

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

In the Matter of the Penalty Issued to:	}	
<b>NORTHERN INYO HEALTHCARE DISTRICT</b>	}	OSHPD No. 20-031C-HQF
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 Wednesday, December 9, 2020, beginning at 1:04 p.m.

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

Northern Inyo Healthcare District, owner and operator of Northern Inyo Hospital, collectively “Appellant,” was represented by Jennifer Colbert, Financial Advisor Officer, and Vinay Behl, Chief Financial Officer (“CFO”).

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, December 9, 2020, at 1:48 p.m.

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## PROCEDURAL FINDINGS

1. On January 16, 2020, OSHPD assessed a penalty against Appellant in the amount of \$28,600 for Northern Inyo Hospital's delinquent Hospital Quarterly Financial Utilization Report for the report period ending ("RPE") date of December 31, 2018.
2. On June 4, 2020, OSHPD assessed a penalty against Appellant in the amount of \$26,300 for Northern Inyo Hospital's delinquent Hospital Quarterly Financial Utilization Report for the RPE date of March 31, 2019.
3. On June 4, 2020, OSHPD assessed a penalty against Appellant in the amount of \$17,200 for Northern Inyo Hospital's delinquent Hospital Quarterly Financial Utilization Report for the RPE date of June 30, 2019.
4. Appellant did not submit its appeals from the penalty letters dated January 16, 2020 and June 4, 2020 within the required fifteen business days from receipt of the penalty letters.<sup>1</sup> At the time of scheduling, Appellant was informed that if it wanted to provide a statement justifying why the appeals were not submitted timely or to dispute the date of receipt it should submit the grounds for reconsideration of these appeals by Friday, November 13, 2020. Appellant did not submit written grounds for reconsideration; however, oral testimony was received from Appellant which indicated that the previous CFO initially decided to pursue payment of those fees by Athena Health due to their responsibility for Appellant's inability to obtain the data necessary to file their reports. As this decision was made by a responsible party of Appellant, there is no good cause to consider the untimely appeals.
5. On August 12, 2020, OSHPD assessed a penalty against Appellant in the amount of \$15,400 for Northern Inyo Hospital's delinquent Hospital Quarterly Financial Utilization Report for the RPE date of September 30, 2019.<sup>2</sup>

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<sup>1</sup> Health & Saf. Code, § 128770.

<sup>2</sup> Health & Saf. Code, § 128770.

6. On August 12, 2020, OSHPD assessed a penalty against Appellant in the amount of \$7,400 for Northern Inyo Hospital's delinquent Hospital Quarterly Financial Utilization Report for the RPE date of December 31, 2019.<sup>3</sup>
7. On August 12, 2020, OSHPD assessed a penalty against Appellant in the amount of \$1,000 for Northern Inyo Hospital's delinquent Hospital Quarterly Financial Utilization Report for the RPE date of March 31, 2020.<sup>4</sup>
8. Appellant appealed the penalties by submitting a Request for Administrative Hearing form dated August 17, 2020 and received by the OSHPD Hearing Office on September 29, 2020.
9. Appellant did submit its appeals from the penalty letters dated August 12, 2020 within the required fifteen business days from receipt of the penalty letters.<sup>5</sup>
10. Appellant requested consolidation of the appeals of Northern Inyo Healthcare Districts for all six report periods at the time of appeal. The Hearing Office granted the request for consolidation for the RPE dates of September 30, 2019, December 31, 2019, and March 31, 2020.
11. The hearing was conducted electronically using video and teleconferencing.
12. OSHPD submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 34 were found to be authentic and relevant and admitted to the record.
13. Appellant submitted written exhibits to the Hearing Office and OSHPD in advance of the hearing in a timely manner. Exhibit A was found to be authentic and relevant and admitted to the record.

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<sup>3</sup> Health & Saf. Code, § 128770.

<sup>4</sup> Health & Saf. Code, § 128770.

