

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

In the Matter of the Penalty Issued to:

**CIRBY HILLS BEHAVIORAL  
HEALTH**

Appellant.

OSHPD No. 19-013-HQF

**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, October 22, 2019 beginning at 1:01 P.M.

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

North Valley Behavioral Health, licensee and operator of Cirby Hills Behavioral Health, “Appellant,” was represented by Debra McCartney, Administrator.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, October 22, 2019 at 1:24 P.M.

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## PROCEDURAL FINDINGS

1. On September 4, 2019, OSHPD assessed a penalty against Appellant in the amount of \$1,500 for its delinquent Hospital Quarterly Financial Utilization Report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated September 5, 2019 and received by the OSHPD Hearing Office on September 19, 2019.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.<sup>1</sup>
4. 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 in a timely manner.

## FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128770 to file Cirby Hills Behavioral Health's Hospital Quarterly Financial Utilization Report by August 14, 2019. Penalties accrued from August 15, 2019 until August 29, 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 15 days, resulting in a total penalty amount of \$1,500.<sup>2</sup> These facts were substantiated both by oral statements made under oath by Mr. Christensen 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."

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

<sup>2</sup> Health & Saf. Code, § 128770.

4. Appellant submitted a written statement with its appeal, written exhibits, and made oral statements of facts under oath it believes show good cause why its report was not submitted in a timely manner.

5. Appellant stated that the previous report preparer resigned on May 31, 2019, shortly after filing the previous quarterly report. Although Cirby Hills Behavioral Health attempted to update their contact information to Ms. McCartney, e-mails were still going to the previous report preparer. None of the reminder e-mails were received by a current employee of Cirby Hills Behavioral Health. In addition, when Ms. McCartney asked for the next report deadline, she was erroneously informed by accounting staff it was in September. The previous report preparer forwarded the delinquency e-mail which was sent on or about August 17, 2019, to Ms. McCartney on or about August 26, 2019. Ms. Tran sent the delinquency letter on or about August 26, 2019, and it was delivered on or about August 27, 2019. Ms. McCartney immediately reached out to OSHPD and other staff at Cirby Hills Behavioral Health, obtained the financial records to prepare the report, and filed the report as quickly as possible. The report was completed and filed within three days of the time the Appellant actually received the notification. Additionally, Cirby Hills Behavioral Health has only been open a little over a year and filed its first quarterly report on March 14, 2019. Both the March and May quarterly reports were filed timely. The facility has also implemented some controls going forward to ensure reports are timely filed. These facts were substantiated both by oral statements made under oath by Appellant at the hearing and written exhibits.

6. OSHPD's representative stated that it was likely the contact information from MIRCal was updated, but not SIERA, and the systems do not talk to each other. 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 Hospital Quarterly Financial Utilization Report for Cirby Hills Behavioral Health by August 14, 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.”<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. The substantiated facts show that Appellant took what it believed were the necessary steps to update its contact information with OSHPD. While Appellant was mistaken, the oral statements made under oath by Appellant at the hearing are credible. It is subjectively reasonable that a facility, especially a new facility, might not know that updating their records with one OSHPD system would not update all their records with OSHPD. It was also

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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 4, 2019].

<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 December 4, 2019]. 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.

subjectively reasonable that the facility might not be expecting to receive reminder e-mails and letters due to the expectation that the following report would be due in September. As Cirby Hills Behavioral Health had not been open to file a report the previous August, the staff had no institutional knowledge or organizational experience with the fall quarterly report. While the deadlines are outlined in statute and regulations, they must be calculated rather than falling on a set day such as the 15<sup>th</sup> of the next month.<sup>7</sup> Therefore, it is reasonable that staff would place some reliance on the reminder e-mails which were not received to verify the upcoming deadline. Finally, the facility demonstrated their commitment to filing the required reports through a quick response to the delinquency notification and assurances that processes are in place to ensure future reports are all timely filed.

4. The substantiated facts demonstrate a subjectively reasonable mistake which constitutes good cause. Therefore, Appellant met the burden of showing good cause for waiver of the penalty assessed.

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<sup>7</sup> Health & Saf. Code, § 128740. *See also* Cal. Code Regs., tit. 22, § 97040.1.

PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: December 9, 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: December 9, 2019

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