

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

In the Matter of the Penalty Issued to:	}	
PACIFIC HAVEN SUBACUTE AND HEALTHCARE CENTER	}	OSHPD No. 19-012-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 Wednesday, November 20, 2019 beginning at 1:06 P.M.

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

12072 Trask, Inc., owner and operator of Pacific Haven Subacute and Healthcare Center, “Appellant,” was represented by Cathy Storr and Michael Lesnick, Vice-Presidents, Axiom Healthcare Group, “Axiom.”

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, November 20, 2019 at 1:42 P.M.

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PROCEDURAL FINDINGS

1. On August 23, 2019, OSHPD assessed a penalty against Appellant in the amount of \$2,300 for its delinquent Long-Term Care Annual Disclosure Report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated September 18, 2019 and received by the OSHPD Hearing Office on September 18, 2019.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.¹
4. At the election of the Hearing Office, the hearing was conducted telephonically.
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 at the time of their appeal.

FACTUAL FINDINGS

1. On April 11, 2019, Appellant requested both the 60-day and 30-day extensions for Pacific Haven Subacute and Healthcare Center's Long-Term Care Annual Disclosure Report. Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128770 to file Pacific Haven Subacute and Healthcare Center's Long-Term Care Annual Disclosure Report by July 29, 2019. Penalties accrued from July 30, 2019 until August 21, 2019 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 23 days, resulting in a total penalty amount of \$2,300.² These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

¹ Health & Saf. Code, § 128770.

² Health & Saf. Code, § 128770.

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 because it is a subacute facility, it must submit both OSHPD and Medi-Cal reports and also must do accounting for two separate departments. Axiom prepared Appellant’s calendar year 2015, 2016, and 2018 reports. A different report preparer was used for the calendar year 2017 reporting period. The facility added a substantial amount of subacute beds during February 2018, more than doubling their capacity, and required additional nurse staffing in the subacute department which crossed between the subacute and skilled nursing departments. Appellant believed this was being accounted for in its timekeeping system. However, when Axiom was auditing the data and comparing it to 2017, substantial deviations were noted. Over \$500,000 was misclassified due to the staffing cross-over and the timekeeping system defaulting each nurse to their home department, skilled nursing, even when they were working in the subacute department. This technical glitch was not caught until the financial reports were being finalized in July 2019. This required Appellant to manually review eleven months of payroll and accounting records. The revised financial records were provided to Axiom on or about August 19, 2019 and the report was quickly revised, audited, and submitted. These facts were substantiated by oral statements made under oath by Ms. Storr and Mr. Lesnick at the hearing and written exhibits.

6. OSHPD’s representatives confirmed the dual reporting status of Pacific Haven Subacute and Healthcare Center. Neither OSHPD nor Appellant offered additional testimony. The initial statements of both parties were not rebutted.

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

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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 Pacific Haven Subacute and Healthcare Center by July 29, 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

3. 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, which cannot be amended.⁷ Therefore, it is important that the information

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 4, 2019].

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 December 4, 2019]. See also *Waters, supra*, 58 Cal.2d 885, 893.

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.

submitted be complete and accurate at the time of submittal.

4. The substantiated facts demonstrate that accurate and correct information was unavailable in time to submit the report by the deadline. The question is whether this delay was within the control of Appellant. The 2018 report period seemed subject to an unusual, and perhaps unforeseeable, number of issues. The nexus was the addition of subacute beds, which came with predictable logistics challenges. However, the problem with the timekeeping system was unforeseen and caused the largest delay, requiring the manual review of eleven months of records when it was discovered. Appellant's testimony indicated that this was compounded by the change in report preparer, necessitating further review during the auditing process and incurring additional delay. Furthermore, Appellant has demonstrated immediate and ongoing efforts to improve recordkeeping and ensure accurate records are available in a timely manner going forward.

5. 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: January 9, 2020

/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: January 14, 2020

/s/
MARKO MIJIC
Acting Director
Office of Statewide Health Planning and
Development