

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. 18-012C Part 3

**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.

New Orange Hills, LLC, owner and operator of New Orange Hills, “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 \$8,000 for New Orange Hill's delinquent Long-Term Care Annual Disclosure report.
2. 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.
3. 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.
4. Appellant submitted its appeal within the required fifteen business days from receipt of the denial of informal appeals.<sup>1</sup>
5. Appellant requested to appear by telephone at the time of its Request for Administrative Hearing. The request was granted.
6. OSHPD submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner.
7. Appellant did not submit written exhibits to the Hearing Office and OSHPD in advance of the hearing.

## FACTUAL FINDINGS

1. On January 31, 2017, Appellant requested 90-days of extensions of New Orange Hill'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 New Orange Hill's Long-Term Care Annual Disclosure report by May 29, 2017. Appellant failed to file the report by May 29, 2017. The delinquent report was filed on August 17, 2017.

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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."

2. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 80 days, resulting in a total penalty amount of \$8,000.<sup>3</sup> These facts were substantiated by written exhibits.

3. 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.”

4. 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.

5. Appellant stated that the reports were late because accurate and correct information was unavailable in time to submit the reports. Appellant stated the specific accounting issue was in allocations between the subacute and skilled nursing departments. On or about May 4, 2017, Axiom completed the draft report and reviewed it with Appellant. There were substantial changes in costs between the sub-acute costs, which dropped by 20%, and skilled nursing, where costs increased. Evaluation and adjustments of payroll data had to be completed. Business practices were modified in 2015 to try to solve related issues, but revenue and expenses for sub-acute are complicated because of the dual tracking and adjustments are still being made each accounting period. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

6. When questioned, OSHPD stated that it is common to see complicated revenue issues with the sub-acute classification of facilities. OSHPD indicated that because these facilities must allocate revenues for both sub-acute and skilled nursing facilities, they are essentially completing twice the accounting as an acute facility to track Medi-Cal expenses as well as tracking non-revenue expenses.

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

8. Appellant does not have a history of filing required reports on time during their last three reporting periods.

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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 Long-Term Care Annual Disclosure report for New Orange Hills by May 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>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 that the reports were late because accurate and correct information was unavailable in time to submit the reports. Appellant stated the specific accounting issue was in allocations between the subacute and skilled nursing departments. On or about May 4, 2017, Axiom completed the draft report and reviewed it with Appellant. There were substantial changes in costs between the sub-acute costs, which dropped by 20%, and skilled nursing, where costs increased. Substantial evaluation and adjustments of payroll data had to be completed. Business practices changed in 2015 to try and audit and solve this, but revenue and expenses for sub-acute are complicated because of the dual tracking and adjustments are still being made each

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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.

accounting period. These facts were substantiated by oral statements made under oath by Appellant at the hearing and written statements submitted with the request for appeal.

4. Unavailability of records can sometimes include unavailability of correct and accurate records. In many statutes, knowingly submitting incomplete or inaccurate data results in penalties. OSHPD statutes and regulations allow amendments to be filed and do not explicitly impose penalties for filing incomplete or inaccurate reports.<sup>7</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>8</sup> Therefore, it is important that the information submitted be complete and accurate at the time of submittal.

5. The substantiated facts showed that the discrepancies were identified on or about May 4, 2017, four weeks prior to the extended report due date. OSHPD stated that it is common to see complicated revenue issues with the sub-acute classification of facilities. OSHPD indicated that because these facilities must allocate revenues for both sub-acute and skilled nursing facilities, they are essentially completing twice the accounting as an acute facility to track Medi-Cal expenses as well as tracking non-revenue expenses. In its appeal, Appellant included a statement that ancillary services logs required detailed manual auditing. Based on the audits, reported expenses were modified and new procedures were implemented to ensure that the ancillary revenue for non Medi-Cal sub-acute patients is being tracked correctly throughout the year.

6. The procedural changes implemented in 2015 fixed several reporting issues seen in 2016 but uncovered further revenue tracking issues. Appellant has communicated regularly with OSHPD regarding their accounting and has diligently worked to improve their reporting processes. Additional improvements to business practices were needed once the ancillary revenue issue was identified. Appellant stated that they have made changes which should ensure accuracy for their 2018 report. Appellant has demonstrated continuous and ongoing efforts to improve recordkeeping and ensure accurate records are available going forward.

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<sup>7</sup> Health & Saf. Code, § 128755. *See generally*, Health & Saf. Code, § 128675 *et seq.*

<sup>8</sup> Health & Saf. Code, § 128730(a)(2). *See also*, Welf. & Inst. Code, § 14170.

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

**PROPOSED ORDER**

The assessed penalty is waived for good cause.

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