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

In the Matter of the Penalty Issued to:

HCAI No. 24-024-LTC

JUNIPER MANOR, LLC,
Appellant.

AMENDED DECISION¹

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This is the final decision of the California Department of Health Care Access and Information (HCAI) regarding the penalty of \$5,100 assessed against Appellant Juniper Manor, LLC, (HCAI ID No. 206360025) on or about June 28, 2023 for filing its 2022 Long-term Care Facility (LTC) Annual Financial Report 51 days late.

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After reviewing the record, HCAI determines that there is good cause to reduce the penalty from \$5,100 to \$1,700.

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I.

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PENALTY AND APPEAL BACKGROUND

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Appellant is a licensed Congregate Living Health Facility, which is required to file an LTC Annual Financial Report with HCAI under Health and Safety Code section 128735 and California Code of Regulations (CCR), title 22, section 97040. Such annual reports must be filed within four months after the facility's fiscal year under Health and Safety Code section 128755(b).

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For Appellant, the deadline to file its 2022 LTC Annual Financial Report was April 30, 2023

¹ The Decision was amended because of a mistake regarding the name of Appellant's representative. Instead of "Ellee Posner," the Decision mistakenly referred to Appellant's Representative as "Eleanor Posner". Eleanor Posner appears to be a different individual. (*See* the Hilton Manor, LLC Appeal Form, listing "Eleanor Posner" as Administrator and "Ellee Posner" as the Facility Representative.)

1 because its fiscal year ended on December 31, 2022. Appellant completed its filing of its 2022 LTC
2 Annual Financial Report on June 20, 2023, which was 51 days after April 30, 2023. (Respondent's
3 Exhibit 12, HCAI Notice of Penalty to Appellant.)

4 Per Health and Safety Code section 128770(a), there is a penalty of \$100 a day for each day
5 the report is late. Based on this, HCAI assessed a penalty of \$5,100 against Appellant on June 28,
6 2023. (Respondent's Exhibit 12, HCAI Notice of Penalty to Appellant.)

7 Pursuant to Health and Safety Code section 128775, Appellant appealed the penalty to
8 HCAI.

9 II.

10 RELATED APPEAL

11 Appellant's representative for this penalty appeal was Ellee Posner², Operations Manager.
12 At the hearing for this appeal on November 25, 2024, Ms. Posner testified that she worked as the
13 Operations Manager not only for Appellant but several other Congregate Living Health Facilities,
14 including Hilton Manor, LLC, and Blue Jay Manor, LLC.

15 Hilton Manor, LLC, (HCAI ID No. 206364580) also filed its 2022 LTC Annual Financial
16 Report late for the same reasons as Appellant Juniper Manor, LLC, and was assessed the same
17 penalty of \$5,100. Hilton Manor appealed the penalties for its late 2022 report (HCAI Penalty
18 Appeal No. 23-010-LTC), and after a hearing in which Ms. Posner appeared for Hilton Manor on
19 September 21, 2023, HCAI issued a final decision reducing the penalty to \$400.

20 Ms. Posner testified at Appellant's hearing that she thought that the hearing for Hilton Manor
21 included Appellant's appeal. However, it appears that HCAI has no record of a request to
22 consolidate the appeals and the hearing for Hilton Manor was clearly just about Hilton Manor.³

23 Appellant's appeal has the same factual basis as Hilton Manor's appeal⁴ and Appellant
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25 ² All subsequent references to Ms. Posner in this Amended Decision is in regard to Ellee
26 Posner.

27 ³ Based on the transcript for the Hilton Manor appeal, HCAI Penalty Appeal No. 23-010-
28 LTC, the HCAI Hearing Officer made clear that the appeal was just about Hilton Manor and the
Exhibits submitted in that appeal were just for Hilton Manor.

⁴ The appeal letters for Hilton Manor and Juniper Manor (Appellant's Exhibit A) are nearly
the same and Ms. Posner at the November 25, 2024 hearing for Appellant stated that everything that
Appellant submitted was the same as for Hilton Manor.

1 makes the same arguments as Hilton Manor. During Appellant’s hearing on November 25, 2024, the
2 HCAI Hearing Officer looked up the exhibits from the Hilton Manor appeal and the Proposed
3 Decision in this appeal is virtually the same as the final decision for Hilton Manor. For this reason, I
4 considered the record from the Hilton Manor appeal, HCAI Penalty Appeal No. 23-010-LTC, along
5 with the record in this appeal for this decision. However, for the reasons discussed below, I do not
6 come to the same decision as in the Hilton Manor appeal.

