

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

In the Matter of the Penalty Issued to:

**KINDRED HOSPITAL – SAN  
FRANCISCO BAY AREA**

Appellant.

HCAI No. 23-005-HQF

**PROPOSED DECISION**

This matter was heard before John Gray, Hearing Officer, Department of Health Care Access and Information (“HCAI”), State of California, on June 7, 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.

Larry Foster, owner and operator of Kindred Hospital – San Francisco Bay Area,<sup>1</sup> collectively, “Appellant,” was represented by Ziba Aflak, Chief Financial Officer.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on June 7, 2023 at 10:43 A.M. PDT.

**PROCEDURAL FINDINGS**

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<sup>1</sup> Department of Public Health, CalHealth Find Database  
<https://www.cdph.ca.gov/Programs/CHCO/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=140000148> (last accessed February 4, 2023).

1. On February 21, 2023, HCAI assessed a penalty against Appellant in the amount of \$100 for its delinquent Hospital Quarterly Financial Utilization Report.<sup>2</sup>
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated February 27, 2023 and received by the HCAI Hearing Office on March 9, 2023.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.<sup>3</sup>
4. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 6 were found to be authentic and relevant and admitted to the record.
5. Appellant submitted written exhibits to the Hearing Office and HCAI in advance of the hearing. Exhibits A and B were 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 December 31, 2022 by February 14, 2023.<sup>4</sup>
2. The report was filed on February 15, 2023.<sup>5</sup>
3. In accordance with Health and Safety Code section 128770, subsection (a), HCAI assessed penalties in the amount of \$100 per day for 1 day, resulting in a total penalty amount of \$100.<sup>6</sup> These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

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<sup>2</sup> Health & Saf. Code, § 128770. *See also* exhibit 6.

A. <sup>3</sup> Health & Saf. Code, § 128775. *See also* Cal. Code Regs. Tit. 22, § 97052 and exhibit

<sup>4</sup> Health & Saf. Code, § 128770. *See also* Cal. Code Regs. Tit. 22, § 97051 and exhibit 1.

<sup>5</sup> Exhibit 5.

<sup>6</sup> Health & Saf. Code, § 128770.

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

5. In its written statement, Appellant stated that its representative, Ms. Aflak, was out sick prior to the report filing deadline and was unable to prepare the report.<sup>7</sup> These facts were substantiated by oral statements made under oath by Ms. Aflak at the hearing. They were further substantiated by Ms. Aflak's medical records, marked Exhibit B, which show that Ms. Aflak was admitted to an urgent care center on February 13, 2023.<sup>8</sup> Written exhibits were provided to the Hearing Officer and HCAI in a timely manner prior to the hearing.

6. Ms. Aflak testified that she had worked for Appellant since 1998 and had always prepared the report during that period. She testified that she stopped working with Appellant in December of 2022 to work for another company and was not working for the Appellant for the month of January, 2023. She returned to work for the Appellant on February 1, 2023.

7. Ms. Aflak further testified that she was out sick from February 6, 2023 until February 15, 2023. Her illness culminated in an urgent care visit on February 13, 2023. Upon return to work on February 15, 2023, Ms. Aflak submitted the report.

8. Exhibit 6 showed that Appellant does have a history of filing required reports in a timely manner and that Appellant typically files required reports several weeks prior to the due date.

#### 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 for its report by February 14, 2023 and whether the penalty should be waived in whole or in part.

2. Under Health and Safety Code section 128770, subsection (c), a penalty may "be reviewed on appeal, and the penalty may be reduced or waived for good cause." In *Waters v.*

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<sup>7</sup> Exhibit A.

<sup>8</sup> Exhibit B.

*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>9</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>10</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>11</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>12</sup>

3. A party’s diligence is a factor in determining good cause for an extension or a delay.<sup>13</sup> Appellant has shown a history of submitting its’ Hospital Quarterly Financial and Utilization Report several weeks prior to the deadline.<sup>14</sup> Here, the substantiated facts show that the Chief Financial Officer is responsible for submitting the Hospital Quarterly Financial and Utilization Report on behalf of the Appellant. Ms. Aflak had filled that position and submitted the report on behalf of Appellant since 1998. Ms. Aflak resigned as Chief Financial Officer in December of 2022, leaving Appellant without anyone to file the report on its behalf. This context explains why Appellant was unable to file the report early, as it had historically.

4. The substantiated facts further demonstrate that the Appellant rehired Ms. Aflak as Chief Financial Officer on February 1, 2023, approximately two weeks before the deadline to file the

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<sup>9</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

<sup>10</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>11</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, 2022]. See also *Waters, supra*, 58 Cal.2d 885, 893.

<sup>12</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

<sup>13</sup> *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.

<sup>14</sup> Exhibit 6.

report. Appellant demonstrated diligence in successfully filling the vacant position with sufficient time to either file the report or request an extension.

5. The substantiated facts also demonstrate that Ms. Aflak fell ill on February 6, 2023, 8 days before the report was due. Ms. Aflak's illness was serious enough to warrant a visit to urgent care on February 13, 2023.<sup>15</sup> Ms. Aflak was ill until February 15, 2023, at which point she promptly submitted the report, one day after the deadline.

6. Courts and administrative bodies have often found that hospitalization may constitute good cause.<sup>16</sup> Here, Ms. Aflak, who was responsible for submitting the report, was ill enough to be hospitalized for the week prior to the reporting deadline.<sup>17</sup> Because of the vacancy in the Chief Financial Officer position during the month of January, Ms. Aflak's illness accounted for 8 of the 14 days available to Appellant to timely submit the report or file an extension. Based on Appellant's prior reporting history and that the report was submitted upon Ms. Aflak's return, it is likely that Appellant would have timely submitted the report prior to the deadline but for Ms. Aflak's illness.<sup>18</sup>

7. The substantiated facts demonstrate that Appellant was impacted by circumstances clearly outside its control and acted with due diligence under the circumstances and with reasonable haste. Therefore, the substantiated facts show good cause for waiver of the penalty assessed.

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<sup>15</sup> Exhibit B.

<sup>16</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, 2022]. See also *Waters, supra*, 58 Cal.2d 885, 893.

<sup>17</sup> Exhibit B.

<sup>18</sup> See exhibit 6.

PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: June 30, 2023

//original signed//  
JOHN GRAY  
Hearing Officer  
Department of Health Care Access and Information

DECISION

Pursuant to Health and Safety Code section 128775, after due consideration of the record,  
the Proposed Decision is:

Accepted

Rejected

Dated: July 6, 2023

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