

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

In the Matter of the Penalty Issued to:

MAYERS MEMORIAL HOSPITAL

Appellant.

HCAI No. 24-006-EDD

PROPOSED DECISION

This matter was heard before Michelle Church-Reeves, Hearing Officer, Department of Health Care Access and Information (“HCAI”), State of California, beginning on Wednesday, July 10, 2024 at 1:29 PM PDT.

HCAI was represented by Anthony Tapney, Manager, Patient Data Section. Nancy Chea, Associate Governmental Program Analyst, Patient Data Section was also present on behalf of HCAI.

Mayers Memorial Hospital District, owner and operator of Mayers Memorial Hospital,¹ collectively, “Appellant,” was represented by Travis Lakey, Chief Financial Officer. Lori Gibbons, RHIT, Health Information Manager, was also present on behalf of Appellant.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on July 10, 2024 at 1:58 PM PDT.

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¹ Department of Public Health, CalHealth Find Database
<https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=230000009> (last accessed July 10, 2024).

PROCEDURAL FINDINGS

1. On January 25, 2024, HCAI assessed a penalty against Appellant in the amount of \$4,400 for its delinquent Emergency Department Patient Data Report.²
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated February 1, 2023 [sic] and received by the HCAI Hearing Office on February 5, 2024.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.³
4. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 9 were found to be authentic and relevant and admitted to the record.
5. Appellant submitted a letter of explanation to the Hearing Office and HCAI at the time of appeal. The letter was found to be authentic and relevant and was supported by credible testimony during the hearing.

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code sections 128736 and 128755 to file or request an extension for the Emergency Department Patient Data Report for the Report Period Ending (“RPE”) date September 30, 2023 by Tuesday, November 14, 2023.⁴
2. On or about Thursday, November 9, 2023, Appellant requested and received its sole available extension.⁵ Following the approval of the extension, Appellant was required to file the report at issue by Tuesday, November 28, 2023.⁶
3. The report was filed on Thursday, January 11, 2024.⁷

² Health & Saf. Code, § 128770. *See also* exhibit 7.

³ Health & Saf. Code, § 128775. *See also* Cal. Code Regs. Tit. 22, § 97052.

⁴ Health & Saf. Code, § 128755(d). *See also* Cal. Code Regs. Tit. 22, §§ 97211, 97241 and exhibit 1.

⁵ Exhibit 4.

⁶ Health & Saf. Code, § 128770. *See also* Cal. Code Regs. Tit. 22, § 97241 and exhibit 4.

⁷ Exhibit 5.

4. In accordance with Health and Safety Code section 128770, subsection (a), HCAI assessed penalties in the amount of \$100 per day for 44 days, resulting in a total penalty amount of \$4,400.⁸ These facts were substantiated both by oral statements made under oath by Mr. Tapney at the hearing and written exhibits.

5. Appellant submitted a written statement with its appeal and made oral statements of facts it believes show good cause why the report at issue was not submitted in a timely manner.

6. In its written statement, Appellant stated that the new Electronic Medical Records (“EMR”) system was implemented on September 18, 2023 and the data from September 18 to September 30, 2023, was not available until after the extended reporting deadline.

7. Mr. Lakey testified that he has worked for Appellant for fourteen years and had an on-time filing record both prior to the report at issue and since. Testimony and HCAI’s exhibit 9 show that all data that was available on Tuesday, November 28, 2023, was uploaded to the System for Integrated Electronic Reporting and Auditing (“SIERA”). However, because almost two weeks of data were missing, the report was incomplete and could not be submitted.⁹

8. Mr. Lakey further testified that Appellant intended to make the switch to its new vendor, Cerner, at the start of the quarter, July 1, 2023, to avoid any potential disruption to its reporting, but the contractor was unable to complete the install until September 18, 2023. He further testified that the previous EMR vendor had been through three sales and the updates for the clinical modules were becoming fewer and fewer, causing the clinical staff to lose confidence in the system’s capabilities. This caused Appellant to select a new EMR vendor, Cerner, and go through the process of switching to the new system even with the installation delays. However, there were issues following the switch on September 18, 2023, the major one being the inability to export the data and merge the two reports needed to file the report at issue in a timely manner.

9. Credible testimony substantiated that Appellant filed help tickets with the vendor’s support staff and worked to get the data needed to file the report. Correspondence demonstrated that on December 4, 2023, Appellant was waiting for its vendor to “finish building the report

⁸ Health & Saf. Code, § 128770.

