

PROCEDURAL FINDINGS

1. On December 31, 2018, OSHPD assessed a penalty against Appellant in the amount of \$5,200 for Camellia Gardens Care Center's delinquent Long-Term Care Annual Disclosure report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated January 11, 2018 [sic] and received by the OSPD Hearing Office on or about January 15, 2019.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.¹
4. Appellant requested to appear by telephone via an e-mail dated January 22, 2019. 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 did not submit written exhibits to the Hearing Office and OSHPD in advance of the hearing.

FACTUAL FINDINGS

1. Prior to the original due date of July 29, 2018, Appellant requested 90 days of extensions. OSHPD granted a 60-day extension and a 30-day extension. Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128735 to file Camellia Gardens Care Center's Long-Term Care Annual Disclosure report by October 29, 2018. Penalties accrued from October 30, 2018 until December 20, 2018 when the report was filed.
2. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 52 days, resulting in a total penalty amount

¹ Health & Saf. Code, § 128770.

of \$5,200.² These facts were substantiated both by oral statements made under oath by OSHPD at the hearing and 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 and made oral statements of facts it believes show good cause why its report was not submitted in a timely manner.

5. Appellant stated that Axiom Healthcare Group received the financial data from Appellant in August of 2018. It appeared that Appellant’s new accountant had switched Appellant’s financial records to a cash-based accounting rather than the required accrual-based accounting. Axiom Healthcare Group notified the owner in September of 2018. The owner investigated immediately. As a result, the administrator was replaced, and the old accountant was rehired in October of 2018. Appellant stated it took the old accountant a couple months to re-record and redo the accounting as accrual-based rather than cash-based. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

6. Under questioning, Appellant stated that the new administrator had hired a new accountant who was not following the OSHPD and Medi-Cal reporting requirements and when they brought that to the owner’s attention, they took immediate steps to return to the old accountant. In addition, the business office manager left during the administrator transitions. Appellant further stated that the new administrator had the required certifications for the job and should have known the accounting requirements. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

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

8. OSHPD’s representative confirmed that Appellant does have a history of filing required reports on time for the previous three years.

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² 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 Camellia Gardens Care Center by October 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.”³ 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.⁴ 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.⁵ Good cause is not limited to the listed reasons however.

3. Appellant stated that Axiom Healthcare Group received the financial data from Appellant in August of 2018. It appeared that Appellant’s new accountant had switched Appellant’s financial records to a cash-based accounting rather than the required accrual-based accounting. Axiom Healthcare Group notified the owner in September of 2018. The owner investigated immediately. As a result, the administrator was replaced, and the old accountant was rehired in October of 2018. Appellant stated it took the old accountant a couple months to re-record and

³ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

⁴ *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].

⁵ 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.

redo the accounting as accrual-based rather than cash-based. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

4. Under questioning, Appellant stated that the new administrator had hired a new accountant who was not following the OSHPD and Medi-Cal reporting requirements and when they brought that to the owner's attention, they took immediate steps to return to the old accountant. In addition, the business office manager left during the administrator transitions. Appellant further stated that the new administrator had the certifications required for the administrator position and should have known the accounting requirements to file with OSHPD. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

5. 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.⁶ 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.⁷ Therefore, it is important that the information submitted be complete and accurate at the time of submittal.

6. Above, it was stated that "good cause...should be outside the reasonable control of the party." However, Appellant did have control over the hiring of the new administrator, which was the root cause of the change in accountants and the unavailability of accurate records at the time the extensions were exhausted. The hiring of a new accountant was also within the reasonable control of Appellant as a major business decision made by an employee given considerable authority by Appellant. Appellant is responsible for the decision whether they approved the hiring or merely delegated the authority to make the decision.⁸ However, the substantiated facts show that Appellant hired a new administrator with all expected certifications and qualifications and believed in good faith that the administrator was performing his or her

⁶ Health & Saf. Code, § 128755. *See generally*, Health & Saf. Code, § 128675 *et seq.*

⁷ Health & Saf. Code, § 128730(a)(2). *See also*, Welf. & Inst. Code, § 14170.

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duties in compliance with the laws and regulations of California. Similarly, the substantiated facts show the accountant was licensed by the California Board of Accountancy and was contracted to perform work that was well within their expected level of competence. Once the report preparer received the accountant's records, there was a delay while the books were reviewed before Axiom Healthcare Group reported to Appellant there was a problem with the accounting. There are no substantiated facts which provide evidence that the accounting and reports are simple enough that a layperson would be expected to identify the accounting issue without expert advice. Furthermore, when apprised of the issues, the Appellant did take appropriate and immediate steps to rectify the issues. The substantiated facts support that Appellant took all reasonable steps to ensure timely compliance. This, along with their history of on-time filing, demonstrates due diligence by Appellant.

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

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PROPOSED ORDER

The assessed penalty is waived for good cause.

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