

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

In the Matter of the Penalty Issued to:	}	
REHABILITATION HOSPITAL OF SOUTHERN CALIFORNIA	}	HCAI No. 24-007-HQF
Appellant.	}	
	}	
	}	
	}	
	}	
	}	
	}	
	}	
	}	

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 17, 2024, at 1:30 PM 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.

Rehabilitation Hospital of Southern California, LLC, owner and operator of Rehabilitation Hospital of Southern California,¹ collectively, “Appellant,” was represented by Crystal West, Field Finance CFO for Ernest Health.

Both documentary and testamentary evidence was received. The hearing concluded on July 17, 2024, at 1:53 PM PDT. The record was held open until July 17, 2024, at 2:34 PM PDT for HCAI and Appellant to submit additional requested documentation.

¹ Department of Public Health, CalHealth Find Database
<https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=630017654> (last accessed July 17, 2024).

PROCEDURAL FINDINGS

1. On March 7, 2024, HCAI assessed a penalty against Appellant in the amount of \$900 for its delinquent Hospital Quarterly Financial Report.²
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated March 13, 2024, and received by the HCAI Hearing Office on March 14, 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 10 were found to be authentic and relevant and admitted to the record. Appellant had no objection to admitting exhibit 10 late.
5. Appellant submitted a letter of explanation to the Hearing Office and HCAI at the time of appeal. Exhibits A through D were found to be authentic and relevant and admitted to the record. HCAI had no objection to admitting late exhibits B through D.

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128770 to file or request an extension for its Hospital Quarterly Financial Utilization Report for the Report Period Ending (“RPE”) date December 31, 2023 by Wednesday, February 14, 2024.⁴
2. HCAI sent automated reminders to Appellant via email on Sunday, February 4, 2024,⁵ and Tuesday, February 13, 2024.⁶ A delinquent report reminder was automatically emailed to Appellant on Saturday, February 17, 2024.⁷
3. On Friday, February 23, 2024, an initial delinquency letter dated February 22, 2024 was

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, § 128770. *See also* Cal. Code Regs. Tit. 22, §§ 97051.

⁵ Exhibit 1.

⁶ Exhibit 2.

⁷ Exhibit 3.

delivered to Appellant at the facility location via General Logistics Systems mail.⁸

4. Penalties accrued from Wednesday, February 14, 2024 until Friday, February 23, 2024 when the report was filed.⁹

5. In accordance with Health and Safety Code section 128770, subsection (a), HCAI assessed penalties in the amount of \$100 per day for nine days, resulting in a total penalty amount of \$900.¹⁰ These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

6. Appellant submitted exhibits 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.

7. In its written statement Appellant stated that it experienced a massive IT breach within Ernest Health's systems on or about February 1, 2024.¹¹ All systems were shut down to prevent the criminals from accessing further systems while the breach was repaired. Appellant's representatives did not have access to email, accounting, calendars, and most other software for approximately two weeks. After this initial lockdown period, systems were slowly reconnected to the network after their security was verified. Full restoration of all systems was not completed until on or about April 2, 2024, sixty-two days later.

8. Ms. West testified that the network systems were protected by a firewall and antivirus software. In addition, she used an approved password manager to store her credentials for accessing HCAI's System for Integration Electronic Reporting and Auditing ("SIERA"). After the cyberattack, she could not perform an automated password reset as the SIERA account was linked to her work email, which she was unable to access during this period. She further testified that because Ernest Health manages facilities in thirteen states with varying deadlines, she uses her work calendar to track the varying report due dates, but she was unable to access her calendar during this time.¹² Similarly, the automated reminder emails from SIERA were unable to be read due to the lack of access to her work email.

⁸ Exhibits 4 and 5.

⁹ Exhibit 6.

¹⁰ Health & Saf. Code, § 128770.

¹¹ Exhibit A.

¹² *See also* Exhibits B and 9.

9. Ms. West further testified that Appellant was overwhelmed and simply unaware of the upcoming deadline due to the totality of circumstances surrounding the criminal activity. Once the delinquency notice was received by Appellant on February 23, 2024, Ms. West immediately called HCAI staff to have the SIERA account access linked to her Gmail and perform a password reset so she could access the system and submit the report.¹³ Appellant did have an extension available, but rather than requesting the extension, Appellant chose to finalize and upload the report at issue that same day.

10. The exhibits demonstrated that the criminals which attacked Appellant's systems were sophisticated and well-resourced. Operation Cronos targeted the criminal group responsible for the attack on Appellant, LockBit¹⁴. The multinational operation, led by the United Kingdom National Crime Agency, seized 34 servers and over 200 cryptocurrency accounts on or about February 19, 2024.¹⁵ In addition, Exhibit D showed that cyberattacks against hospitals increased from 25 in 2022 to 46 in 2023, and that number is expected to continue to grow.

11. These facts were substantiated by oral statements made under oath by Ms. West at the hearing as well as written exhibits.¹⁶ The written statement was provided to the Hearing Officer and HCAI in a timely manner prior to the hearing.

12. Exhibit 9 showed that Appellant has 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 file for its report or request an extension by Wednesday, February 14, 2024, 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

¹³ See also Exhibit 10.

¹⁴ Exhibits B and C.

¹⁵ Exhibit B.

¹⁶ Exhibits A, B, C, and D.

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

3. A party’s diligence is a factor in determining good cause for an extension or a delay.²¹ Appellant has shown a history of submitting its’ reports timely.²² Here, the substantiated facts show that Appellant was locked out of multiple network systems as a direct consequence of criminal activity. In addition, once Appellant realized the report was overdue, they took immediate action to regain account access to SIERA and file the report at issue. This further supports the assertion that they were prepared to file the report and would have been able to file timely if not for the criminal activity.

4. Criminal activity is clearly outside the reasonable control of Appellant. However, Appellant must still take reasonable precautions to combat criminal activity. The substantiated

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.

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.

²² Exhibit 9.

PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: August 14, 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: 8/26/2024

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