

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

In the Matter of the Penalty Issued to:

**ANTELOPE VALLEY HOSPITAL**

Appellant.

OSHPD No. 19-002

**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, February 20, 2019 beginning at 9:31 A.M.

Ty Christensen, Manager, Accounting and Reporting Systems Section, and Tina Tran, Associate Governmental Program Analyst, Accounting and Reporting Systems Section represented OSHPD.

Antelope Valley Healthcare District, owner and operator of Antelope Valley Hospital, “Appellant,” was represented by William (Bill) Keenan, Interim Controller, Slavka Rehacek, and Jaycee Lin, Consultant with Essential Consulting LLC.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, February 20, 2019 at 9:53 A.M.

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## PROCEDURAL FINDINGS

1. On December 31, 2018, OSHPD assessed a penalty against Appellant in the amount of \$500 for Antelope Valley Hospital's delinquent Hospital Quarterly Financial Utilization Report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated January 15, 2019 and received by the OSHPD Hearing Office on January 15, 2019.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the denial of its informal appeal.<sup>1</sup>
4. Appellant requested to appear by telephone via an e-mail dated January 16, 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 submitted written exhibits to the Hearing Office and OSHPD in advance of the hearing in a timely manner.

## FACTUAL FINDINGS

1. On October 30, 2018, Appellant requested a 30-day extension of Antelope Valley Hospital's Hospital Quarterly Financial and Utilization Report. OSHPD granted the extension. Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file the report by December 14, 2018. Penalties accrued from December 14, 2018 until December 19, 2018 when the report was certified.
2. The report was submitted on Friday, December 14, 2018.
3. The report was certified on Wednesday, December 19, 2018.
4. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 5 days, resulting in a total penalty amount

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

of \$500.<sup>2</sup> These facts were substantiated both by oral statements made under oath by OSHPD at the hearing and 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 and made oral statements of facts it believes show good cause why its report was not submitted in a timely manner.

7. Appellant alleged in their written statement that they received an e-mail on Friday, December 14, 2018 confirming the submission of the Hospital Quarterly Financial and Utilization Report. The referenced e-mail states the requirement that the report be certified but states the “report is pending submission with a date of 12/14/18.” Appellant stated that it was unclear that the report would be considered delinquent until the certification was received until the delinquency e-mail was send on Monday, December 17, 2018. Both the certifier, Ms. Rehacek, and the new interim controller, Mr. Keenan are new hires for Appellant and Mr. Keenan is also new to California. Appellant further stated that Ms. Rehack and Mr. Keenan made the decision to review the report together prior to certifying it as it was their first quarterly report in their new positions. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

8. Under questioning, Appellant further stated that Mr. Keenan traveled to Pennsylvania to see his wife and kids on Friday, December 14, 2018 and did not return to California until Tuesday December 18, 2019. Upon his return to the office on Wednesday, December 19, 2019, he reviewed the report with Ms. Rehacek and it was certified.

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

10. OSHPD’s representative confirmed that Appellant does have a history of filing required reports on time.

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<sup>2</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 Hospital Quarterly Financial Utilization Report for Antelope Valley Hospital by December 14, 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.”<sup>3</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>4</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>5</sup> Good cause is not limited to the listed reasons however. In civil actions a mistake can be a defense. This excusable neglect must be objectively honest and subjectively reasonable.<sup>6</sup>

3. Appellant alleged in their written statement that they received an e-mail on Friday, December 14, 2018 confirming the submission of the Hospital Quarterly Financial and Utilization Report. The referenced e-mail states the requirement that the report be certified but states the “report is pending submission with a date of 12/14/18.” Appellant stated that it was unclear that the report would be considered delinquent until the certification was received until

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

<sup>4</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>5</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.

<sup>6</sup> Black’s Law Dict. (8<sup>th</sup> ed. 2004), p. 1601. See also Code Civ. Pro., §473.

the delinquency e-mail was sent on Monday, December 17, 2018 at or around 11:50 PM. Both the certifier, Ms. Rehacek, and the new interim controller, Mr. Keenan are new hires for Appellant and Mr. Keenan is also new to California. Appellant further stated that Ms. Rehack and Mr. Keenan made the decision to review the report together prior to certifying it as it was their first quarterly report in their new positions. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

4. Appellant has demonstrated an honest and reasonable mistake in believing that the report was submitted on the due date of Friday, December 14, 2018. However, when notified that the report would be considered delinquent until it was certified, Appellant did not take steps to immediately certify the report. The delay in certifying the report was due to personal travel. That substantiated fact does not fall under any of the enumerated examples of good cause.

5. The substantiated facts meet the typical showing of good cause for three days of the delinquency. Therefore, Appellant met the burden of showing good cause for reduction of the penalty assessed by three days. \$200 of the assessed penalty is upheld.

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PROPOSED ORDER

The assessed penalty is waived in part for good cause. \$200 of the penalty is upheld.

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