

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

In the Matter of the Penalty Issued to:	}	
PALOMAR HEALTH DOWNTOWN CAMPUS, POMERADO HOSPITAL	}	OSHPD No. 20-007C-HAF
Appellant.	}	
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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, April 7, 2020 beginning at 1:32 p.m.

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

Palomar Health, owner and operator of Pomerado Hospital and Palomar Health Downtown Campus, collectively “Appellant,” was represented by Linda Corwin, Manager at Wipfli LLP.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, April 7, 2020 at 1:50 p.m.

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PROCEDURAL FINDINGS

1. On February 12, 2020, OSHPD assessed a penalty against Appellant in the amount of \$500 for Pomerado Hospital's delinquent Long-Term Care Annual Disclosure Report.
2. On February 12, 2020, OSHPD assessed a penalty against Appellant in the amount of \$500 for Palomar Health Downtown Campus's delinquent Long-Term Care Annual Disclosure Report.
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated February 21, 2020 and received by the OSHPD Hearing Office on February 24, 2020.
4. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.¹
5. Appellant requested consolidation of the appeals of Pomerado Hospital and Palomar Health Downtown Campus at the time of appeal. The request was granted by the Hearing Office.
6. The hearing was conducted electronically using video and teleconferencing.
7. 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.
8. Appellant submitted written exhibits to the Hearing Office and OSHPD in advance of the hearing in a timely manner. Exhibits A and B were found to be authentic and relevant and admitted to the record.

FACTUAL FINDINGS

1. On September 4, 2019, Appellant requested the 60-day extension for the Long-Term Care Annual Disclosure Reports of Palomar Health Downtown Campus and Pomerado Hospital. On October 31, 2019, Appellant requested the final 30-day extension for the reports of Palomar

¹ Health & Saf. Code, § 128770.

Health Downtown Campus and Pomerado Hospital. Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128770 to file Palomar Health Downtown Campus and Pomerado Hospital's Long-Term Care Annual Disclosure Reports by January 29, 2020. Penalties accrued from January 30, 2020 until February 3, 2020 when the reports were filed.

2. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 5 days for each report, resulting in a total penalty amount of \$1,000.² 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 the reports were uploaded to the SIERA system on Wednesday, January 29, 2020.³ Ms. Corwin uploaded the signed certification page along with the reports but did not click the certify button in SIERA. She did not believe she was authorized to as she is not the certification authority. However, SIERA does not register the reports as being complete until the certify button is clicked, which Ms. Corwin did on Monday, February 3 after reviewing the email from OSHPD stating that her reports were now delinquent. Ms. Corwin testified that it was a mistake and that she did not recall the upload working the same way previously. These facts were substantiated by oral statements made under oath by Ms. Corwin at the hearing.

6. I questioned Mr. Christensen about changes to the interface and software of SIERA. Mr. Christensen testified that a new report type was integrated into the system recently and several changes were made in SIERA which could have caused Ms. Corwin's confusion. Additionally,

² Health & Saf. Code, § 128770.

³ SIERA is the System for Integrated Electronic Reporting and Auditing. SIERA is an OSHPD application that allows health facility and pharmaceutical manufacturer employees and consultants to submit and revise OSHPD reports, view past reports, maintain user information, and perform other report functions.

Mr. Christensen stated that SIERA would have updated the date on the reports if a new report file was uploaded, thus confirming that the reports were actually loaded into SIERA on the due date. 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 Reports for Palomar Health Downtown Campus and Pomerado Hospital by January 29, 2020, 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."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

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 4, 2019].

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 December 4, 2019]. See also *Waters, supra*, 58 Cal.2d 885, 893.

reasons, however. In civil actions a mistake can be a defense. This excusable neglect must be objectively honest and subjectively reasonable.⁷

3. The substantiated facts show that Appellant took what it believed were the necessary steps to certify and file its reports with OSHPD in a timely manner. While Appellant was mistaken, the oral statements made under oath by Ms. Corwin at the hearing are credible. It is subjectively reasonable that a filer might not know that they needed to click the certify button in addition to uploading the signed certification, even an experienced filer, due to the changes made in the SIERA system. The reports themselves were uploaded on the date they were due, and those files were not changed after the due date.

4. The substantiated facts demonstrate a subjectively reasonable mistake which constitutes good cause. Therefore, Appellant met the burden of showing good cause for waiver of the penalties assessed.

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

PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: September 17, 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