

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

In the Matter of the Penalty Issued to:

**INDIO NURSING AND  
REHABILITATION CENTER, LEGACY  
POST-ACUTE REHABILITATION  
CENTER**

Appellant.

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OSHPD No. 18-012C Part 1

**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 23, 2019 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.

Indio Nursing and Rehabilitation Center Inc., owner and operator of Indio Nursing and Rehabilitation Center, and San Bernardino Convalescent Operations, Inc., owner and operator of Legacy Post-Acute Rehabilitation Center, which are both owned by Legacy Standard, Inc., collectively referred to hereinafter as “Appellant,” was represented by Joe McFadden and Eddie Uppal, Consultants with Axiom Healthcare Group.

Documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, January 23, 2019 at 1:49 P.M.

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## PROCEDURAL FINDINGS

1. On August 25, 2017, OSHPD assessed a penalty against Appellant in the amount of \$2,400 for Indio Nursing and Rehabilitation Center's delinquent Long-Term Care Annual Disclosure report.
2. On August 25, 2017, OSHPD assessed a penalty against Appellant in the amount of \$2,400 for Legacy Post-Acute Rehabilitation Center's delinquent Long-Term Care Annual Disclosure Report.
3. On November 14, 2018, OSHPD declined to adjust the penalties under the informal appeal and instructed Appellant that it could request a formal hearing within 15 business days.
4. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 27, 2018 and received by the OSHPD Hearing Office on December 12, 2018.
5. Appellant submitted its appeal within the required fifteen business days from receipt of the denial of informal appeals.<sup>1</sup>
6. Appellant requested to appear by telephone at the time of its Request for Administrative Hearing. The request was granted.
7. OSHPD submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner.
8. Appellant did not submit written exhibits to the Hearing Office and OSHPD in advance of the hearing.

## FACTUAL FINDINGS

1. On March 29, 2017, Appellant requested 90-days of extensions of Indio Nursing and Rehabilitation Center's Long-Term Care Annual Disclosure report due date. OSHPD granted a

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

60-day extension and a 30-day extension.<sup>2</sup> Following the extensions, Appellant was required under Health and Safety Code section 128735 to file Indio Nursing and Rehabilitation Center's Long-Term Care Annual Disclosure report by July 29, 2017. Appellant failed to file the report by July 29, 2017. The delinquent report was filed on August 22, 2017.

2. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 24 days, resulting in a total penalty amount of \$2,400.<sup>3</sup> These facts were substantiated by written exhibits.

3. On March 29, 2017, Appellant requested 90 days of extensions of Legacy Post-Acute Rehabilitation Center's Long-Term Care Annual Disclosure report due date. OSHPD granted a 60-day extension and a 30-day extension.<sup>4</sup> Following the extensions, Appellant was required under Health and Safety Code section 128735 to file Legacy Post-Acute Rehabilitation Center's Long-Term Care Annual Disclosure report by July 29, 2017. Appellant failed to file the report by July 29, 2017. The delinquent report was filed on August 22, 2017.

4. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 24 days, resulting in a total penalty amount of \$2,400.<sup>5</sup> These facts were substantiated by 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. Appellant made oral statements of facts it believes show good cause why its report was not submitted in a timely manner.

7. Appellant stated that the reports were late because accurate and correct information was unavailable in time to submit the reports. Appellant stated that Axiom Healthcare Group received the Medicare cost data on or about May 31, 2017, but this data was not finalized.

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<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."

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

<sup>4</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."

<sup>5</sup> Health & Saf. Code, § 128770.

Appellant was unable to verify that date that Axiom Healthcare Group received the finalized data. Appellant also stated that financial discrepancies were noted when preparing the report. Specifically, when comparing the hourly rates in the payroll report, some of the employees were below minimum wage. Axiom Healthcare Group informed Appellant of these cost issues and requested corrections on or about July 28, 2017. Appellant provided Axiom Healthcare Group with corrected payroll reports on or about August 19 or 20, 2017. Axiom Healthcare Group finalized and submitted the reports for both facilities on August 22, 2017. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

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

9. Appellant has a history of filing required reports on time. However, Appellant also consistently requests both extensions of the filing deadline.

#### 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 reports for Indio Nursing and Rehabilitation Center and Legacy Post-Acute Rehabilitation Center by July 29, 2017 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>6</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>7</sup> Good cause is sometimes defined as circumstances beyond the party’s control, and not related to

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<sup>6</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

<sup>7</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].

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>8</sup>

3. Appellant stated that the reports were late because accurate and correct information was unavailable in time to submit the reports. Appellant stated that Axiom Healthcare Group received the Medicare cost data on or about May 31, 2017, but this data was not finalized. Appellant was unable to verify the date that Axiom Healthcare Group received the finalized data except that it was after May 31, 2017. Appellant stated that financial discrepancies were noted when preparing the report using the finalized data. Specifically, when comparing the hourly rates in the payroll report, some of the categories of employees had hourly rates which were below the minimum wage and obviously incorrect. Axiom Healthcare Group informed Appellant of these cost issues and requested corrections on or about July 28, 2017. Appellant worked with their payroll company to compare payroll across pay periods and identify the discrepancies. Appellant provided Axiom Healthcare Group with corrected payroll reports on or about August 19 or 20, 2017. Axiom Healthcare Group finalized and submitted the reports for both facilities on August 22, 2017. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

4. Unavailability of records can sometimes include unavailability of correct and accurate records. It would obviously be inappropriate to submit reports that Appellant knows are inaccurate. A short delay to correct the reports would most likely qualify as good cause if outside the control of Appellant. However, corrections were requested by Axiom Healthcare Group prior to the filing deadline, and no facts which were mentioned account for the one-month delay. The extensions are available to cover cases of unforeseen circumstances and would have provided sufficient time to correct the noted mistakes.

5. The substantiated facts do not meet the typical showing of good cause. Therefore,

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<sup>8</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.

Appellant has not met the burden of showing good cause for waiver of the penalty assessed.

**PROPOSED ORDER**

The assessed penalty is upheld.

Dated: June 19, 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: June 24, 2019

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