BEFORE THE

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

STATE OF CALIFORNIA

In the Matter of the Penalty Issued to: **GARDEN CREST CONVALESCENT HOSPITAL** Appellant.	OSHPD No. 18-002

PROPOSED DECISION

This matter was heard before Michelle Church-Reeves, Hearing Officer, Office of Statewide Health Planning and Development (OSHPD), State of California, on Wednesday, October 17, 2018 beginning at 1:00 PM.

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

Garden Crest Convalescent Hospital, Inc., owner and operator of Garden Crest Convalescent Hospital, also known as Garden Crest Rehabilitation Center, was represented by Brent Roberts of Roberts Accounting.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, October 17, 2018 at 1:17 PM.

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PROCEDURAL FINDINGS

1. On August 8, 2018, OSHPD assessed a Penalty against Appellant in the amount of $800 for its 2017 Long-Term Care Annual Disclosure Report.

2. 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 30, 2018.

3. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letters.[1]

4. Appellant requested to appear by telephone via an e-mail dated October 17, 2018. The request was granted due to the distance from Appellant's office near Los Angeles to OSHPD's headquarters in Sacramento.

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128770 to file its 2017 Long-Term Care Annual Disclosure Report for Garden Crest Convalescent Hospital by July 29, 2018 after all extensions were exhausted.

2. Appellant filed its 2017 Long-Term Care Annual Disclosure Report on August 6, 2018.

3. Penalties accrued from July 30, 2018 to August 6, 2018. In accordance with Health and Safety Code section 1278770, subsection (a), OSHPD assessed penalties in the amount of $100 per day for 8 days, resulting in a total penalty amount of $800.[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."

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[1] Health & Saf. Code, § 128770.
[2] *Id.*

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

6.   Appellant stated that key staff turned over, including the only person able to make changes in the accounting software and all financial records needed to be manually migrated to a new accounting software. Appellant further stated that an on-time filing would have included inaccurate or incomplete financial records despite substantial overtime worked. Furthermore, Appellant detailed the new software and monthly accounting procedures that were put in place to ensure that reports were submitted timely going forward. Appellant made a written statement with its appeal and a verbal statement at the hearing that substantiated these facts. Appellant did not submit any documents into evidence nor present additional witness testimony.

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

8.   Appellant has a history of filing required reports on time.

DISCUSSION AND LEGAL CONCLUSIONS

1.   The issue here is whether Appellant had good cause for failing to file the 2017 Long-Term Care Annual Disclosure Report for Garden Crest Convalescent Hospital on July 29, 2018 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 records may constitute good cause.[4] Good cause must be directly related to the specific legal requirement which the party failed to perform.

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[3] *Waters v. Superior Court of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).
[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.

3.   Appellant stated that key staff turned over and all financial records needed to be migrated to a new accounting software. Due to the staff turnover and file compatibility issues, no export of data from the existing software could be accomplished and the records were migrated manually. Furthermore, Appellant stated that an on-time filing would have included inaccurate or incomplete financial records and would not have been an appropriate business practice.

4.   The substantiated facts meet the typical showing of good cause due to loss or unavailability of records. Therefore, Appellant met the burden of showing good cause for the Penalty assessed.

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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:

[X] Accepted

[ ] Rejected

Dated: November 2, 2018   /s/
                                                ROBERT P. DAVID
                                                Director
                                                Office of Statewide Health Planning and
                                                Development