7 **III.**

8 **PROCEDURAL HISTORY**

9 On or about November 25, 2024, a hearing was held regarding the \$5,100 penalty in which
10 Appellant was represented by Ellee Posner, Operations Manager. HCAI’s employees, Ty
11 Christensen and Tina Tran, represented Respondent.

12 On January 8, 2025, HCAI Hearing Officer, Michelle Church-Reeves, issued the Proposed
13 Decision in this matter recommending reducing the \$5,100 penalty to \$400. The Proposed Decision
14 is attached to this Decision as Attachment A.

15 On January 14, 2025, as the HCAI Director’s delegate, I issued a Notice of Rejection of the
16 Proposed Decision, partially rejecting the January 8, 2025 Proposed Decision. I gave the parties
17 until the end of January 22, 2025 to present written arguments about the rejection as required by
18 California Code of Regulations, title 22, section 97054(c)(1). As of the date of this Decision, HCAI
19 has not received any written arguments.

20 **IV.**

21 **LEGAL STANDARD**

22 Per Health and Safety Code section 128770(c), HCAI may reduce or waive the penalty
23 against Appellant “for good cause.” “Good cause” is just “a good reason for a party's failure to
24 perform that specific requirement from which he seeks to be excused.” (*Waters v. Superior Court of*
25 *Los Angeles County* (1962) 58 Cal.2d 885, 893.)

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V.

DECISION

A. Penalty Periods

This Decision will use the same penalty periods discussed in the Proposed Decision. The Proposed Decision broke down the penalty in this matter into three periods: (1) from May 1, 2023 through May 5, 2023 (hereinafter the “First Period”); (2) from May 6, 2023 through June 6, 2023 (hereinafter the “Second Period”), and (3) from June 7, 2023 through June 20, 2023 (hereinafter the “Third Period”). (**Attachment A**, page 6, para. 3.)

B. Partial Adoption of Proposed Decision for the First and Second Periods

HCAI adopts the Proposed Decision’s conclusions that there was good cause to reduce the First Period penalty by \$100 from \$500 to \$400 (**Attachment A**, page 6, para. 4) and to fully waive the Second Period penalty of \$3,200 (**Attachment A**, pages 6-7, para. 5).

Thus, for the First and Second Periods, the penalty is reduced from \$3,700 to \$400.

C. No Full Waiver of Penalty for the Third Period

HCAI rejected the Proposed Decision’s conclusion regarding the Third Period because good cause was not established for that period. In other words, there were no reasonable grounds for not filing the 2022 LTC Annual Financial Report on or about June 7, 2023.

The Proposed Decision states that the Third Period penalty should be waived because although Appellant received notice that the report had not been filed on June 6, 2023 at around 5:11 p.m. (**Attachment A**, page 7, para. 5; Respondent’s Exhibits 9 and 10⁵), there was good cause for the delay because Ms. Posner, Appellant’s Operations Manager and the employee who usually submits such reports, “was away at school when the letter was received and was unable to properly address the matter” and that Appellant “did not have the financial resources available to hire another person to submit the report” because “of the size of the facility.”⁶ (**Attachment A**, page 7, para. 6.) These reasons are insufficient to establish good cause for waiver.

⁵ Mr. Christensen testified at Appellant’s hearing about how Exhibit 10 is the delivery certification notification for Exhibit 9 to Appellant.

⁶ This is the same reasoning and conclusion from HCAI’s final decision, dated June 17, 2024, in the Hilton Manor appeal, HCAI Penalty Appeal No. 23-010-LTC.

1 Regarding the first reason, which was an argument made during Appellant’s hearing⁷, Ms.
2 Posner being away when Appellant received the notice on June 6, 2023 does not explain why
3 another official or employee of Appellant did not act in response to the notice while Ms. Posner was
4 away, such as her mother who operated the facility (**Attachment A**, page 4, para. 11)⁸. It is
5 unreasonable that Appellant, if Ms. Posner was completely unavailable, would not have another
6 employee or official monitor and act regarding its legal obligations. There is no explanation of why,
7 if Appellant received the June 2, 2023 Notice (Respondent’s Exhibit 9) on June 6, 2023, Appellant
8 waited until Ms. Posner came back on June 20, 2023 to act on the notice. Furthermore, Ms. Posner
9 testified that another facility, Blue Jay Manor, for which she filed reports, addressed the filing of its
10 annual report without her assistance.⁹ For these reasons, there does not appear to be good cause for
11 the delay in correcting the late report after Appellant received notice of the delinquency on June 6,
12 2023.

