

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

In the Matter of the Penalty Issued to:

HILLSIDE HOUSE

Appellant.

OSHPD No. 20-001-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, February 18, 2020 beginning at 10:30 a.m.

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

Hillside House Inc., owner and operator of Hillside House, “Appellant,” was represented by Craig Olson, CEO and Administrator, Director of Operations Gail Metzger, and Director of Finance Erin Kelley.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, February 18, 2020 at 10:51 a.m.

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PROCEDURAL FINDINGS

1. On December 18, 2019, OSHPD assessed a penalty against Appellant in the amount of \$14,000 for its delinquent Long-Term Care Annual Disclosure Report.
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated December 30, 2019 and received by the OSHPD Hearing Office on January 9, 2020.
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 19 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 April 8, 2019, Appellant requested the 60-day extension for the Long-Term Care Annual Disclosure Report of Hillside House. On June 5, 2019, Appellant requested the final 30-day extension for the Long-Term Care Annual Disclosure Report of Hillside House. Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128770 to file Hillside House's Long-Term Care Annual Disclosure Report by July 29, 2019. Penalties accrued from July 30, 2019 until December 16, 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 140 days, resulting in a total penalty amount

¹ Health & Saf. Code, § 128770.

of \$14,000.² 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’s representative testified that in or around mid-November 2018, Hillside House Inc.’s CFO unexpectedly resigned. Accounting work, especially timely submission of monthly billing, was not completed. An employee was assigned to follow up, track, and resubmit the monthly billings as needed. However, in early 2019, this employee abruptly went on a three-month medical leave from which they never returned. The last remaining staff member planned to and did retire on or about May 31, 2019. Appellant was unable to permanently fill the vacancies prior to the final responsible party’s retirement. Temporary workers were hired, but did not work out and Hillside House was forced to hire a temporary bookkeeping agency to complete their annual audit which provided the data needed to submit the report to OSHPD as well as their taxes, which Appellant also requested an extension on. While the unexpected and continuing series of unfortunate events is unlikely to ever be repeated, Appellant believes that the new staff and processes in place should prevent such a delay from ever happening again. These facts were substantiated by oral statements made under oath by Mr. Olson 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

² Health & Saf. Code, § 128770.

Code section 128770, for failing to file the Long-Term Care Annual Disclosure Report for Hillside House 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, 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. Despite a lack of statutory penalties, knowingly filing incomplete or inaccurate reports would be a very poor business practice at best.

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.

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.

5. The substantiated facts demonstrate that Appellant was affected by a series of unexpected medical and staffing issues among the staff responsible for the report which caused substantial delays and errors in billing and bookkeeping. Due to the joint filing of the OSHPD and Medi-Cal reports, and the inability of the Appellant to correct the Medi-Cal reports, knowingly filing an incomplete or inaccurate report would constitute negligence. The substantiated facts also demonstrate that Appellant took prompt and thorough measures to address each vacancy as it occurred by attempting to hire new employees, hiring temporary workers, and hiring a temporary bookkeeping agency to assist Appellant. The unexpected resignation of the CFO alone would not constitute good cause. However, the medical leave of the next responsible party was clearly outside of Appellant's control and severely impacted the ability of Appellant to ensure continuity of business operations as the final staff member's planned retirement approached. The substantiated facts demonstrate that this was followed by a series of staffing issues which plagued Appellant through attempts at hiring new staff, hiring temporary staff, and finally hiring a temporary bookkeeping agency. The substantiated facts demonstrate a series of events occurring in short order which are unlikely to ever reoccur, many of which were clearly outside of Appellant's control and resulted in unavailability of records to file timely.

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.

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PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: November 13, 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: November 30, 2020

/s/
MARKO MIJIC
Acting Director
Office of Statewide Health Planning and
Development