

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

In the Matter of the Penalty Issued to:

HILTON MANOR, LLC

Appellant.

HCAI No. 23-010-LTC

PROPOSED DECISION

This matter was heard before John Gray, Hearing Officer, Department of Health Care Access and Information (“HCAI”), State of California, on September 21, 2023 beginning at 10:30 A.M.

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.

Hilton Manor, LLC,¹ “Appellant,” was represented by Ellee Posner, Operations Manager.

Both documentary and testamentary evidence was received. The matter remained open until September 29, 2023 to allow the parties to file additional information. The matter was submitted for decision and the record was closed on September 29, 2023 at 9:40 A.M.

PROCEDURAL FINDINGS

¹ Department of Public Health, CalHealth Find Database
<https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=630016751> (last accessed October 26, 2023).

1. On June 28, 2023, HCAI assessed a penalty against Appellant in the amount of \$5,100 for its delinquent Long Term Care Annual Disclosure Report for report period (RPE) 12/31/2022.
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 6, 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 12 were found to be authentic and relevant and admitted to the record. Additionally, HCAI submitted written exhibits on September 21, 2023 after the hearing at the request of the Hearing Officer. Exhibits 13 and 14 were found to be authentic and relevant and admitted to the record.
5. Appellant submitted a written exhibit to the Hearing Office and HCAI in advance of the hearing in a timely manner. Appellant submitted a letter explaining the circumstances surrounding the delinquent report as Exhibit A. Exhibit A was 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 12/31/2022 by April 30, 2023.³ Penalties accrued from April 30, 2023 until June 20, 2023.
2. The report was filed on June 20, 2023 by emailing the report to HCAI staff.⁴

² Health & Saf. Code, § 128770.

³ Exhibit 13.

⁴ Exhibit 11.

3. In accordance with Health and Safety Code section 128770, subsection (a), HCAI assessed penalties in the amount of \$100 per day for 51 days, resulting in a total penalty amount of \$5,100.⁵

4. HCAI sent a reminder email to Appellant on Wednesday, April 5, 2023 that the report was coming due.⁶ HCAI sent another reminder email to Appellant on April 20, 2023.⁷ HCAI sent a final reminder email to Appellant on April 29, 2023.⁸ HCAI sent an initial delinquency email to Appellant on May 3, 2023.⁹ HCAI also sent a delinquency letter to Appellant on May 3, 2023.¹⁰ The delinquency letter was received by the facility on May 4, 2023.¹¹ HCAI sent a second delinquency letter to Appellant on June 2, 2023.¹² The letter was received by the facility on June 6, 2023.¹³

5. HCAI received a text file submission from Eleanor Posner on May 5, 2023.¹⁴ However, the submission only included the first tab of the report submitted.¹⁵

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

7. Mr. Christensen testified that the SIERA submission portal typically only converts the first tab of an Excel file to a .TXT file when the file is submitted as a .TXT file.

8. Mr. Christensen also testified that HCAI does not see when a facility attempts to submit a report unless the report is submitted successfully.

9. Mr. Christensen further testified that Long Term Care Facilities are not required to submit the annual report through the SIERA portal and can submit the report via email to HCAI staff if the facility chooses not to purchase the software required to access the SIERA portal.

⁵ Health & Saf. Code, § 128770.

⁶ Exhibit 1.

⁷ Exhibit 2.

⁸ Exhibit 3.

⁹ Exhibit 4.

¹⁰ Exhibit 5.

¹¹ Exhibit 6.

¹² Exhibit 9.

¹³ Exhibit 10.

¹⁴ Exhibit 7.

¹⁵ Exhibit 8.

10. Appellant submitted a written statement prior to the hearing and made oral statements of facts it believes show good cause why its report was not submitted in a timely manner.

11. Appellant stated that the SIERA reporting portal did not accept the report when Ellee Posner attempted to upload it.¹⁶ Appellant further stated that Ms. Posner contacted HCAI staff after receiving the penalty letters and that HCAI staff informed her that HCAI does not get notified when a facility attempts to upload documents and the SIERA system rejects the upload. These facts were substantiated by oral statements made under oath by Ellee Posner at the hearing. Written exhibits were provided to the Hearing Officer and HCAI prior to the hearing in a timely manner.

