

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

In the Matter of the Penalty Issued to:

**HOAG MEMORIAL HOSPITAL
PRESBYTERIAN AND HOAG
ORTHOPEDIC INSTITUTE**

Appellant.

HCAI No. 23-014C-SDR

PROPOSED DECISION

This matter was heard before John Gray, Hearing Officer, Department of Health Care Access and Information (“HCAI”), State of California, on February 7, 2024 beginning at 10:31 A.M.

HCAI was represented by Alma Lopez, Manager, Hospital Disclosure Compliance section.

Hoag Memorial Hospital Presbyterian¹ and Hoag Orthopedic Institute,² “Appellant,” were represented by Binh Pham, Executive Director of Supply Chain.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on February 7, 2024 at 11:04 A.M.

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¹ Department of Public Health, CalHealth Find Database [Facility Detail \(ca.gov\)](#) (last accessed June 7, 2024).

² Department of Public Health, CalHealth Find Database [Facility Detail \(ca.gov\)](#) (last accessed June 7, 2024).

PROCEDURAL FINDINGS

1. On October 3, 2023, HCAI assessed a penalty against Appellant for each facility in the amount of \$300 for its delinquent Hospital Supplier Diversity Reports for report period (RPE) 12/31/2022 for a total of \$600.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated October 27, 2023 and received by the HCAI Hearing Office on November 2, 2023.
3. Appellant requested the consolidation of the two appeals at the time of appeal. No party objected to the consolidation request and the consolidation was approved by the Hearing Office.
4. Appellant did not submit its appeals within the required fifteen business days from receipt of the penalty letters.³
5. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 34 were found to be authentic and relevant and admitted to the record.
6. 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 1339.87 to file RPE 12/31/2022 by July 1, 2023 for each facility.⁴ An extension was filed by Appellant extending the deadline to file the RPE 12/31/2022 to August 1, 2023.⁵ Penalties accrued from August 1, 2023 until August 4, 2023.

³ Health & Saf. Code, § 128770.

⁴ Exhibit 5 and 19.

⁵ Exhibits 1 and 15.

2. The report was filed on August 4, 2023.⁶
3. In accordance with Health and Safety Code sections 1339.87 and 128770, subsection (a), HCAI assessed penalties in the amount of \$100 per day for 3 days for each facility, resulting in a total penalty amount of \$600.⁷
4. HCAI sent reminder emails to Appellant on Tuesday, June 6, 2023 that the reports were coming due.⁸ HCAI sent another set of reminder emails to Appellant on June 21, 2023 that the reports were coming due.⁹ HCAI sent another set of reminder emails to Appellant on June 30, 2023 that the reports were coming due.¹⁰
5. Appellant filed extension requests for each facility, extending the deadline to submit to August 1, 2023.¹¹ HCAI sent another set of reminder emails to Appellant on July 7, 2023.¹² HCAI sent another set of reminder emails to Appellant on July 22, 2023.¹³ HCAI sent a final set of reminder emails to Appellant on July 31, 2023.¹⁴
6. Appellant attempted to submit a consolidated report for both facilities on July 31, 2023.¹⁵ Ms. Lopez testified that she left a voicemail with Appellant after the submission of the consolidated report, explaining that the reports needed to be submitted individually.
7. HCAI sent Appellant delinquency notifications on August 2, 2023 via email.¹⁶
8. Appellant submitted the reports on August 4, 2023.¹⁷ HCAI issued a penalty notice to each facility of \$300 each.¹⁸ The penalty letter was delivered to the facility on October 5, 2023.¹⁹

⁶ Exhibits 11 and 25.

⁷ Health & Saf. Code, §§ 1339.87 and 128770.

⁸ Exhibits 1 and 15.

⁹ Exhibits 2 and 16.

¹⁰ Exhibits 3 and 17.

¹¹ Exhibits 5 and 19.

¹² Exhibits 6 and 20.

¹³ Exhibits 7 and 21.

¹⁴ Exhibits 8 and 22.

¹⁵ Exhibit 9.

¹⁶ Exhibits 10 and 23.

¹⁷ Exhibit 11 and 24.

¹⁸ Exhibit A.

¹⁹ Exhibit 26.

9. Ms. Lopez testified that Appellant had been notified on October 11, 2022 that individual reporting was required for the 2021 reporting period. This communication was logged at the time by HCAI in a Microsoft Excel spreadsheet.²⁰ Ms. Lopez testified that Mr. Pham successfully submitted the reports individually on behalf of both facilities in 2022.

10. These facts were substantiated both by oral statements made under oath by Alma Lopez at the hearing and written exhibits.

11. Mr. Pham testified on behalf of the Appellant. Mr. Pham stated that the reason for the delay in submitting the individual reports was that the voicemail left by HCAI notifying Appellant of its inadequate submissions was left to another employee of Appellant rather than to Mr. Pham. Mr. Pham stated that when he learned of the voicemail, he took prompt action, contacting HCAI to clarify what was needed to correct the submission and making the necessary changes.

12. Ms. Lopez then testified that Mr. Pham had spoken to another HCAI staff member and that she could not testify as to what was discussed.

DISCUSSION AND LEGAL CONCLUSIONS

1. The issue here is whether Appellant had good cause, as required by Health and Safety section 128770,²¹ for failing to file its report by July 29, 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

²⁰ Exhibit 34

²¹ See Health and Safety Code § 1339.87(c), stating that an appeal to a penalty assessed under the section shall be subject to the remedies provided by Health and Safety Code §§ 128770 and 128775.

excused.”²² 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.²³ 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.²⁴ 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.²⁵

3. Appellant submitted a consolidated report for both facilities in a timely manner on July 31, 2023. However, Appellant was required to submit an individual report for each facility.²⁶

4. Appellant’s only argument for a good cause reduction of the penalties is that it did not know that the reports were supposed to be submitted individually. The only question at issue then, is whether Appellant had adequate notice of their insufficient report submissions. Appellant was informed in October of 2022, nine months prior to the original deadline to submit the reports at issue, that the reports needed to be submitted individually. At that time, Appellant successfully submitted the reports for each facility individually for the 2021 reporting period. These facts demonstrate that Appellant had notice that a consolidated report was insufficient.

5. These facts do not demonstrate that Appellant was impacted by circumstances clearly outside its control. Therefore, the substantiated facts do not show good cause for reduction of the \$300 penalties assessed to each facility.

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²² *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*);

²³ *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].

²⁴ 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.

²⁵ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

²⁶ California Code of Regulations, Title 22, Division 7, § 95003(b).

PROPOSED ORDER

The assessed penalty is upheld.

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 1339.87, after due consideration of the record, the Proposed Decision is:

Accepted

Rejected

Dated: June 26, 2024

//original signed//

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