

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

In the Matter of the Penalty Issued to: PARADISE CONGREGATE LIVING Appellant.	}	OSHPD No. 19-017-LTC
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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, November 26, 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.

Paradise Congregate Living Inc., owner and operator of Paradise Congregate Living, “Appellant,” was represented by Liliana Cohen, Administrator.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, November 26, 2019 at 1:22 P.M.

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PROCEDURAL FINDINGS

1. On September 24, 2019, OSHPD assessed a penalty against Appellant in the amount of \$5,000 for its delinquent Long-Term Care Annual Disclosure Report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated October 8, 2019 and received by the OSHPD Hearing Office on October 8, 2019.
3. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letters.¹
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. Exhibits 1 through 21 were found to be authentic and relevant and admitted to the record.
6. Appellant did not submit written exhibits to the Hearing Office and OSHPD in advance of the hearing.

FACTUAL FINDINGS

1. On February 27, 2019, Appellant requested the 60-day extension for the Long-Term Care Annual Disclosure Report of Paradise Congregate Living. On or about June 10, 2019, Appellant requested the final 30-day extension. Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128770 to file Paradise Congregate Living's Long-Term Care Annual Disclosure Report by July 29, 2019. Penalties accrued from July 30, 2019 until September 17, 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 50 days, resulting in a total penalty amount

¹ Health & Saf. Code, § 128770.

of \$5,000.² 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.”

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 the facility was closed from either March 31 or April 30, 2019 until mid-September 2019. During this time, Meryl Lefkovitch, the administrative assistant who was primarily responsible for providing the financial records to the accountant who was preparing the report, left the country and was unreachable to obtain records. Ms. Cohen testified that she worked with the accountant to search for and compile the records necessary to complete the report, but Ms. Lefkovitch’s unexpected absence caused significant delay. Currently, Ms. Cohen is the sole responsible party for the report and will handle it herself going forward. Furthermore, in October 2019, the facility underwent a change of ownership by adding a partner to the corporate structure as Ms. Cohen was unable to handle the administrative tasks by herself. These facts were substantiated by oral statements made under oath by Ms. Cohen at the hearing.

6. 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.

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 Paradise Congregate Living by July 29, 2019, and whether the penalty should be waived in whole or in part.

² Health & Saf. Code, § 128770.

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 submitted be complete and accurate at the time of submittal.

4. The substantiated facts do not show a change of ownership sufficient to warrant a waiver of the penalty as Ms. Cohen remains in the corporate structure both before and after October 2019. However, 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.

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.

5. The substantiated facts demonstrate that Ms. Cohen encountered significant and unforeseeable difficulty in obtaining the necessary records to complete the report. The primary administrative employee was not only not at work but left the country and was completely unreachable. Furthermore, Appellant has demonstrated immediate and ongoing efforts to improve recordkeeping and ensure accurate records are available in a timely manner going forward.

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: February 6, 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: March 6, 2020

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