

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

In the Matter of the Penalty Issued to:

**ENCOMPASS HEALTH
REHABILITATION HOSPITAL OF
TUSTIN**

Appellant.

HCAI No. 23-003-HAF

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, May 2, 2023, beginning at 10:29 a.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.

Encompass Health Rehabilitation Hospital of Tustin L.P., owner and operator of Encompass Health Rehabilitation Hospital of Tustin², collectively “Appellant,” was represented by Paula Redmond, Chief Executive Officer.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, May 2, 2023, at 10:50 a.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=060001097> [as of May 2, 2023].

PROCEDURAL FINDINGS

1. On January 18, 2023, HCAI assessed a penalty against Appellant for the late filing of Encompass Health Rehabilitation Hospital of Tustin's Hospital Annual Disclosure Report for \$3,900.³
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated January 25, 2023 and received by the Hearing Office via e-mail on February 1, 2023.
3. Appellant submitted its appeal 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. On June 30, 2022, HCAI staff notified Appellant that due to a change of location on or about April 22, 2022, Appellant was receiving a new HCAI identification number and that a Hospital Annual Disclosure Report would be due based off the last day of patient care at the old location, not the fiscal year end of May 31st annually.⁵
2. Appellant was therefore required under Health and Safety Code section 128740 to file or request an extension for the Hospital Annual Disclosure Report for the Report Period Ending ("RPE") date April 21, 2022 by August 21, 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 Cal. Code Regs. tit. 22, § 97040(b)(3) and exhibit 1.

⁶ *See also* Cal. Code Regs. tit. 22, § 97051 and exhibit 1.

3. Automated reminder emails were sent to Paula.Redmond@encompasshealth.com on Wednesday, July 27, 2022.⁷
4. Appellant requested and received its first extension on Wednesday, August 10, 2022. Following exhaustion of the extension, the report at issue was due by October 20, 2022.⁸
5. Appellant requested and received its final extension on Thursday, September 22, 2022. Following exhaustion of the extension, the report at issue was due by November 19, 2022.⁹
6. Automated reminder emails were sent to Paula.Redmond@encompasshealth.com on Tuesday, October 25, 2022; Wednesday, November 9 2022; and Friday, November 18, 2022.¹⁰ In addition, an automated delinquency notification was emailed on Tuesday, November 22, 2022.¹¹
7. HCAI mailed Appellant the Notice of Delinquency using Global Logistics Services overnight mail dated Tuesday, November 29, 2022 which was delivered on Saturday, December 3, 2022.¹²
8. Penalties accrued from Saturday, November 19, 2022 until Wednesday, December 28, 2022 when Appellant filed the report at issue.¹³ In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for thirty-nine days for the late filing of the report at issue, resulting in a penalty amount of \$3,900.¹⁴
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 report was not filed in a timely manner.
11. Ms. Redmond testified that Appellant was unaware that the location change would trigger an annual report due five weeks earlier as well as a second annual report to cover the five-week

⁷ Exhibit 2.

⁸ Exhibit 3.

⁹ Exhibit 4.

¹⁰ Exhibits 5, 6, and 7.

¹¹ Exhibit 8.

¹² Exhibits 9 and 10.

¹³ Exhibit 12.

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

period until the normal fiscal year end. In response to this five-week gap, Appellant requested to change the facility's year end date to December 31st from May 31st rather than file an additional annual report that only covered that five-week period, however this did not affect the due date of the report at issue.¹⁵ Appellant was without a controller for approximately a year, during which time Ms. Redmond was trying to perform the duties of both the CEO, to which she was officially appointed in March 2022, and controller, as well as accomplish all tasks required for the move. Patient care and patient safety had to be the first priority, and in addition to the report at issue, Appellant had quarterly reports to complete for HCAI as well whose due dates were not affected by the facility move.

12. Prior to her official appointment as CEO in March of 2022, Ms. Redmond was acting as the interim CEO. Recruitment for a new controller began in April of 2022 but received very few applications despite the assistance of an outside recruiter. After a series of interviews of approximately eight applicants, Appellant hired a new controller with no health care experience in mid-December of 2022, but this was too late to assist with the report at issue. None of the applicants interviewed had the desired health care experience. Finally, the report at issue was submitted on what would have been the due date had not a partial year report been triggered by the facility relocation.¹⁶

13. HCAI's exhibit 1 shows that the due dates in the System for Integrated Electronic Reporting and Auditing ("SIERA") were updated by HCAI staff to reflect the new due dates on or around June 30, 2022.

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

15. HCAI's exhibit 15 show that Appellant's previous reports were filed timely.

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¹⁵ Exhibits 1 and A. *See also* Cal. Code Regs. tit. 22, § 97051.

¹⁶ Exhibit A.

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 Annual Disclosure Report for Encompass Health Rehabilitation Hospital of Tustin 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.”¹⁷ 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.”¹⁸ 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.¹⁹ 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.²⁰ 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.²¹
3. The exhibits showed that HCAI notified Appellant of the requirement to file the report at issue five-weeks earlier than usual compared to their fiscal year end due to the location change on or around June 30, 2022, as soon as HCAI was notified of the change to the license with the

¹⁷ Health & Saf. Code, § 128770(c).

¹⁸ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

¹⁹ *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].

²⁰ 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.

²¹ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

California Department of Public Health. Annual reports normally have four months to be prepared, however, Appellant testified that they were unaware of the regulation and that an out of cycle report would be due five weeks earlier than normal. However, the decision to relocate and the timing of the move was presumably within the control of Appellant.

4. The testimony also demonstrated that Ms. Redmond was unable to hire a controller for approximately eight months after she was appointed as the CEO despite utilizing an outside recruiter, interviewing at least eight candidates, and none of the eight candidates having a background in health care, which are circumstances outside the control of Appellant.

5. Mere ignorance is not a strong showing of good cause.²² A party's diligence is a factor in determining good cause for an extension or a delay.²³ The regulations state that, "[a] reporting period, which may be less than one year, ends: (3) on the last day of patient care at the old facility when the health facility closes to relocate to a new facility."²⁴ Testimony substantiated that Appellant was not familiar with the subsection of the regulation triggering an out of cycle report, and was surprised by the notification received from HCAI on or around June 30, 2022 indicating the earlier due date for the report at issue. In addition, SIERA did not reflect the partial year report or the updated due dates until on or around June 30, 2022. Prior to the update by HCAI staff, SIERA showed a due date of September 30, 2022, with extensions available until December 28, 2022. This gave Appellant approximately seventy days less than given by regulation from the time of notification to the due date of the report at issue, which was further compounded by the difficulties Appellant experienced with finding and hiring a new controller, to include engaging an outside recruiter to bring in additional applicants after their own recruitment efforts failed.

6. According to its license, Appellant was in its previous location from 1991 to 2022. While the move was planned, the critical vacancies were unplanned and are unlikely to repeat. Appellant's extensions were requested timely, and the fiscal year end change was also requested

²² *Tsingaris v. State of California* (1979) 91 Cal.App.3d 312, 314.

²³ *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.

²⁴ Cal. Code Regs. tit. 22, § 97040(b).

PROPOSED ORDER

The assessed penalties are waived for good cause.

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