

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

In the Matter of the Penalty Issued to:

ASTOR HEALTHCARE CENTER

Appellant.

OSHPD No. 19-019-LTC

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, December 17, 2019 beginning at 10:32 A.M.

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

Vista Post Acute Center LLC, owner and operator of Astor Healthcare Center, “Appellant,” was represented by Eddie Uppal and Joe McFadden, Consultants, Axiom Healthcare Group (“Axiom”).

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, December 17, 2019 at 10:49 A.M.

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PROCEDURAL FINDINGS

1. On October 28, 2019, OSHPD assessed a penalty against Appellant in the amount of \$8,000 for its delinquent Long-Term Care Annual Disclosure Report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 11, 2019 and received by the OSHPD Hearing Office on November 12, 2019.
3. Appellant submitted its appeals 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 18 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 March 19, 2019, Appellant requested both the 60-day and 30-day extensions for the Long-Term Care Annual Disclosure Report of Astor Healthcare Center. Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128770 to file Astor Healthcare Center's Long-Term Care Annual Disclosure Report by July 29, 2019. Penalties accrued from July 30, 2019 until October 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 80 days, resulting in a total penalty amount of \$8,000.² 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’s representative Mr. Eddie Uppal testified that LDC Resources LLC (AKA Independence Healthcare Management) operated Astor Healthcare Center from 2016 until in or around March 2019. In or around March 2019, Beecan Healthcare took over administrative operations for Astor Healthcare Center and several other facilities. Axiom was responsible for preparing the report during all report periods. When Axiom reviewed the financial records provided by Beecan Healthcare, there were substantial deviations in administrative costs from the previous two reporting periods. This was not the case with many of the other facilities Beecan Healthcare was responsible for. Axiom brought the issues to Beecan Healthcare and worked with them to obtain accurate reports. However, due to the timing of the transition, this was unable to be completed during the extension time. Mr. Uppal testified that he believes this was an unexpected and a one-time delay which should not be repeated. These facts were substantiated by oral statements made under oath by Mr. Uppal 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. 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 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.

5. The substantiated facts demonstrate that while there was no change of ownership, significant changes took place in operations which caused a substantial delay in obtaining

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.

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