⁹ *See also* exhibit 9.

format so that we can run the report out of the new system.” Appellant sent the “aliasing workbook” to its vendor for processing on Thursday, December 7, 2023.¹⁰ On Wednesday, December 20, 2023, a representative for Appellant was making updates or corrections for the report at issue to send back over to its vendor and requested a Teams call with HCAI. Appellant sent the information to the vendor team to “help them in structuring their reports better in the future so other hospitals don’t have to deal with all of the bumps that we have had.”¹¹

Correspondence also indicated that the vendor might not finalize the data for the report at issue until after January 1, 2024 due to planned holiday closures. Upon obtaining the data, the report at issue was updated and filed.¹²

10. These facts were substantiated by oral statements made under oath by Mr. Lakey at the hearing. The written statement was provided to the Hearing Officer and HCAI in a timely manner prior to the hearing.

11. Additional corrections were required following the upload of the report as some records, specifically involving those patients who were transferred from the Emergency Department to inpatient, were separately reported on the report at issue and not properly merged.¹³ The corrections were made on or about January 12, 2024, but did not impact the filing date of the report at issue. Following receipt of the Penalty Notice, a representative of Oracle, the owner of Cerner, the EMR vendor, called HCAI on or about February 6, 2024 to explain that the facility’s EMR system switch had caused the delay.¹⁴

12. Exhibit 9 showed that Appellant contacted HCAI prior to the deadline and communicated the issues it was experiencing with its data. HCAI representatives did not dispute Appellant’s testimony that it has a history of filing required reports in a timely manner. However, HCAI staff testified that the quarterly timelines are vital for processing and publishing the consolidated data sets each quarter and that Appellant was in danger of missing the quarterly submission entirely. //

¹⁰ Exhibit 9, page 18.

¹¹ Exhibit 9, page 12.

¹² See also exhibit 9.

¹³ Exhibit 9, pages 3 - 4.

¹⁴ Exhibit 9, page 2.

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 November 28, 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.”¹⁵ 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.¹⁶ 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.¹⁷ 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.¹⁸
3. A party’s diligence is a factor in determining good cause for an extension or a delay.¹⁹ Appellant has shown a history of submitting its’ reports timely.²⁰ Here, the substantiated facts show that the necessary records were unavailable to Appellant in a timely manner to file its

¹⁵ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

¹⁶ *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].

¹⁷ 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.

¹⁸ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

¹⁹ *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.

²⁰ Exhibit 6.

report. However, the decision to change EMR providers which resulted in the unavailability of the records was within the control of Appellant. Appellant relied upon its new EMR provider to its detriment. While the substantiated facts support the reasonable business decision to not delay the switch due to the status of the previous vendor, it appears there were additional steps Appellant could have taken to ensure the reporting would not have been delayed such as utilizing its previous system until September 30, 2023 or further testing of the new EMR system following the installation. It appears that both Appellant and its vendor underestimated the necessary adjustments and the time necessary to prepare the report for submission, a mistake, not good cause.

4. The substantiated facts also demonstrate that Appellant’s vendor did not install the EMR system with the functionality required. While this was out of Appellant’s direct control, it was still Appellant’s decision. The substantiated facts show that the data was available in some form on or about December 7, 2023 when Appellant sent the aliasing workbook over to its vendor for processing, nine days after the extended deadline. It is clear from the correspondence contained in exhibit 9 that Appellant spent a large portion of the month of December working with its vendor to finalize the report. While some delay was reasonable under the circumstances due to the complexity of the report and the necessity of merging two reports from two EMR systems,²¹ the substantiated facts do not directly address why it took nearly two weeks to request further assistance from HCAI on or about December 20, 2023, nor why submitting the final report took an additional 21 days following that meeting. And the substantiated facts further show that approximately one week of the delay after that point was due to the vendor’s holiday schedule, which is not good cause.

5. The substantiated facts further demonstrate that the Appellant contacted HCAI prior to

²¹ Unlike congregate living health facilities, which submit their annual report as an emailed spreadsheet in accordance with Tit. 22, Cal. Code Regs. § 97041(c), hospitals must submit a software-based report through SIERA. In addition, HCAI requires that the report submitted through SIERA be one facility, and one reporting period in accordance with Tit. 22, Cal. Code Regs. §§ 97215, 97244. *See also* Department of Health Care Access and Information, “ED and AS Format and File Specifications for Online Transmission” (Nov. 2022) <https://hcai.ca.gov/wp-content/uploads/2022/12/ED-AS-format-and-file-specs-jan-2023.pdf> [as of July 31, 2024].

PROPOSED ORDER

The assessed penalty is reduced for good cause. \$2,100 of the penalty is upheld.

Dated: August 9, 2024

//original signed//
MICHELLE CHURCH-REEVES
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: 8/12/2024

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