

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

In the Matter of the Penalty Issued to:

**ROSE DESERT CONGREGATE
CARE**

Appellant.

OSHPD No. 19-018-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 Wednesday, December 4, 2019 beginning at 1:37 P.M.

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

Rose Desert Congregate Care Inc., owner and operator of Rose Desert Congregate Care, “Appellant,” was represented by Tamara Rosenthal, Chief Executive Officer.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, December 4, 2019 at 1:58 P.M.

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PROCEDURAL FINDINGS

1. On August 23, 2019, OSHPD assessed a penalty against Appellant in the amount of \$1,800 for its delinquent Long-Term Care Annual Disclosure Report.
2. Appellant appealed the penalty via e-mail on September 25, 2019 but failed to attach the Request for Administrative Hearing form. Upon the request of the Hearing Office, Appellant submitted the Request for Administrative Hearing form dated September 27, 2019 and received by the OSHPD Hearing Office on October 16, 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 did not submit written exhibits to the Hearing Office and OSHPD in advance of the hearing.

FACTUAL FINDINGS

1. On February 15, 2019, Appellant requested and was granted a 60-day extension for Rose Desert Congregate Care's Long-Term Care Annual Disclosure Report. On June 29, 2019, Appellant requested and was granted an additional 30-day extension. Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128770 to file the Long-Term Care Annual Disclosure Report by July 29, 2019. Penalties accrued from July 30, 2019 until August 16, 2019 when 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 18 days, resulting in a total penalty amount

¹ Health & Saf. Code, § 128770.

of \$1,800.² 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 that the report was submitted on or about 10:14 P.M. on Tuesday, July 30, 2019. When the file was received and reviewed by OSHPD on July 31, 2019, Ms. Tran discovered the report was password protected and could not be opened. Unfortunately, after submitting the password protected report, Appellant was involved in a motor vehicle accident which resulted in her long-term hospitalization. Appellant has very limited administrative staff and Ms. Rosenthal is the sole responsible party for the filing of OSHPD reports. In Ms. Rosenthal’s absence, other staff attempted to obtain the password to the file. The file was resubmitted by Appellant on August 12, 2019, but the signed certification was not submitted until August 16, 2019. Ms. Rosenthal was still in the hospital at that time. Under questioning, Ms. Rosenthal testified that she submitted the 2017 calendar year report via e-mail because she was unable to file electronically for both report periods. OSHPD exhibits showed she e-mailed Ms. Tran on or about 10:10 A.M. on July 30, 2019 stating that she received an error when attempting to upload the Excel file. Ms. Tran responded on or about 11:32 A.M. on July 30, 2019 reiterating that electronic filing required specialized software that Congregate Living Health Facilities are not required to purchase due to their limited bed space and small staffing. These facts were substantiated by oral statements made under oath by Ms. Rosenthal 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 is a new facility with a limited filing history, but their inaugural report was filed on time.

² Health & Saf. Code, § 128770.

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 Rose Desert Congregate Care 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. The substantiated facts demonstrate that the responsible party was hospitalized for the period from on or about July 30, 2019, until on or about September 17, 2019. If the report had not been password protected when it was submitted on July 30, 2019, or Ms. Rosenthal had been available to immediately provide the password to OSHPD instead of hospitalized, the report would have been completed on or about July 30, 2019 and would have only incurred \$100 of penalties. Congregate Living Facilities are exempt from the online filing requirement in

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.

OSHPD's regulations due to their small size and limited staffing.⁶ Furthermore, Appellant was informed of this by OSHPD staff when submitting its inaugural report and again when Appellant stated they had difficulty filing online on or about July 30, 2019. As this was not a new process or requirement, Ms. Rosenthal knew or should have known to file the report and certification by email and Appellant's failure to file on July 29, 2019 does not meet the typical showing of good cause.

4. The substantiated facts of accident involvement and hospitalization meet the typical showing of good cause. Therefore, Appellant met the burden of showing good cause for reduction of the penalty assessed to the date of the accident, or \$100.

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⁶ Tit. 22, Cal. Code Regs., § 97041(c).

PROPOSED ORDER

The assessed penalty is waived in part for good cause. \$100 of the assessed penalty is upheld.

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