12. Ms. Posner testified that the facility was a family run business, operated by her mother, and that she had been responsible for submitting the report for the past three years. The facility has only 6 beds and no other staff outside of nurses for the patients. Ms. Posner testified that she had begun nursing school in January of 2023 and had moved to only working for the facility part time during the school year. She testified that she handles the reporting requirements for the facility.

13. Ms. Posner stated that she attempted to submit the report via the SIERA portal on May 4, 2023. She further testified that she had successfully submitted the report via the SIERA portal in the past, but that the portal did not accept the report in the usual submission manner this year. She testified that she received an error message when attempting to submit the report as an Excel file. She testified that she was able to submit the report as a .TXT file. She testified that she believed that she had submitted the report successfully at that time.

14. Ms. Posner also testified that, while the facility received the second delinquency letter on June 6, 2023 she was not made aware that the report was submitted incorrectly until she returned from school on June 20, 2023.

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

¹⁶ Exhibit A.

16. Exhibit 12 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 April 30, 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. 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.”¹⁷ 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.¹⁸ 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.¹⁹ 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.²⁰

¹⁷ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

¹⁸ *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].

¹⁹ 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.

²⁰ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

3. There are three relevant time periods to consider when analyzing good cause for a reduction or waiver of the penalty. First is between when the report was due, on April 30, 2023, and when Ms. Posner attempted to submit the report via the SIERA portal, on May 5, 2023. Second is the period between when Ms. Posner attempted to submit the report via the SIERA portal, on May 5, 2023 and when the facility received the second penalty letter, on June 6, 2023. The third period to consider is between when the facility received the second penalty letter, on June 6, 2023 and when the report was ultimately submitted on June 20, 2023.

4. Regarding the first period, between April 30, 2023 and May 5, 2023, Appellant has not presented any evidence of good cause for a reduction. Appellant received multiple notices of the report's due date and makes no argument that it did not receive sufficient notice. However, Government Code section 6707 states that "When the last day for filing any instrument or other document with a state agency falls upon a Saturday or holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed." Government Code section 6700(a)(1) states that every Sunday is considered a holiday in the state of California. In this case, the reporting deadline fell on April 30, 2023, which was a Sunday. Thus, the effective deadline for filing the report should fall on the following business day, May 1, 2023. The penalty associated with this period is therefore reduced from \$500 to \$400.

5. Regarding the second period, between May 5, 2023 and June 6, 2023, Appellant has shown good cause for a waiver of the penalty. On May 5, 2023, Ms. Posner attempted to submit the report by uploading it to the SIERA portal as a .TXT file. The SIERA system did not notify Ms. Posner that the report was submitted in an insufficient format. As Ms. Posner reasonably believed that the report was submitted correctly, Appellant did not have notice that the report remained outstanding until at least June 6, 2023 when the facility received the second delinquency letter. As lack of notice is sufficient justification for good cause, the penalty is waived for the period between May 5, 2023 and June 6, 2023.

6. While the facility received the delinquency notice on June 6, 2023, Ms. Posner credibly claimed that she was away at school when the letter was received and was unable to properly address the matter. When she came back from school, she submitted the report. Here, the

facility in question was a family owned and operated business, where the person in charge of report submittal had recently shifted to part time work to accommodate her school schedule. Based on the size of the facility, Appellant did not have the financial resources available to hire another person to submit the reports and reasonably relied on Ms. Posner's submission to satisfy the reporting requirements.

7. A party's diligence is a factor in determining good cause for an extension or a delay.²¹ Here, Appellant has demonstrated a consistent record of timely reporting in the past. Given the totality of the circumstances, a waiver of the penalty during the period from June 6 to June 20, where Appellant had constructive notice but not actual notice of the reporting deficiency, is warranted.

8. The substantiated facts do 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 reduction of the penalty assessed from \$5,100 to \$400.

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²¹ *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 penalty is waived in part.

Dated: June 7, 2024

//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: June 17, 2024

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