

PROCEDURAL FINDINGS

1. On December 10, 2018, OSHPD assessed a penalty against Appellant in the amount of \$2,200 for its delinquent Long-Term Care Annual Disclosure report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 21, 2018 and received by the OSPD Hearing Office on November 29, 2018.
3. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letters.¹
4. Appellant requested to appear by telephone via a letter dated December 28, 2018. The request was granted.
5. OSHPD submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner.
6. Appellant submitted written exhibits to the Hearing Office and OSHPD in advance of the hearing in a timely manner.

FACTUAL FINDINGS

1. Appellant failed to file the Long-Term Care Annual Disclosure Report by November 14, 2018. On November 19, 2018, OSHPD mailed Appellant a letter notifying it of the delinquent report. The GSO Delivery Notification shows it was delivered to the mail room on November 21, 2018. On December 6, 2018, Appellant requested an extension of the report due date. OSHPD granted a 30-day extension.² Penalties accrued from November 15, 2018 until December 6, 2018 when the extension was requested. Following the extension, Appellant was required under Health and Safety Code section 128735 to file Hospice of San Joaquin's Long-Term Care Annual Disclosure report by January 5, 2019.

¹ Health & Saf. Code, § 128770.

² 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. The delinquent report was filed on January 4, 2019.
3. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 22 days, resulting in a total penalty amount of \$2,200.³ 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 made oral statements of facts it believes show good cause why its report was not submitted in a timely manner.
6. Appellant alleged in its written statement that the report was late because reminders were sent to staff no longer with the organization and an employee out on emergency medical leave. Appellant also stated that the e-mail notifications went to two employees, one of whom is no longer with the hospital. In addition, a reorganization meant that the former employee was not replaced. The second employee went out on medical leave on September 14, 2018 for seven weeks, and her duties were eventually transferred to Appellant’s representative, Ms. Aranas. Appellant’s representative stated that the delinquency notice was not routed to her until on or about December 6, 2018. Appellant stated that access to the online system was requested immediately and the extension was requested as soon as access was granted. These facts were substantiated by oral statements made under oath by Appellant at the hearing.
7. OSHPD confirmed that Appellant has a history of filing required reports on time.

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 Hospice of San Joaquin by October 31, 2018 and whether the penalty should be waived in whole or in part.

³ Health & Saf. Code, § 128770.

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.”⁴ 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.⁵ 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.⁶

3. Appellant alleged in its written statement that the report was late because reminders were sent to staff no longer with the organization and an employee out on emergency medical leave. Appellant stated the extension was requested the same day Appellant’s representative was given access to the online reporting system. Appellant also stated that the e-mail notifications went to two employees, one of whom is no longer with the hospital. In addition, a reorganization meant that the former employee was not replaced. The second employee went out on unplanned medical leave on September 14, 2018 and her duties were eventually transferred to Appellant’s representative. However, Appellant’s representative had not yet received training on the deadlines and how to access the online reporting system and update contact information to receive notifications. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

4. Hospitalization is generally recognized as a circumstance beyond the party’s control, and Appellant stated there was no overlap with the outgoing staff due to unexpected medical leave of the primary employee and no immediate transition to backup staff due to vacancies and the

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

⁵ *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].

⁶ 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 waived.

Dated: June 28, 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: July 1, 2019

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