

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

In the Matter of the Penalty Issued to:

**COMMUNITY REGIONAL
MEDICAL CENTER**

Appellant.

OSHPD No. 19-021-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 Monday, January 6, 2020 beginning at 1:30 P.M.

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

Fresno Community Hospital and Medical Center, owner and operator of Community Regional Medical Center, “Appellant,” represented by Lee Lenox, Reimbursement Analyst II, failed to appear.

Documentary evidence was received. The matter was submitted for decision and the record was closed on Monday, January 6, 2020 at 2:05 P.M.

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PROCEDURAL FINDINGS

1. On November 15, 2019, OSHPD assessed a penalty against Appellant in the amount of \$100 for its delinquent Hospital Quarterly Financial Utilization Report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 21, 2019 and received by the OSHPD Hearing Office on November 21, 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 1:30 P.M. until 2:05 P.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 Community Regional Medical Center's Hospital Quarterly Financial Utilization Report by November 14, 2019. Penalties accrued from November 15, 2019 until November 15, 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 1 days, resulting in a total penalty amount

¹ Health & Saf. Code, § 128770.

of \$100.² 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.

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 but did not make oral statements of facts to show good cause why its report was not submitted in a timely manner.

5. On or about November 21, 2019, Appellant’s representative wrote that the report was submitted on time. Mr. Lenox stated that he did not “know why it didn’t go through…” and that a “glick [*sic*] occurred in the system.”

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 1:45 P.M. on January 6, 2020, I attempted to e-mail Mr. Lenox informing him that the hearing was scheduled to begin at 1:30 P.M. and a continuance had not been requested. I also stated that if he did not call the conference line by 2:00 P.M. the hearing record would be closed, and the matter would be decided based on the existing record. I further informed Mr. Lenox that failure to appear may result in a decision against Appellant. Due to technical issues with the computer, the e-mail was not actually sent until at or about 1:54 P.M. Accordingly, I held the record open longer to give Mr. Lenox an opportunity to appear. At or about 2:07 P.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.

8. OSHPD’s exhibits show that Appellant does have a history of filing required reports on time.

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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 Hospital Quarterly Financial Utilization Report for Community Regional Medical Center by November 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.”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 alleged system malfunction by Appellant were not admitted to the record. If all the alleged facts are true, they fail to demonstrate hospitalization, incapacitation, accident involvement, loss or unavailability of records, or that the failure to file the report by November 14, 2019 was outside the reasonable control of the appellant.
4. Therefore, Appellant did not meet the burden of showing good cause for waiver or reduction of the penalty assessed.

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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.

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