday, September 14, 2022 at or around 1:37 p.m.<sup>14</sup> .

7. Penalties accrued from Wednesday, August 3, 2022 until Wednesday, September 27, 2022 when Appellant filed the report at issue.<sup>15</sup>

8. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for fifty-five days for the late filing of the report at issue, resulting in a penalty amount of \$5,500.<sup>16</sup>

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<sup>7</sup> See also Cal. Code Regs. tit. 22, § 97051 and exhibit 1.

<sup>8</sup> Exhibits 1, 2, and 3.

<sup>9</sup> Exhibit 4.

<sup>10</sup> Exhibit 5

<sup>11</sup> Exhibits 6 and 7.

<sup>12</sup> Exhibit 8.

<sup>13</sup> Exhibits 9 and 10.

<sup>14</sup> Exhibits 12 and 13.

<sup>15</sup> Exhibit 14.

<sup>16</sup> Health & Saf. Code, § 128770(a) and Exhibit 15.

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

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. Agustin testified on behalf of Appellant that lingering impacts from the COVID-19 pandemic and difficulties logging in to the System for Integrated Electronic Reporting and Auditing (“SIERA”) to request the extension caused the delay in requesting the extension and filing the report at issue.<sup>17</sup> Ms. Agustin emailed HCAI staff on August 11, 2023 to request assistance as she was unable to login nor submit the report through SIERA.<sup>18</sup> HCAI staff reset her password on August 12, 2022 and instructed her to return the Excel spreadsheet via e-mail along with a signed certification.

12. Ms. Agustin further testified that Appellant was still trying to gather information for the report and catch up on work that was delayed due to lingering impacts from the COVID-19 pandemic. Specifically, she testified that hiring and training new staff as well as updating compliance practices took priority as this report did not directly affect patient care.

13. Mr. Christiansen further testified that long-term care facilities are unable to file through SIERA as they do not have the software required to submit reports electronically. Under HCAI statutes and regulations, they are exempt from the electronic filing requirements and instead submit a shorter version of the report in Excel via e-mail.

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

15. HCAI’s exhibits 17 show that Appellant has filed the three reports since its opening late.

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<sup>17</sup> Exhibit A.  
<sup>18</sup> Exhibit 11.

## 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 August 2, 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>19</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>20</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>21</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>22</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>23</sup>
3. The substantiated facts show that since the Appellant opened their facility for business each of their three required reports were filed late. While Appellant demonstrated circumstances outside its control due to the COVID-19 pandemic in OSHPD Appeal No. 21-034-LTC, the testimony in this case did not demonstrate that any of those circumstances, such as waivers for

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<sup>19</sup> Health & Saf. Code, § 128770(c).

<sup>20</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

<sup>21</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>22</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>23</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.



PROPOSED ORDER

The assessed penalty is upheld.

Dated: June 7, 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: 6/28/2023

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