

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

In the Matter of the Penalty Issued to:

**ST. RITA’S HAVEN, ST. RITA’S  
HAVEN 2**

Appellant.

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) OSHPD No. 18-004C  
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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 Thursday, November 29, 2018 beginning at 1:06 P.M.

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

St. Rita’s Haven, Inc., owner and operator of St. Rita’s Haven and St. Rita’s Haven 2, collectively “Appellant,” was represented by Davit Gevorgyan, Administrator.

Both documentary and testimonial evidence was received. The matter was submitted for decision and the record was closed on Thursday, November 29, 2018 at 1:29 P.M.

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## PROCEDURAL FINDINGS

1. On September 21, 2018, OSHPD assessed a penalty against St. Rita's Haven in the amount of \$4,000 for its delinquent Long-Term Care Annual Disclosure report.
2. On September 21, 2018, OSHPD assessed a penalty against St. Rita's Haven 2 in the amount of \$4,000 for its delinquent Long-Term Care Annual Disclosure report.
3. Appellant appealed the penalties by submitting a Request for Administrative Hearing form dated October 15, 2018 and received by the OSPD Hearing Office on October 19, 2018.
4. Appellant requested consolidation of the appeals of St. Rita's Haven and St. Rita's Haven 2 at the time of appeal.
5. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.<sup>1</sup>
6. OSHPD provided written exhibits to the Hearing Officer and Appellant in a timely manner prior to the hearing.<sup>2</sup>
7. Appellant did not submit additional written exhibits to the Hearing Officer and OSHPD prior to the hearing.

## FACTUAL FINDINGS

1. Appellant requested and was granted an extension of the filing deadline for St. Rita's Haven's Long-Term Care Annual Disclosure report in a timely fashion. Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128770 to file St. Rita's Haven's Long-Term Care Annual Disclosure report by July 29, 2018. Penalties accrued from July 30, 2018 until September 7, 2018 when the report was filed.

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<sup>1</sup> Health & Saf. Code, § 128770.

<sup>2</sup> OSHPD Data Act Hearing Procedures (August 1, 2018) <https://oshpd.ca.gov/wp-content/uploads/2018/08/Data-Act-Hearing-Procedures.pdf> [as of December 14, 2018]; Cal. Code Regs., tit. 22, § 97053.

2. Appellant requested and was granted an extension of the filing deadline for St. Rita's Haven 2's Long-Term Care Annual Disclosure report in a timely fashion. Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128770 to file St. Rita's Haven 2's Long-Term Care Annual Disclosure report by July 29, 2018. Penalties accrued from July 30, 2018 until September 7, 2018 when the report was filed.

3. Both Long-Term Care Annual Disclosure reports were filed on September 7, 2018.

4. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 40 days, resulting in a total penalty amount of \$4,000 per report or \$8,000 total.<sup>3</sup> These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

5. 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."

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

7. Appellant stated in their grounds for appeal that their financial software was damaged by a power outage and all financial information for both facilities was erased. Appellant also stated that a data recovery professional was hired, but the financial information recovered was incomplete and much of the data had to be reinputted to the financial software. These facts were substantiated by oral statements made by Appellant's representative under oath at the hearing. No written exhibits were provided to the Hearing Officer and OSHPD prior to the hearing.

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

9. OSHPD's representative confirmed that Appellant does have a history of filing required reports on time.

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<sup>3</sup> Health & Saf. Code, § 128770.

## 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 Long-Term Care Annual Disclosure report for St. Rita's Haven and St. Rita's Haven 2 on July 29, 2018, and whether the penalties 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."<sup>4</sup> 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.<sup>5</sup> 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 often found that hospitalization, incapacitation, accident involvement, or loss or unavailability of records may constitute good cause.<sup>6</sup>
3. Appellant stated in their grounds for appeal that their financial software was damaged by a power outage and all financial information for both facilities was erased. Appellant also stated that a data recovery professional was hired, but the financial information recovered was incomplete and much of the data had to be reinputted to the financial software. This appears to constitute loss or unavailability of records, which may constitute good cause. Appellant appears to have taken appropriate steps to attempt recovery of the data immediately following the data

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<sup>4</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

<sup>5</sup> *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 14, 2018].

<sup>6</sup> 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] 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 14, 2018]. See also *Waters, supra*, 58 Cal.2d 885, 893.

loss and the power outage itself was beyond the control of Appellant. However, a short discussion of negligence is required to address the cause of the lost data.

4. Appellant’s representative stated during questioning that records were maintained on a single computer terminal and backups were not regularly performed. In response to the loss of records due to the power outage, Appellant now performs regular backups to two external hard drives in an alternating fashion. This improved business practice will hopefully prevent any such reoccurrence in the future. However, does it rise to the level of negligence that this practice was not followed prior to the power outage? To establish negligence, first the Appellant would have to have a duty of care to protect their business data from loss due to a natural or man-made disaster. The Hearing Officer is not aware of, and did not discover, a legally established affirmative duty to backup data.

5. Therefore, the substantiated facts meet the typical showing of good cause. Therefore, Appellant met the burden of showing good cause for wavier of the penalties assessed.

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PROPOSED ORDER

The assessed penalties are waived for good cause.

Dated: December 17, 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: December 24, 2018

/s/

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