13 The “financial resources” reason also does not establish good cause. First, Appellant did not
14 present an argument based a lack of financial resources and I could not find any reference to the
15 “financial resources” argument in the record.¹⁰ It is improper to decide an appeal based on an
16 argument that was not presented or suggested during the proceedings since it did not give the parties
17 a chance to address the argument or allow Respondent to refute the argument. Second, there is no
18 evidence in the record that shows that Appellant lacked financial resources or that such a lack would
19 constitute good case. The Proposed Decision assumed that small facility size automatically means a
20 lack of financial resources. However, this conclusion is not obvious and nothing explains why this
21 conclusion is reasonable. Furthermore, there is no evidence in the record about Appellant’s finances
22 around the time of the late report. There is also no evidence on how much it would have cost to
23 correct the late report and whether Appellant would have needed to hire another person to correct the

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25 ⁷ Appellant’s Hearing Transcript, at around 16:34.

26 ⁸ Ms. Posner testified during the Hilton Manor LLC hearing that she did the reporting for her
27 mother’s facilities, including Juniper Manor, and that Ms. Posner did “all the operational things with
28 my mom.” (Hilton Manor Hearing Transcript, at around 18:44 and at around 20:50.)

⁹ Appellant’s Hearing Transcript, at around 20:16 [regarding Ms. Posner handling reports for
Appellant and other facilities, including Blue Jay Manor]; at around 23:18 [about Blue Jay Manor
requesting and receiving an extension to file its annual report].

¹⁰ I could not find any mention of a lack of financial resources in Appellant’s Exhibit A,
Appellant’s Appeal Letter; Appellant’s Hearing Transcript; and Hilton Manor Hearing Transcript.

1 late report. For this reason, the “financial resources” reason cannot establish good cause.

2 Lastly, once Ms. Posner received notice of the late report on June 20, 2023, she was able to
3 correct the late report on the same day.¹¹ For this reason, Appellant could have corrected the late
4 report in one day from receiving the June 2, 2023 Notice. However, the June 2, 2023 Notice was
5 delivered to Appellant on June 6, 2023 at around 5:11 p.m. Since 5:00 p.m. is usually around the
6 end of a business day¹², it does not appear reasonable to start the Third Period on June 7, 2023 and
7 that Appellant should have been given at least one full day to correct the late report. Thus, for the
8 Third Period, the penalty is reduced by \$100 from \$1,400 to \$1,300.

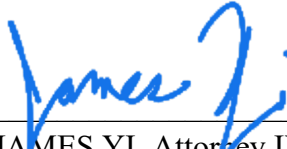
9 **VI.**

10 **ORDER**

11 For the reasons discussed above, HCAI reduces the penalty assessed against Appellant from
12 \$5,100 to \$1,700.

13 Dated: January 24, 2025

IT IS SO ORDERED.

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16 JAMES YI, Attorney IV
17 FOR ELIZABETH A. LANDSBERG, Director
18 Department of Health Care Access and Information

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27 ¹¹ Respondent’s Exhibit 11; and Appellant’s Hearing Transcript, at around 16:34 [Ms. Posner
thought she received the June 2, 2023 Notice on June 20, 2023 and emailed the complete report].

28 ¹² See California Government Code section 11020(a) [“all offices of every state agency shall
be kept open for the transaction of business from 8 a.m. until 5 p.m. of each day from Monday to
Friday, inclusive, other than legal holidays.”].

In re: Juniper Manor, LLC

HCAI No. 24-024-LTC

DECISION

ATTACHMENT 1

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

In the Matter of the Penalty Issued to:

JUNIPER MANOR, LLC

Appellant.

HCAI No. 24-024-LTC

PROPOSED DECISION

This matter was heard before Michelle Church-Reeves, Hearing Officer, Department of Health Care Access and Information (“HCAI”), State of California, on Wednesday, November 25, 2024, beginning at 1:29 PM PST.

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.

Juniper Manor, LLC,¹ owner and operator of Juniper Manor, LLC, hereafter “Appellant,” was represented by Eleanor “Ellee” Posner, Operations Manager.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on November 25, 2024 at 1:56 PM PST.

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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=630017416> [as of November 25, 2024].

