

PROCEDURAL FINDINGS

1. On June 28, 2023, HCAI assessed a penalty against Appellant in the amount of \$4,200 for its delinquent Hospital Quarterly Financial Utilization Report for report period (RPE) 3/31/2023.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated July 3, 2023 and received by the HCAI Hearing Office on July 3, 2023.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.²
4. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 11 were found to be authentic and relevant and admitted to the record.
5. Appellant did not submit written exhibits to the Hearing Office and HCAI in advance of the hearing. Appellant submitted a letter explaining the circumstances surrounding the delinquent report as Exhibit A on September 26, 2023. Appellant submitted an email indicating that the former Controller's last day of work was January 9, 2023 as Exhibit B on September 26, 2023. 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 128770 to file RPE 3/31/2023 by May 15, 2023.³ Penalties accrued from May 15, 2023 until June 26, 2023 when an extension was requested.
2. The report was filed on June 26, 2023.⁴
3. In accordance with Health and Safety Code section 128770, subsection (a), HCAI assessed penalties in the amount of \$100 per day for 42 days, resulting in a total penalty amount

² Health & Saf. Code, § 128770.

³ Exhibit 9.

⁴ Exhibit 11.

of \$4,200.⁵ These facts were substantiated both by oral statements made under oath by Ty Christianson at the hearing and written exhibits.

4. Appellant submitted a written statement on September 26, 2023 and made oral statements of facts it believes show good cause why its report was not submitted in a timely manner.

5. Appellant stated that the employee responsible for submitting the reports left the company on January 9, 2023.⁶ Appellant further stated that the reminder and delinquency emails were sent to the defunct email address of the former employee and were not received by the facility.⁷ Appellant explained that the initial delinquency letter sent by courier to the facility was put in the Controller's office but was not reviewed as the Controller worked remotely.⁸

Appellant further explained that the second delinquency letter was reviewed by the CEO on June 26, 2023 at which point an extension was filed.⁹ These facts were substantiated by oral statements made under oath by Melissa Campbell at the hearing. Written exhibits were provided to the Hearing Officer and HCAI on September 26, 2023, after the hearing.

6. Ms. Campbell further testified that she was serving as the Controller only in a temporary capacity, which is why she worked remotely and did not see the initial delinquency letter.

7. Neither HCAI nor Appellant offered additional testimony. The initial statements of both parties were not rebutted.

8. Exhibit 11 showed that Appellant does have a history of filing required reports in a timely manner.

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 request an extension for its report by May 15, 2023 and whether the penalty should be waived in whole or in part.

⁵ Health & Saf. Code, § 128770.

⁶ Exhibit A.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

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. 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.”¹⁰ 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.¹¹ 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.¹² 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.¹³

3. A party’s diligence is a factor in determining good cause for an extension or a delay.¹⁴ Here, the substantiated facts show that Appellant did not act diligently in transitioning their Controller. The facility had a staff position responsible for filing the report. That staff position was filled at the time that the report at issue was due. The facility’s transition plan did not adequately notify the new Controller of her duty to file the report, despite having over four months to do so. This constitutes a lack of diligence, not good cause for failing to file.

4. The substantiated facts also demonstrate that the Appellant did not receive the reminder emails or the initial delinquency email as the emails were sent to a former employee’s email

¹⁰ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

¹¹ *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].

¹² 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.

¹³ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

¹⁴ *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.

address.¹⁵ However, these emails are sent by HCAI as a courtesy and are not mandated by statute. Statutorily, the requirement to file the report does not depend on receipt of a reminder email by the facility. It is ultimately the responsibility of the facility to file the report. The facility had actual notice of their duty to file these reports quarterly as evidenced by their past timely filings of reports.¹⁶ Non-receipt of the courtesy emails does not serve as good cause for failure to file the report.

5. The substantiated facts do not demonstrate that Appellant was impacted by circumstances clearly outside its control and did not act with due diligence under the circumstances and with reasonable haste. Therefore, the substantiated facts do not show good cause for waiver of the penalty assessed.

//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//

¹⁵ Exhibit A.
¹⁶ Exhibit 11.

PROPOSED ORDER

The assessed penalty is upheld.

Dated: 10/17/2023

//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: 11/20/23

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