

PROCEDURAL FINDINGS

1. On November 12, 2019, OSHPD assessed a penalty against Appellant in the amount of \$500 for its delinquent Long-Term Care Annual Disclosure Report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 15, 2019 and received by the OSHPD Hearing Office on November 20, 2019.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.¹
4. The hearing was scheduled to be conducted telephonically at the election of the Hearing Office.
5. OSHPD submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 10 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.
7. Appellant failed to appear at the scheduled hearing. The Hearing Officer and OSHPD's representatives were available to conduct the scheduled hearing from 10:30 A.M. until 11:15 A.M. Appellant received written notice of the closing of the hearing record via e-mail.

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128770 to file Mercy Retirement and Care Center's Long-Term Care Annual Disclosure Report by October 31, 2019. Penalties accrued from November 1, 2019 until November 5, 2019 when an extension was requested. The second extension was requested on December 16, 2019. Following exhaustion of the extensions, Appellant was required to file the Report by February 3, 2020.

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¹ Health & Saf. Code, § 128770.

2. This appeal concerns the penalty assessed for requesting the extension after the due date of October 31, 2019. The report was not filed as of the date of the scheduled hearing.

3. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 5 days, resulting in a total penalty amount of \$500.² These facts were substantiated by documentary evidence in the form of written exhibits provided to the Hearing Office and Appellant in advance of the scheduled hearing.

4. 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.”

5. Appellant did not submit a written statement with its appeal and did not make oral statements of facts it believes show good cause why its report was not submitted in a timely manner.

6. Appellant’s representative failed to appear at the hearing. The telephone number for the conference room was included in the scheduling notice sent to Appellant on December 5, 2019 via e-mail. In addition, at or about 10:44 A.M. on January 6, 2020, I e-mailed Ms. Foreman informing her that the hearing was scheduled to begin at 10:30 A.M. and a continuance had not been requested. I also stated that if she did not call the conference line by 11 A.M. the hearing record would be closed, and the matter would be decided based on the existing record. I further informed Ms. Foreman that failure to appear may result in a decision against Appellant. At or about 11:03 A.M., Ms. Foreman e-mailed the Hearing Officer and OSHPD’s representatives stating that she had received a busy signal when dialing the conference line. Mr. Christensen used his cell phone to test the conference line and the call rang through. I e-mailed Ms. Foreman that she must have misdialed, and we held the record open until 11:15 A.M. to give her time to call in again. At or about 11:15 A.M., I closed the hearing record via e-mail.

7. This proposed decision is based solely on documentary evidence. Appellant was informed on or about December 5, 2019 and January 6, 2020 that failure to appear could result in a decision against Appellant.

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² Health & Saf. Code, § 128770.

8. OSHPD's exhibits show 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 Mercy Retirement and Care Center or request an extension by October 31, 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. Due to Appellant's failure to appear, details regarding the circumstances surrounding the delinquent extension request by Appellant were not admitted to the record. If all the alleged facts are true, they fail to demonstrate that the failure to file the report or request an extension by October 31, 2019 was outside the reasonable control of the appellant.

4. Therefore, Appellant did not meet the burden of showing good cause for waiver or

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.

reduction of the penalty assessed.

PROPOSED ORDER

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