PROCEDURAL FINDINGS

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 end (“RPE”) date of 12/31/2022.²
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated July 5, 2023. In addition, Appellant testified that it submitted a Request for Consolidation form with Hiton Manor LLC, previously heard by John Gray as HCAI appeal number 23-010-LTC. There is no record that these forms were ever received by the HCAI Hearing Office and appeal 23-010-LTC was heard without being consolidated with the current matter.
3. Appellant attempted to submit its appeal within the required fifteen business days from receipt of the penalty letter.³
4. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 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 its RPE 12/31/2022 report by April 30, 2023.⁴ Penalties accrued from April 30, 2023 until June 20, 2023.⁵

² Exhibit 12.

³ Health & Saf. Code, § 128770. Applicable testimony and details can be found in paragraph 14 of the factual findings.

⁴ Exhibit 13.

⁵ Exhibits 11 and 12.

2. The report was filed on June 20, 2023 by emailing the report to HCAI staff.⁶
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 \$5,100.⁷
4. HCAI sent a reminder email to Appellant on Wednesday, April 5, 2023 that the report was coming due.⁸ HCAI sent another reminder email to Appellant on April 20, 2023.⁹ HCAI sent a final reminder email to Appellant on April 29, 2023.¹⁰ HCAI sent an initial delinquency email to Appellant on May 3, 2023.¹¹ HCAI also sent a delinquency letter to Appellant dated May 3, 2023 which was received by the facility on May 4, 2023.¹² HCAI sent a second delinquency letter to Appellant dated June 2, 2023 which 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. Mr. Christensen also testified that the System for Integrated Electronic Reporting and Accounting (“SIERA”) portal typically only converts the first tab of an Excel file to a .TXT file when the file is submitted as a .XLS or .XLSX file. In addition, HCAI does not see when a facility attempts to submit a report unless the report is submitted successfully.
7. Mr. Christensen further testified that Congregate Living Health Facilities are exempt from the requirement 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 utilize SIERA.
8. These facts were substantiated both by written exhibits and oral statements made under

⁶ Exhibit 11.

⁷ Health & Saf. Code, § 128770.

⁸ Exhibit 1.

⁹ Exhibit 2.

¹⁰ Exhibit 3.

¹¹ Exhibit 4.

¹² Exhibits 5 and 6.

¹³ Exhibits 9 and 10.

¹⁴ Exhibit 7.

¹⁵ Exhibit 8.

oath by Ty Christensen at the hearing.

9. 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.

10. Appellant stated that the SIERA portal did not accept the report when Ms. 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 SIERA rejects the upload. These facts were substantiated by oral statements made under oath by Ms. Ellee Posner at the hearing. Written exhibits were provided to the Hearing Officer and HCAI prior to the hearing in a timely manner.

11. Ms. Posner testified that the facility is 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 six 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 alone handles the reporting requirements for the facility.

12. 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.

13. 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.

14. Ms. Posner additionally testified that she prepared the Request for Administrative Hearing form, Request for Consolidation form, and the Statement of the Basis for Appeal for Juniper Manor on or about July 5, 2023 and placed them in U.S. Postal Service regular mail. Ms.

¹⁶ Exhibit A.

Posner believed the forms had been received by HCAI and when the hearing was conducted for HCAI appeal number 23-010-LTC that Juniper Manor would be included in that hearing decision. When the decision was received, she contacted HCAI staff to inquire about the status of the Juniper Manor appeal and learned it had not been received and consolidated.

15. These facts were substantiated both by written exhibits and oral statements made under oath by Ellee Posner at the hearing.

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

17. Exhibit 14 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

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].

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. 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 due date, 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 waiver. 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." Additionally, 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 Sunday, April 30, 2023. Therefore, the effective deadline for filing the report should fall on the following business day, Monday, 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

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.

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 report 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. \$400 of the penalty is upheld.

Dated: January 8, 2025

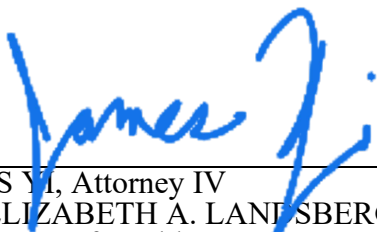

MICHELLE L. CHURCH-REEVES
Hearing Officer
Department of Health Care Access and Information

DECISION

Pursuant to Health and Safety Code section 128775, after due consideration of the record,
the Proposed Decision is:

- Accepted
 Rejected

Dated: January 14, 2025


JAMES YI, Attorney IV
FOR ELIZABETH A. LANIENBERG, Director
Department of Health Care Access and Information