

APPENDIX B

PENALTIES AND APPEALS

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California Health and Safety Code, Division 107 Statewide Health Planning and Development, Part 5 Health Data, Chapter 1 Health Facility Data.

Section 128770. Penalties; disposition.

(a) Any health facility that does not file any report as required by this chapter with the office is liable for a civil penalty of one hundred dollars (\$100) a day for each day the filing of any report is delayed. No penalty shall be imposed if an extension is granted in accordance with the guidelines and procedures established by the office, with the advice of the commission.

(b) Any health facility that does not use an approved system of accounting pursuant to the provisions of this chapter for purposes of submitting financial and statistical reports as required by this chapter shall be liable for a civil penalty of not more than five thousand dollars (\$5,000).

(c) Civil penalties are to be assessed and recovered in a civil action brought in the name of the people of the State of California by the office. Assessment of a civil penalty may, at the request of any health facility, be reviewed on appeal, and the penalty may be reduced or waived for good cause.

(d) Any money which is received by the office pursuant to this section shall be paid into the General Fund.

(Added by Stats. 1995, c. 415 (S.B. 1360), § 9. Former 443.36 added by Stats. 1984, c. 1326, § 7.)

TITLE 22, California Code of Regulations, Division 7, Chapter 10. Health Facility Data, Article 3. Required Reporting

Section 97250. Failure to File Required Reports.

Any health facility which does not file any report completed as required by this article is liable for a civil penalty of one hundred dollars (\$100) a day to be assessed and recovered in a civil action brought in the name of the people of the State of California by the Office for each day that the filing of the report is delayed, considering all approved extensions of the due date as provided in Section 97241. Assessed penalties may be appealed pursuant to Section 97052. Within fifteen days after the date the reports are due, the Office shall notify the health facility of reports not yet received, the amount of the liability, and potential future liability for failure to file reports when due. Sixty days after an original report due date as specified in Section 97211 (c), the MIRCal system will close for that report period. No report for the period will be accepted after the MIRCal system

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closure. No additional penalties will accrue for outstanding reports after the MIRCAl system closure for a report period.

TITLE 22, California Code of Regulations, Division 7, Chapter 10. Health Facility Data, Article 4. Modification, Extension, and Appeal Processes

Section 97052. Appeal Procedure.

(a) Any health facility affected by any determination made under the Act by the Office may appeal the decision. This appeal shall be filed with the Office within 15 business days after the date the notice of the decision is received by the health facility and shall specifically describe the matters which are disputed by the petitioner.

(b) A hearing on an appeal shall, at the discretion of the Director, be held before any one of the following:

- (1) An employee of the Office appointed by the Director to act as hearing officer.
- (2) A hearing officer employed by the Office of Administrative Hearings.
- (3) A committee of the Commission chosen by the chairperson for this purpose.

Authority: Section 128810, Health and Safety Code.

Reference: Section 128775, Health and Safety Code.

Section 97053. Conduct of Hearing.

(a) The hearing, when conducted by an employee of the Office appointed by the Director to serve as hearing officer or by a committee of the Commission, shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(b) When the hearing is conducted by an employee of the Office or by a committee of the Commission, the hearing shall be recorded by a tape recording, unless the appellant agrees to provide a certified shorthand reporter at the appellant's expense. If the appellant provides a certified shorthand reporter, the original of the transcript shall be provided directly to the Office.

(c) A copy of the tape recording or of the transcript, if made, shall be available to any person so requesting who has deposited with the Office an amount of money which the Director has determined to be sufficient to cover the costs of the copy of the tape recording or transcript.

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Authority: Section 128810, Health and Safety Code.
Reference: Section 128775, Health and Safety Code.

Section 97054. Decision on Appeal.

(a) The employee, hearing officer, or committee shall prepare a recommended decision which includes findings of fact and conclusions of law.

(b) This proposed decision shall be presented to the Office for its consideration.

(c) The Office may adopt the proposed decision, or reject it and decide the matter as described in paragraph 1 below.

(1) If the Office does not adopt the proposed decision as presented, it will furnish a Notice of Rejection of Proposed Decision along with a copy of the proposed decision to appellant and, if applicable, appellant's authorized representative. The Office will provide appellant the opportunity to present written arguments to the Office. The decision of the Office will be based on the record, including the hearing record, and such additional information as is provided by the appellant.

