

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

In the Matter of the Penalty Issued to:

**MAIN WEST POSTACUTE CARE,  
NORTH STARR POSTACUTE  
CARE**

Appellant.

OSHPD No. 18-012C Part 2

**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.

Vista Del Sol PostAcute Care, owner and operator of Main West Postacute Care and North Starr Postacute Care, 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 15, 2017, OSHPD assessed a penalty against Appellant in the amount of \$1,200 for Main West Postacute Care's delinquent Long-Term Care Annual Disclosure report.
2. On August 15, 2017, OSHPD assessed a penalty against Appellant in the amount of \$1,200 for North Starr Postacute Care'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 Main West Postacute Care's Long-Term Care Annual Disclosure report due date. OSHPD granted a 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 Main West Postacute Care's Long-Term Care Annual

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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."

Disclosure report by July 29, 2017. Appellant failed to file the report by July 29, 2017. The delinquent report was filed on August 10, 2017.

2. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 12 days, resulting in a total penalty amount of \$1,200.<sup>3</sup> These facts were substantiated by written exhibits.

3. On March 29, 2017, Appellant requested both extensions of North Starr Postacute Care'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 North Starr Postacute Care'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 10, 2017.

4. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 12 days, resulting in a total penalty amount of \$1,200.<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 acquired the two facilities in 2015. The two facilities are close together and share employees. Thus, the salaries must be billed to each facility. Axiom Healthcare Group prepared the report for Appellant's review. Appellant stated that upon review, Appellant informed Axiom Healthcare Group that the expense reports included unreasonable expense to revenue ratios. Appellant provided Axiom Healthcare Group with corrected data on or about August 8 or 9, 2017. Axiom Healthcare Group finalized and

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<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.

submitted the reports for both facilities on August 10, 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 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>

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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].

<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.

3. Appellant stated that the reports were late because accurate and correct information was unavailable in time to submit the reports. Appellant acquired the two facilities in 2015. The two facilities are close together and share employees. Thus, the salaries must be billed to each facility. Axiom Healthcare Group prepared the report for Appellant's review. Appellant stated that upon review, Appellant informed Axiom Healthcare Group that the expense reports were unreasonable expense to revenue ratios. Appellant provided Axiom Healthcare Group with corrected data on or about August 8 or 9, 2017. Axiom Healthcare Group finalized and submitted the reports for both facilities on August 10, 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 Appellant's control. However, corrections were requested by Axiom Healthcare Group prior to the filing deadline, and no facts outside of Appellant's control were mentioned which 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. None of the factors were outside Appellant's control.

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

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PROPOSED ORDER

The assessed penalty is upheld.

Dated: June 20, 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