

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

In the Matter of the Penalty Issued to:

**PARK MERRITT CARE CENTER**

Appellant.

OSHPD No. 18-008

**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, January 2, 2019 beginning at 1 P.M.

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

Superior Healthcare, LLC, owner and operator of Park Merritt Care Center, “Appellant,” represented by Shirley Ma, Administrator, failed to appear.

Documentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, January 2, 2019 at 1:38 P.M.

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## PROCEDURAL FINDINGS

1. On October 22, 2018, OSHPD assessed a penalty against Appellant in the amount of \$4,000 for its delinquent Long-Term Care Annual Disclosure report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 1, 2018 and received by the OSPD Hearing Office on November 7, 2018.
3. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letters.<sup>1</sup>
4. Appellant requested to appear by telephone via a telephone conversation on December 26, 2018 at approximately 1:30 PM. The request was granted due to the distance from Appellant's office in Oakland to OSHPD's headquarters in Sacramento.
5. OSHPD submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner.
6. Appellant did not submit written exhibits to the Hearing Office and OSHPD in advance of the hearing.
7. Appellant failed to appear at the hearing. The Hearing Officer and OSHPD's representatives were available for the hearing from 1:00 P.M. until 1:38 P.M. Appellant received written notice of the closing of the hearing via e-mail.

## FACTUAL FINDINGS

1. On April 6, 2018, Appellant requested an extension of the report due date. OSHPD granted a 60-day extension. On June 20, 2018, Appellant requested a second extension of the report due date. OSHPD granted a 30-day extension, reaching the maximum allowed by regulation.<sup>2</sup> Following exhaustion of the extensions, Appellant was required under Health and

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

<sup>2</sup> Cal. Code Regs., Title 22, § 97051. "The Office may grant extensions but not to exceed an accumulated total, for all extensions and corrections, of 90 days for annual reports required by Section 97040."

Safety Code section 128735 to file Park Merritt Care Center’s Long-Term Care Annual Disclosure report by July 29, 2018. Penalties accrued from July 30, 2018 until September 8, 2018 when the report was filed.

2. The delinquent report was filed on September 8, 2018.
3. In accordance with Health and Safety Code section 128770, subsection (a), Appellant is liable for penalties in the amount of \$100 per day for 41 days. OSHPD elected to assess an adjusted penalty amount of \$4,000.<sup>3</sup> These facts were substantiated by 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. Appellant failed to appear at the hearing.
6. Appellant stated in its written statement that the report was late because the cost report consultant did not complete the report in a timely manner. Appellant stated that Ms. Ma repeatedly followed up with the cost report consultant and has hired a new accountant to complete the report for the 2018 calendar year.

#### 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 Park Merritt Care Center by 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.”<sup>4</sup> Good cause must be directly related to the specific legal requirement

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

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

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 that Ms. Ma repeatedly followed up with the cost report consultant and has hired a new accountant to complete the report for the 2018 calendar year. Due to Appellant's failure to appear, further details regarding the correspondence between Appellant and the cost report consultant were not obtained. If all the alleged facts are true, they fail to demonstrate that the failure to file the report by July 29, 2018 was outside the reasonable control of the Appellant.

4. Furthermore, Appellant was informed in the Hearing Office scheduling letter dated November 28, 2018 that "failure to appear at a scheduled hearing may result in a decision against the party." The date and time of the hearing were confirmed via phone on December 26, 2018 when Appellant requested to appear by telephone. The Hearing Officer and OSHPD's representatives were available for the hearing from 1:00 P.M. until 1:38 P.M. Appellant had ample opportunity to present evidence in support of the request for waiver of assessed penalties.

5. The alleged facts do not meet the typical showing of good cause. Therefore, Appellant did not meet the burden of showing good cause for waiver of the penalty assessed.

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<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.

PROPOSED ORDER

The assessed penalty is upheld.

Dated: March 7, 2019

/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: March 11, 2019

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