

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

In the Matter of the Penalty Issued to:

HOSPICE OF SAN JOAQUIN

Appellant.

OSHPD No. 18-011

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, January 22, 2019 beginning at 9:01 A.M.

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

Superior Healthcare, LLC, owner and operator of Hospice of San Joaquin, “Appellant,” was represented by Rebecca Burnett, Chief Executive Officer and Catherine Mitchell, Interim Chief Financial Officer.

Documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, January 22, 2019 at 9:20 A.M.

//

//

//

PROCEDURAL FINDINGS

1. On November 14, 2018, OSHPD assessed a penalty against Appellant in the amount of \$900 for its delinquent Long-Term Care Annual Disclosure report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 21, 2018 and received by the OSPD Hearing Office on November 29, 2018.
3. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letters.¹
4. Appellant requested to appear by telephone via a letter dated December 28, 2018. The request was granted.
5. OSHPD submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner.
6. Appellant submitted written exhibits to the Hearing Office and OSHPD in advance of the hearing in a timely manner.

FACTUAL FINDINGS

1. Appellant failed to file the Long-Term Care Annual Disclosure Report by October 31, 2018. On November 9, 2018, Appellant requested an extension of the report due date. OSHPD granted a 60-day extension.² Penalties accrued from November 1, 2018 until November 9, 2018 when the extension was requested. Following the extension, Appellant was required under Health and Safety Code section 128735 to file Hospice of San Joaquin's Long-Term Care Annual Disclosure report by January 8, 2019.
2. The delinquent report was filed on November 13, 2018.

¹ Health & Saf. Code, § 128770.

² Cal. Code Regs., Title 22, § 97051. "The Office may grant extensions but not to exceed an accumulated total, for all extensions and corrections, of 90 days for annual reports required by Section 97040."

3. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 9 days, resulting in a total penalty amount of \$900.³ These facts were substantiated by written exhibits.

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

6. Appellant stated in its written statement that the report was late because notifications were sent to staff no longer with the organization, notifications were only sent via e-mail, the extension was requested the same night the late notice was received via mail. Appellant stated that it relied on the updates to the license information submitted to the State and believed this meant OSHPD would update its notifications to the current contacts. Appellant’s representatives also stated that they are new to California and are still learning California’s reporting requirements. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

7. OSHPD confirmed that Appellant has a history of filing required reports on time except for the report immediately preceding this one.

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 Hospice of San Joaquin by October 31, 2018 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

³ Health & Saf. Code, § 128770.

he seeks to be excused.”⁴ 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.⁵ 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.⁶ Good cause is not limited to the listed reasons however. In civil actions a mistake can be a defense. This excusable neglect must usually be objectively honest and subjectively reasonable.⁷

3. Appellant stated in its written statement that the report was late because notifications were sent to staff no longer with the organization, notifications were only sent via e-mail where U.S. mail would have been routed to the correct individuals, the extension was requested the same night the late notice was received via mail. Appellant stated that it relied on the updates to the license information submitted to the State and believed this meant OSHPD would update its notifications to the current contacts. Appellant’s representatives also stated that they are new to the administration of healthcare facilities in California and are still learning California’s reporting requirements. Under questioning, Appellant stated that Appellant’s Chief Financial Officer had relocated from Utah only months before to fill the position. These facts were substantiated by oral statements made under oath by Appellant at the hearing.

4. The filing periods are outlined in Chapter 10 of Division 7 of Title 22 of the California Code of Regulations. Specifically, the report is due four months after the end of the filing

⁴ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

⁵ *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 14, 2018].

⁶ 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 October 26, 2018]. See also *Waters, supra*, 58 Cal.2d 885, 893.

⁷ Black’s Law Dict. (8th ed. 2004), p. 1601. See also Code Civ. Pro., § 473.

period.⁸ However, the end of the filing period varies.⁹ While the California deadline itself is published, and can be calculated by a facility, there is some merit to the claim that someone moving from a state which uses the same deadline for all facilities every year could make a mistake in the calculations. Furthermore, Appellant stated there was no overlap with the outgoing staff and OSHPD program staff identified accounting errors which had not been corrected from the previous years' report. As a courtesy, OSHPD provides reminders to users registered with the online system. By statute and regulation however, OSHPD only must notify the licensee that their report is delinquent within 15 days of the delinquency.¹⁰ Once Appellant received notice of their delinquency however, it made a same-day effort to contact OSHPD and learn how to request an extension and file the report. Furthermore, Appellant immediately began working on the report and was able to file the report four days later.

5. Appellant has demonstrated an honest and reasonable mistake which was quickly rectified and outlined improved business practices which should ensure that a delinquent filing does not happen in the future.

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.

//

//

//

//

//

//

//

//

//

//

⁸ Cal. Code Regs., Title 22, §97040(a).

⁹ Cal. Code Regs., Title 22, §97040(b).

¹⁰ Cal. Code Regs., Title 22, §97045.

PROPOSED ORDER

The assessed penalty is waived.

Dated: June 19, 2019

Michelle Louise Church-Reeves
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: 6-24-19

Robert P. David
ROBERT P. DAVID
Director
Office of Statewide Health Planning and
Development

DECLARATION OF SERVICE

I am a resident of the United States and of the County of Sacramento, California. I am over the age of eighteen years and not a party to the within above-entitled action. My business address is 2020 W El Camino Avenue, Suite 1212, Sacramento, California 95833.

That on the date below, I served the following **Proposed Decision, Order, and Decision in Administrative Appeal OSHDP No. 18-011 Appeal from Penalty**, and any enclosure(s), on all parties in the said action as addressed below by causing a true copy thereof to be:

X BY MAIL. I am familiar with this Office's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in a U. S. mailbox in the City of Sacramento, California, after the close of the day's business.

☐ Certified Mail/Return Receipt Requested, Article #

Catherine Mitchell, Interim CFO Hospice of San Joaquin 3888 Pacific Avenue Stockton, CA 95205
--

____ BY PERSONAL SERVICE. I caused such document(s) to be delivered by hand to the office of the person(s) listed below

____ BY OVERNIGHT DELIVERY. I caused the above-listed document(s) to be delivered by overnight delivery to the office of the person(s) listed below:

____ BY FACSIMILE. I caused the above-listed document(s) to be transmitted by facsimile transmission from (916) 322-2561 to the facsimile number listed below. The transmission was reported as completed and without error. The transmission report was properly issued by the transmitting facsimile machine.

X BY E-MAIL. I caused the above-listed document(s) to be transmitted by electronic mail from OSHPDLegalOffice@oshpd.ca.gov to the e-mail address(s) listed below.

Rebecca Burnett Administrator rburnett@hospicesj.org	Ty Christensen Accounting Systems Manager, OSHPD Ty.Christensen@oshpd.ca.gov
--	---

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sacramento, California on June 25, 2019.



Janice Titgen