

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

In the Matter of the Penalty Issued to:	}	
SAN FERNANDO POST ACUTE HOSPITAL	}	OSHPD No. 19-008-LTC
Appellant.	}	
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PROPOSED DECISION

This matter was heard before Michelle Church-Reeves, Hearing Officer, Office of Statewide Health Planning and Development (“OSHPD”), State of California, on Tuesday, September 10, 2019 beginning at 1:01 P.M.

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

San Fernando Post Acute Hospital, Inc. doing business as Golden Legacy Care Center, Inc., owner and operator of San Fernando Post Acute Hospital, “Appellant,” was represented by Naseer Chohan, Director of Reimbursement.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on September 10, 2019 at 1:25 P.M.

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PROCEDURAL FINDINGS

1. On July 17, 2019, OSHPD assessed a penalty against Appellant in the amount of \$1,200 for an extension requested after the due date for San Fernando Post Acute Hospital's delinquent Long-Term Care Annual Disclosure Report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated July 29, 2019 and received by the OSHPD Hearing Office on August 2, 2019.
3. On August 23, 2019, OSHPD assessed an additional penalty against Appellant in the amount of \$1,100 for its delinquent Long-Term Care Annual Disclosure Report.
4. Appellant requested consolidation of the appeals of San Fernando Post Acute Hospital on August 23, 2019.
5. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.¹
6. The Hearing Office elected to schedule a telephonic hearing at the time of the appeal. Neither party objected to conducting the hearing via telephonic means.
7. OSHPD submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner.
8. Appellant did not submit additional written exhibits to the Hearing Office and OSHPD in advance of the hearing.

FACTUAL FINDINGS

1. Following exhaustion of the first extension, Appellant was required under Health and Safety Code section 128735 to file San Fernando Post Acute Hospital's Long-Term Care Annual Disclosure Report by June 29, 2019. Penalties accrued from June 30, 2018 until July 11, 2019 when the second extension was requested.

¹ Health & Saf. Code, § 128770.

2. Following exhaustion of the second extension, Appellant was required under Health and Safety Code section 128735 to file the report by August 10, 2019. Penalties accrued from August 11, 2019 until August 21, 2019.

3. The report was filed on August 21, 2019.

4. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 12 and 11 days respectively, resulting in a total penalty amount of \$2,300.² These facts were substantiated both by oral statements made under oath by Tina Tran 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 wrote that Philmar Care, LLC, owner and operator of San Fernando Post Acute Hospital since 1996, filed for bankruptcy in December of 2018. On or about June 1, 2019, the facility was transferred to a new entity called “Golden Legacy Care Centers.” The bankruptcy trustee hired Axiom Healthcare to file the cost report in or around July 2019. Axiom Healthcare received the financials through July and August 2019 as the facility was able to provide them. Appellant further stated that both it and Axiom Healthcare believed the previous accountant had filed for both extensions. Upon receiving the first delinquency notice, Axiom Healthcare immediately filed for the second extension. The second extension did not provide Appellant and Axiom Healthcare enough time to complete the report due to delays with the transfer of financial records due to the bankruptcy. Appellant stated that Golden Legacy Care Centers has been diligent in their regulatory responsibilities and an application to update the facility’s license has been filed with the Department of Public Health, but the update was still pending as of the date of the hearing. These facts were substantiated by oral statements made under oath by Mr. Chohan at the hearing.

² Health & Saf. Code, § 128770.

8. OSHPD's representatives confirmed that a change of ownership is processing with the Department of Public Health.
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.

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 Report for San Fernando Post Acute Hospital by July 11, 2019 and again by August 10, 2019, 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

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.

reasons however. In civil actions a mistake can be a defense. This excusable neglect must be objectively honest and subjectively reasonable.⁶

3. Appellant stated that Philmar Care, LLC, the former owner and operator of San Fernando Post Acute Hospital since 1996, filed for bankruptcy in December of 2018. The Trustee hired Axiom Healthcare to file the cost report. On or about June 1, 2019, the facility was transferred to a new entity called “Golden Legacy Care Centers.” Appellant stated that an application to update the facility’s license has been filed with the Department of Public Health. Appellant further stated that both it and Axiom Healthcare believed the previous accountant had filed for both extensions. Upon receiving the first delinquency notice, Axiom Healthcare immediately filed for the second extension. The second extension did not provide Appellant and Axiom Healthcare sufficient time to complete the report due to transfer of records due to the bankruptcy, but the report was submitted as soon as possible.

4. The substantiated facts establish that the owner who filed for bankruptcy was responsible in fact for the delinquent reports. The substantiated facts also show the delay in filing the 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 extension requests. Furthermore, the substantiated facts show that Axiom Healthcare was unable to complete the report on or by the due date due to delays in obtaining the necessary financial records due to the bankruptcy, which was outside the control of Appellant, and the date of the extension request did not materially impact the amount of penalties assessed against Appellant. Appellant took immediate and ongoing steps to complete the delinquent report.

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

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

PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: September 25, 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: October 2, 2019

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