



## PROCEDURAL FINDINGS

1. On October 29, 2018, OSHPD assessed a penalty against Barstow Community Hospital in the amount of \$5,500 for its delinquent Hospital Quarterly Financial Utilization report.
2. On October 29, 2018, OSHPD assessed a penalty against Barstow Community Hospital in the amount of \$4,000 for its delinquent Hospital Annual Disclosure report.
3. Appellant appealed the penalties by submitting a Request for Administrative Hearing form dated November 2, 2018 and received by the OSPD Hearing Office on November 7, 2018.
4. Appellant requested consolidation of the appeals of Barstow Community Hospital 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. Appellant requested a telephonic hearing at the time of filing its appeal. The request was granted.
7. OSHPD provided written exhibits to the Hearing Officer and Appellant in a timely manner prior to the hearing.<sup>2</sup>
8. Appellant did not submit additional written exhibits to the Hearing Officer and OSHPD prior to the hearing.

## FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128770 to file Barstow Community Hospital's Hospital Quarterly Financial Utilization report by August 14, 2018. An extension of the filing deadline was requested on October 8, 2018 and granted by OSHPD on

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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.

that date. Penalties accrued from August 15, 2018 until October 8, 2018, when the extension was requested. The report was filed before the extension was exhausted.

2. Appellant was required under Health and Safety Code section 128770 to file Barstow Community Hospital's Hospital Annual Disclosure report by July 29, 2018. An extension of the filing deadline was not requested. Penalties accrued from July 30, 2018 until September 26, 2018 when the report was filed. OSHPD adjusted the penalty to forty days 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 55 days and 40 days, respectively, resulting in penalties of \$5,500 and \$4,000 or a total penalty amount of \$9,500.<sup>3</sup> These facts were substantiated both by oral statements by Mr. Christensen at the hearing and written exhibits.

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 and made oral statements of facts it believes show good cause why its reports were not submitted in a timely manner.

6. Appellant stated in their grounds for appeal that staff turnover and vacancies, combined with communication issues with the third-party preparer, resulted in gaps in notifications and new staff were unaware of reports, their deadlines, and how to request extensions. 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.

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

8. OSHPD's representative confirmed that Appellant does not have a history of filing required reports on time. In the last five years, four of the five Hospital Annual Financial reports were between one and forty days delinquent.

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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 Hospital Quarterly Financial Utilization and Hospital Annual Disclosure reports for Barstow Community Hospital on their due dates 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 staff turnover and vacancies, combined with communication issues with the third-party preparer, resulted in gaps in notifications and new staff were unaware of reports, their deadlines, and how to request extensions. While staff turnover may not be within the control of Appellant, new employee orientation, job training, and desk manuals or other processes for passing along knowledge are solidly within the control of Appellant. Deadlines are clearly articulated in statute, and the principle of *ignorantia juris non excusat*, or ignorance of the law is no excuse, applies.<sup>7</sup> In addition, multiple notifications were

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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]. See also *Waters, supra*, 58 Cal.2d 885, 893.

<sup>7</sup> Health & Saf. Code, § 128755.



PROPOSED ORDER

The assessed penalties are upheld.

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