

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

In the Matter of the Penalty Issued to:

**HEARTWOOD AVENUE
HEALTHCARE, SPRINGS ROAD
HEALTHCARE, TWIN OAKS POST
ACUTE REHAB, NEW HOPE POST
ACUTE CARE, EMPRES POST
ACUTE REHAB**

Appellant.

OSHPD No. 18-003C

PROPOSED DECISION

This matter was heard before Michelle Church-Reeves, Hearing Officer, Office of Statewide Health Planning and Development (OSHPD), State of California, on Thursday, October 18, 2018 beginning at 1:21 PM.

Alexandra (Lexie) Bloyd, Health Program and Audit Manager, Accounting and Reporting Systems Section, and Tina Tran, Associate Governmental Program Analyst, Accounting and Reporting Systems Section, represented OSHPD.

EmpRes Healthcare Management, the owner and operator of Heartwood Avenue Healthcare, Springs Road Healthcare, Twin Oaks Post Acute Rehab, New Hope Post Acute Care and EmpRes Post Acute Rehab, was represented by Walt McCullouch, Analyst at EmpRes Healthcare Management.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Thursday, October 18, 2018 at 1:39 PM.

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PROCEDURAL FINDINGS

1. On August 7, 2018, OSHPD assessed a Penalty against Appellant in the amount of \$200 for Heartwood Avenue Healthcare's delinquent 2017 Long-Term Care Annual Disclosure Report.
2. On August 7, 2018, OSHPD assessed a Penalty against Appellant in the amount of \$200 for Springs Road Healthcare's delinquent 2017 Long-Term Care Annual Disclosure Report.
3. On August 7, 2018, OSHPD assessed a Penalty against Appellant in the amount of \$200 for Twin Oaks Post Acute Rehab's delinquent 2017 Long-Term Care Annual Disclosure Report.
4. On August 7, 2018, OSHPD assessed a Penalty against Appellant in the amount of \$200 for New Hope Post Acute Care's delinquent 2017 Long-Term Care Annual Disclosure Report.
5. On August 7, 2018, OSHPD assessed a Penalty against Appellant in the amount of \$200 for EmpRes Post Acute Rehab's delinquent 2017 Long-Term Care Annual Disclosure Report.
6. Appellant appealed the Penalty in a letter dated August 27, 2018 which was received by OSHPD on August 31, 2018.
7. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.¹
8. Appellant requested to appear by telephone via an e-mail dated September 17, 2018. The request was granted due to the distance from Appellant's office in Washington to OSHPD's headquarters in Sacramento.
9. Appellant requested a continuance via an e-mail dated October 8, 2018. The hearing was rescheduled from October 17, 2018 at 1:00 PM to October 18, 2018 at 1:00 PM.

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128770 to file the Long-Term Care Annual Disclosure Report by July 29, 2018 after all extensions were exhausted.

¹ Health & Saf. Code, § 128770.

2. Appellant filed the Long-Term Care Annual Disclosure Report on July 31, 2018. Penalties accrued from July 30 until July 31, 2018.
3. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for two days for each delinquent report, resulting in a total penalty amount of \$1,000 for the five facilities.² These facts were substantiated both by oral statements by Ms. Tran 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.”
5. Appellant submitted a written statement with its appeal, made oral statements at the hearing, and written exhibits which were provided to the Hearing Officer and OSHPD in a timely manner prior to the hearing.
6. Appellant stated in its appeal that there were administrative and operational changes with the company which impacted its ability to complete its reports. Appellant also stated that these difficulties were communicated to the Office, but that all extensions had been exhausted. Appellant further stated that layoffs affected its ability to submit reports in a timely manner and that reports were due in several states at overlapping times and were prioritized in accordance with their due dates and whether extensions were available. Furthermore, Appellant stated that Sunday, July 29, 2018 is not a normal business day and the reports would normally be due on Monday, July 30, 2018. Appellant’s representative made a written statement with his appeal and a verbal statement at the hearing that substantiated these facts.
7. July 29, 2018 was a Sunday. Ms. Tran confirmed that if Appellant had submitted the reports on Monday, July 30, 2018, they would not have been considered late. However, under Health and Safety Code section 128770, subsection (a), OSHPD assesses penalties by calendar days, not business days.
8. Neither OSHPD nor Appellant presented witnesses or factual rebuttals.
9. Appellant has a history of filing required reports on time.

² Health & Saf. Code, § 128770.

DISCUSSION AND LEGAL CONCLUSIONS

1. This issue here is whether Appellant had good cause for failing to file the 2017 Long-Term Care Annual Disclosure Report for 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.

3. Appellant stated that key staff were laid off due to financial difficulties and they had to prioritize their filings in the seven states they do business in according to their due dates. Furthermore, Appellant stated because July 29, 2018 fell on a Sunday, the five reports should have been due on Monday, July 30, 2018 and were essentially only one day late.

4. Appellant did not provide statements or evidence of hospitalization, incapacitation, accident involvement, or loss or unavailability of records. While Appellant correctly stated that the extended due date fell on a Sunday, the Accounting and Reporting Manual for Long-Term Care Facilities clearly states in Appendix G that reports will be considered on time if delivered on the following business day⁵ but that penalties are assessed by counting “all days after the due date” in accordance with Health and Safety Code section 128770, subsection (a).⁶ Appellant did not meet the burden of showing good cause for waiver of the Penalty assessed.

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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.

⁵ Office of Statewide Health Planning and Development, Accounting and Reporting Manual for California Long-Term Care Facilities (2d ed.), p. G-2 (hereafter LTC Manual).

⁶ LTC Manual, *supra*, p. G-4.

PROPOSED ORDER

The assessed Penalty is upheld.

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 5, 2018

/s/

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