

BEFORE THE
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT
STATE OF CALIFORNIA

In the Matter of the Penalty Issued to:	}	OSHPD No. 18-001C
UNITED CARE BASQUE	}	
UNITED CARE MINFORD	}	
UNITED CARE PELONA	}	
Appellant.	}	
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PROPOSED DECISION

This matter was heard before Michelle Church-Reeves, Hearing Officer, Office of Statewide Health Planning and Development (OSHPD), State of California, on Tuesday, October 16, 2018 beginning at 12:58 PM.

Ty Christensen, Manager, Accounting and Reporting Systems Section, and Tina Tran, Associate Governmental Program Analyst, Accounting and Reporting Systems Section, represented OSHPD.

United Care Facilities, LLC, owner and operator of United Care Basque, United Care Minford, and United Care Pelona, was represented by Alex Fishkin, Chief Financial Officer of United Care Facilities, LLC and Alex Kush, Chief Executive Officer of United Care Facilities, LLC.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, October 16, 2018 at 2:01 PM.

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PROCEDURAL FINDINGS

1. On August 15, 2018, OSHPD assessed a Penalty against United Care Basque in the amount of \$4,000 for its delinquent 2016 Long-Term Care Annual Disclosure Reports.
2. On August 15, 2018, OSHPD assessed a Penalty against United Care Basque in the amount of \$4,000 for its delinquent 2017 Long-Term Care Annual Disclosure Reports.
3. On August 15, 2018, OSHPD assessed a Penalty against United Care Minford in the amount of \$4,000 for its delinquent 2016 Long-Term Care Annual Disclosure Reports.
4. On August 15, 2018, OSHPD assessed a Penalty against United Care Minford in the amount of \$4,000 for its delinquent 2017 Long-Term Care Annual Disclosure Reports.
5. On August 15, 2018, OSHPD assessed a Penalty against United Care Pelona in the amount of \$4,000 for its delinquent 2016 Long-Term Care Annual Disclosure Reports.
6. On August 15, 2018, OSHPD assessed a Penalty against United Care Pelona in the amount of \$4,000 for its delinquent 2017 Long-Term Care Annual Disclosure Reports.
7. Appellant appealed the Penalty by submitting a Request for Administrative Hearing form dated August 22, 2018 and received by the OSHPD Hearing Office on August 29, 2018.
8. Appellant requested consolidation of the appeals of United Care Basque, United Care Minford, and United Care Pelona at the time of its appeal.
9. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.¹
10. Appellant requested to appear by telephone via an e-mail dated September 18, 2018. The request was granted due to the distance from Appellant's office in Los Angeles to OSHPD's headquarters in Sacramento.

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¹ Health & Saf. Code § 128775.

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128770 to file the 2016 Long-Term Care Annual Disclosure Reports of United Care Basque, United Care Minford, and United Care Pelona by June 29, 2017. An extension of the filing deadline was not requested until on or about July 12, 2018. The extension requests were granted, and the 2016 reports became due by August 11, 2018. Penalties accrued from June 29, 2017 until August 8, 2017 when the second notice of the delinquency would customarily be sent. OSHPD adjusted the Penalty to forty days for each facility because a record could not be found of the sending and receipt of the second notice of the delinquency.
2. Appellant was required under Health and Safety Code section 128770 to file the 2017 Long-Term Care Annual Disclosure Reports of United Care Basque, United Care Minford, and United Care Pelona by April 30, 2018. An extension was not requested until on or about July 12, 2018. The extension requests were granted, and the 2017 reports became due by September 10, 2018. Penalties accrued from April 30, 2018 until June 9, 2018 when the second notice of the delinquency would customarily be sent. OSHPD adjusted the Penalty to forty days for each facility because a record could not be found of the sending and receipt of the second notice of the delinquency.
3. In accordance with Health and Safety Code section 128770 subsection (a), OSHPD assessed penalties in the amount of \$100 per day for forty days for each report which was delinquent from the three facilities, resulting in a total Penalty of \$24,000.² These facts were substantiated both by oral statements by Mr. Christensen at the hearing and written exhibits which were provided to the Hearing Officer and Appellant in a timely manner prior to the hearing.
4. 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.”

² Health & Saf. Code, § 128770.

5. Appellant submitted a written statement with its appeal and made oral statements of facts it believes show good cause why its reports were not submitted in a timely manner.

6. Appellant stated the accountant for the facilities was diagnosed with, and ultimately died of, stage four cancer. During the months after his diagnosis, the accountant continued to work and told Appellant that he would request extensions for any work he was unable to complete. Appellant stated that the accountant's cancer advanced quickly, and he died within a few months. Appellant stated that at first, it did not realize the accountant had not filed the extension requests, and after he died it took a substantial amount of time to find and hire a new accountant for the facilities who was familiar with OSHPD's reporting requirements. These facts were substantiated by oral statements by Appellant at the hearing. No written exhibits were submitted.

7. Neither OSHPD nor Appellant presented witnesses or factual rebuttals.

8. Appellant does not have a history of filing required reports on time as it is new to the long-term care industry.

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 the 2016 and 2017 Long-Term Care Annual Disclosure Reports for United Care Basque, United Care Minford, and United Care Pelona on time and whether the Penalty should be waived in whole or in part.

2. 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."³ On an individual basis, courts and administrative bodies have often found that hospitalization, incapacitation, accident involvement, or loss or unavailability of

³ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

records may constitute good cause.⁴ Good cause must be directly related to the specific legal requirement which the party failed to perform.

3. Appellant stated the accountant for the facilities was diagnosed with, and ultimately died of, stage four cancer. During the months after his diagnosis, the accountant continued to work and told Appellant that he would request extensions for any work he was unable to complete. Appellant stated that the accountant's cancer advanced quickly, and he died within a few months. Appellant stated that at first, it did not realize the accountant had not filed the extension requests, and after he died it took a substantial amount of time to find and hire a new accountant for the facilities who was familiar with OSHPD's reporting requirements.

4. The substantiated facts meet the typical showing of good cause. Therefore, Appellant met the burden of showing good cause for the Penalty assessed.

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⁴ 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 October 26, 2018]. See also *Waters, supra*, 58 Cal.2d 885, 893.

PROPOSED ORDER

The assessed Penalty is withdrawn for good cause.

Dated: October 31, 2018

/s/

MICHELLE CHURCH-REEVES
Attorney, Hearing Officer
Office of Statewide Health Planning and
Development

DECISION

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

Accepted

Rejected

Dated: November 2, 2018

/s/

ROBERT P. DAVID
Director
Office of Statewide Health Planning and
Development