

PROCEDURAL FINDINGS

1. On May 18, 2017, OSHPD mailed a delinquency notification for White Oak Congregate Living for its Long-Term Care Annual Disclosure Report.
2. On May 18, 2017, OSHPD mailed a delinquency notification for Senior Congregate Living Inc for its Long-Term Care Annual Disclosure Report.
3. On May 24, 2018, OSHPD assessed an adjusted penalty against Appellant in the amount of \$31,100 for White Oak Congregate Living's delinquent Long-Term Care Annual Disclosure Report.
4. On May 24, 2018, OSHPD assessed an adjusted penalty against Appellant in the amount of \$30,600 for Senior Congregate Living's delinquent Long-Term Care Annual Disclosure Report.
5. Appellant was denied under the informal appeal process and instructed to pay or file a formal appeal.
6. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated January 18, 2019 and received by the OSHPD Hearing Office on February 14, 2019.
7. Appellant submitted its appeals within the required fifteen business days from receipt of the denial of its informal appeal.¹
8. Appellant requested to appear by telephone via an e-mail dated February 21, 2019. The request was granted.
9. OSHPD submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner.
10. Appellant did not submit written exhibits to the Hearing Office and OSHPD in advance of the hearing.

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¹ Health & Saf. Code, § 128770.

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128735 to file White Oak Congregate Living's Long-Term Care Annual Disclosure Report by April 30, 2017. Appellant failed to file the report by April 30, 2017. Penalties accrued from May 1, 2017 until May 1, 2018 when the report was submitted.
2. Appellant was required under Health and Safety Code section 128735 to file Senior Congregate Living's Long-Term Care Annual Disclosure Report by April 30, 2017. Appellant failed to file the report by April 30, 2017. Penalties accrued from May 1, 2017 until May 1, 2018 when the report was submitted.
3. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 366 days, then adjusted the penalty down for undocumented delinquency notices resulting in a total adjusted penalty amount of \$31,100.² These facts were substantiated both by oral statements made under oath by OSHPD at the hearing and written exhibits.
4. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 366 days, then adjusted the penalty down for undocumented delinquency notices resulting in a total adjusted penalty amount of \$30,600.³ 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 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 two facilities were brand new facilities that began operating in spring of 2016. Appellant further stated that the first reports were due in spring of 2017, but the

² Health & Saf. Code, § 128770.

³ Health & Saf. Code, § 128770.

previous owner/administrator was negligent in her duties and was not even coming to the office. The previous owner/administrator resigned and sold the facilities in or around July 2017. The new owner immediately hired Ms. Vitte to be the administrator in or around July 2017.

Appellant further stated that Ms. Vitte came from an outpatient facility and was unfamiliar with the OSHPD reporting requirements. Furthermore, the delinquency letters and other records were lost or destroyed by the previous owner/administrator. When Appellant learned of the delinquent reports, it contacted OSHPD and made immediate efforts to submit the reports and bring the facilities current. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

8. OSHPD offered additional testimony supporting leniency due to the circumstances and financial hardship. Appellant did not offer additional testimony. The initial statements of both parties were not rebutted.

9. OSHPD's representative confirmed that Appellant does have a history of filing all its subsequent required reports on time. OSHPD further stated that the following fiscal year's reports were submitted at the same time as the delinquent reports, May 1, 2018. Furthermore, the most current reports were submitted early, and in fact were the first two reports submitted by any long-term care facility in the state.

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 Financial Disclosure Reports for White Oak Congregate Living and Senior Congregate Living Inc. by April 30, 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.”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 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.⁷

3. Appellant stated that the two facilities were brand new facilities that began operating in spring of 2016. Appellant further stated that the first reports were due in spring of 2017, but the previous owner/administrator was negligent in her duties and was not even coming to the office. The previous owner/administrator resigned and sold the facilities in or around July 2017. The new owner immediately hired Ms. Vitte to be the administrator in or around July 2017. Appellant further stated that Ms. Vitte came from an outpatient facility and was unfamiliar with the OSHPD reporting requirements. Furthermore, the delinquency letters and other records were lost or destroyed by the previous owner/administrator. When Appellant learned of the delinquent reports, it made immediate efforts to submit the delinquent reports and bring the facilities current. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

4. The substantiated facts establish that the previous owner/administrator was responsible in fact for the delinquent reports. The substantiated facts also show the delay in filing 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.

⁷ Black’s Law Dict. (8th ed. 2004), p. 1601. See also Code Civ. Pro., §473.

delinquent report once the new owner and administrator took over was due to ignorance of both the previous notices, the loss or destruction of which was outside the control of Appellant, and a mistake in not immediately contacting OSHPD and verifying any previous reporting. Once Appellant became aware of the delinquent reports, Appellant took immediate steps to both complete the delinquent reports and submit the upcoming reports in a timely manner.

5. It would be unreasonable to hold Appellant responsible for a delinquency caused by the previous owner/administrator. Appellant has substantiated facts which show that the subsequent delay was due to never receiving notifications of the delinquency nor having any business records which indicated the report was not filed. The issue was rectified within a week and Appellant has ensured that no subsequent reports have been delinquent or even required extensions.

6. 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