

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

In the Matter of the Penalty Issued to:

**NEW ORANGE HILLS**

Appellant.

OSHPD No. 18-005

**PROPOSED DECISION**

This matter was heard before Michelle Church-Reeves, Hearing Officer, Office of Statewide Health Planning and Development (“OSHPD”), State of California, on Monday, December 3, 2018 beginning at 1:04 P.M.

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

New Orange Hills, LLC, owner and operator of New Orange Hills, “Appellant,” was represented by Eddie Uppal and Joe McFadden, Consultants with Axiom Healthcare Group.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Monday, December 3, 2018 at 1:18 P.M.

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## PROCEDURAL FINDINGS

1. On October 17, 2018, OSHPD assessed a penalty against New Orange Hills in the amount of \$3,000 for its delinquent Long-Term Care Annual Disclosure report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated October 26, 2018 and received by the OSPD Hearing Office on October 26, 2018 via e-mail.
3. Appellant requested a telephonic hearing at the time of filing its appeal. The request was granted.
4. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter.<sup>1</sup>
5. OSHPD provided written exhibits to the Hearing Officer and Appellant in a timely manner prior to the hearing.<sup>2</sup>
6. 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 New Orange Hills' 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 New Orange Hills' Long-Term Care Annual Disclosure report by May 29, 2018.
2. Penalties accrued from May 30, 2018 until June 28, 2018.
3. The Long-Term Care Annual Disclosure report was filed on June 28, 2018.
4. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 30 days, resulting in a total penalty amount

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

<sup>2</sup> Health & Saf. Code, § 128775; Cal. Code Regs., tit. 22, § 97053.

of \$3,000.<sup>3</sup> These facts were substantiated both by oral statements 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 made 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 discrepancies in expected costs were noted during the preparation of the report. These discrepancies were brought to the attention of the facility administrator and records were audited. Axiom Healthcare Group did not want to knowingly submit inaccurate data and waited to file the report until the financial data had been audited, ensuring an accurate report was filed that would require no amendments. These facts were substantiated by oral statements made by Appellant’s representatives 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.

## 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 New Orange Hills on May 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

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

he seeks to be excused.”<sup>4</sup> Good cause must be directly related to the specific legal requirements 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 negligence act or failure to act.<sup>6</sup> 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>7</sup>

3. Appellant stated in their grounds for appeal that discrepancies in expected costs were noted during the preparation of the report. These discrepancies were brought to the attention of the facility administrator and records were audited. This led Appellant to conclude that the records were incomplete or inaccurate, which may be analogous to unavailability of records in that accurate records were unavailable. In many statutes, knowingly submitting incomplete or inaccurate data results in penalties. OSHPD statutes and regulations allow amendments to be filed and does not explicitly impose penalties for filing incomplete or inaccurate reports.<sup>8</sup> However, knowingly filing incomplete or inaccurate reports is at best a very poor business practice. In addition, Long-Term Care Annual Disclosure reports are jointly filed with Department of Health Care Services for Medi-Cal audits.<sup>9</sup> Therefore, it is important that the information submitted be complete and accurate at the time of submittal.

4. Based on the testimony of Appellant’s representative, reasonable steps were taken to audit the financial records and correct the reports as soon as possible. In addition, Appellant does not have a history of filing late reports, which indicates that they generally follow good

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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> *Ibid.*

<sup>6</sup> 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>7</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]. See also *Waters, supra*, 58 Cal.2d 885, 893.

<sup>8</sup> Health & Saf. Code, § 128755. See generally, Health & Saf. Code, § 128675 *et seq.*

<sup>9</sup> Health & Saf. Code, § 128730(a)(2). See also, Welf. & Inst. Code, § 14170.

accounting practices and maintain complete and accurate records which can be used to generate the various required reports in a timely manner.

5. The substantiated facts meet the typical showing of good cause. Therefore, Appellant met the burden of showing good cause for waiver of the penalty assessed.

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PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: December 18, 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