(d) The decision of the Office shall be in writing. It shall be made within 60 calendar days after the conclusion of the hearing and shall be final.

Authority: Section 128810, Health and Safety Code
Reference: Section 128775, Health and Safety Code

DISCUSSION:

See attached Appeals Process for Civil Penalties.

APPEAL DOCUMENTS

If you choose to submit an appeal, the following documents may be used.
Appeals should be submitted to:

Office of Statewide Health Planning and Development
Patient Data Section
400 R Street, Suite 270
Sacramento, California 95811-6213
(916) 326-3935; Fax (916) 322-9555
www.oshpd.ca.gov/HID/MIRCal/

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT
APPEALS PROCESS FOR CIVIL PENALTIES
ASSESSED PURSUANT TO
THE HEALTH DATA AND ADVISORY COUNCIL CONSOLIDATION ACT

Right to Appeal

Any health facility which has been assessed a penalty pursuant to Health and Safety Code Section 128770 may petition the Office for review of the penalty assessment. An appeal must be filed within 15 business days of the day the facility receives notification of the penalty assessment. The right to appeal is forfeited if an appeal is not either received by the Office or postmarked within 15 business days of notification of any action or decision. If an appeal is submitted, the facility is entitled to a formal administrative hearing within 60 days.

How to Appeal

The Office provides a form that may be used to file an appeal. Use of this form is not mandatory, but any appeal must be in writing and must include all necessary information. An appeal must be signed by the licensee or administrator, unless they choose someone else to represent the facility.

If the licensee or administrator chooses someone else to represent the facility in its appeal, the Office must be notified in writing of that delegation of authority. (A form for this purpose accompanies the appeal form.) The licensee or administrator should be aware that they will be bound by the statements and actions of an authorized representative.

Informal Procedure

For the convenience of health facilities filing appeals, the Office has established an informal appeal process. The informal procedure does not require the facility to actually attend a hearing. Review of the appeal is based on written materials submitted by the facility as well as the Office's records. If a facility elects to use the informal procedure, it still has the right to request a formal hearing if it is not satisfied with the informal decision. However, in order for a facility to take advantage of the informal procedure, it must waive its right to have a formal hearing held within 60 days.

The informal procedure works as follows:

1. The facility files an appeal, requests an informal review, states the grounds for the appeal, and agrees to waive the 60-day limit.
2. The Chief Counsel for the Office reviews the appeal, makes a decision, and notifies the facility.
3. The facility has fifteen (15) business days from the date it receives the written decision in the mail to either accept it or to reject it and request a formal hearing.
4. If a formal hearing is requested, one is scheduled.

Formal Hearing

Appeals are heard by an employee of the Office designated to hear such matters. Formal hearings are conducted substantially in conformity with the California Administrative Procedure Act. The facility may be represented by an attorney, but this is not required. The hearing will be tape recorded. The facility may, at its expense, supply a court reporter.

Any relevant evidence offered will be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. A recommended decision, including findings of fact and conclusions of law, will be prepared and presented to the Director of the Office. The decision of the Director will be made in writing within 60 days of the conclusion of the hearing. It will be the final administrative decision.

References: Health and Safety Code Sections 128770 and 128775 and Title 22, California Code of Regulations, Sections 97052, 97053, and 97054.

**PETITION TO THE
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT**

Facility Name _____

Address _____

Telephone _____ OSHPD Identification No. _____

Authorized Representative (if any) _____

Address _____
Street City State Zip Code

Telephone _____

Petitioner appeals the decision of the Office of Statewide Health Planning and Development dated _____.

Check one

- Petitioner wishes to use the Office's informal procedure.
We waive our right to a formal hearing within 60 days.

- Petitioner does not wish to use the informal procedure and requests a formal hearing within 60 days.

This appeal is based on the following grounds: (Attach additional pages as necessary.)

Name* _____ Title _____
Please Print Please Print

Signature _____ Date _____

Attachment(s) Yes No

*Representatives other than the facility administrator or licensee must have written authorization from the facility administrator or licensee, which must be submitted with an appeal.

**AUTHORIZATION TO REPRESENT
FACILITY IN APPEAL**

_____ is hereby authorized to represent
(Name of Authorized Representative)

Name of Facility

before the Office of Statewide Health Planning and Development. This authorization extends to all communications between our representative and the Office concerning this appeal. This authorization may be terminated at any time upon written notice to the Office.

Facility Administrator or Licensee Name

Title

Signature

Date