<sup>5</sup> Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

## FACTUAL FINDINGS

1. On October 19, 2019, Appellant sent Mr. Christensen a letter, included as exhibit 1, summarizing difficulties Appellant was experiencing with Athena Electronic Medical Records (“EMR”), which they had begun using on October 1, 2018.
2. On October 11, 2019, Appellant requested the 30-day extension for the Hospital Quarterly Financial Utilization Report RPE date of September 30, 2019.<sup>6</sup> Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128740 to file Northern Inyo Hospital’s Hospital Quarterly Financial Utilization Report by December 14, 2019.<sup>7</sup> Penalties accrued from December 15, 2019 until July 14, 2020 when the report was filed. However, due to the COVID-19 emergency, penalties were temporarily suspended between March 4, 2020 and May 1, 2020.
3. In accordance with Health and Safety Code section 128770, OSHPD assessed penalties in the amount of \$100 per day for 213 days minus the COVID1-9 suspension for the RPE date of September 30, 2019, resulting in a penalty amount of \$15,400.<sup>8</sup>
4. On January 20, 2020, Appellant requested the 30-day extension for the Hospital Quarterly Financial Utilization Report RPE date of December 31, 2019.<sup>9</sup> Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128740 to file Northern Inyo Hospital’s Hospital Quarterly Financial Utilization Report by March 15, 2020.<sup>10</sup> Due to the COVID-19 emergency, penalties were temporarily suspended between March 4, 2020 and May 1, 2020. Thus, penalties accrued from May 2, 2020 until July 14, 2020 when the report was filed.

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<sup>6</sup> Cal. Code Regs. tit. 22, § 97051.

<sup>7</sup> *See also* Cal. Code Regs. Tit. 22, § 97051.

<sup>8</sup> Health & Saf. Code, § 128770(a).

<sup>9</sup> Cal. Code Regs. tit. 22, § 97051.

<sup>10</sup> *See also* Cal. Code Regs. Tit. 22, § 97051.

5. In accordance with Health and Safety Code section 128770, OSHPD assessed penalties in the amount of \$100 per day for 121 days minus the COVID1-9 suspension for the RPE December 31, 2019, resulting in a penalty amount of \$7,400.<sup>11</sup>
6. On March 20, 2020, Appellant requested the 30-day extension for the Hospital Quarterly Financial Utilization Report RPE date of March 30, 2020.<sup>12</sup> Due to the COVID-19 emergency, an additional 30-day emergency extension was granted to Health Policy and Data advisory Consolidation Act filers.<sup>13</sup> Following exhaustion of the extensions, Appellant was required under Health and Safety Code section 128740 to file Northern Inyo Hospital's Hospital Quarterly Financial Utilization Report by July 14, 2020.<sup>14</sup> Penalties accrued from July 14, 2020 until July 24, 2020 when the report was filed.
7. In accordance with Health and Safety Code section 128770, OSHPD assessed penalties in the amount of \$100 per day for 10 days for the RPE March 30, 2020, resulting in a penalty amount of \$1,000.<sup>15</sup>
8. These facts, substantiated both by oral statements made under oath by Mr. Christensen and written exhibits offered by OSHPD, were not contested by Appellant.
9. Under Health and Safety Code section 128770, a penalty may "be reviewed on appeal, and the penalty may be reduced or waived for good cause."<sup>16</sup>
10. 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.
11. Appellant testified that it purchased EMR software from Athena Health and began using it on October 1, 2018. Prior to contracting with Athena Health for the EMR software, Appellant provided a copy of the OSHPD report format to the vendor and Appellant was assured that the software would be sufficient. When the quarter ended in December of 2018 and Appellant began preparing the report, it noticed several issues with the software. The software was unable to

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<sup>11</sup> Health & Saf. Code, § 128770(a).

<sup>12</sup> Cal. Code Regs. tit. 22, § 97051.

<sup>13</sup> Executive order N-55-20 (April 22, 2020).

<sup>14</sup> *See also* Cal. Code Regs. Tit. 22, § 97051.

<sup>15</sup> Health & Saf. Code, § 128770(a).

<sup>16</sup> Health & Saf. Code, § 128770(c).

provide all the data that was needed for the OSHPD report. In addition, there were issues with the data reports from the software. Statistics such as admissions and days were overstated by as much as 20% and the classification of payors did not match the OSHPD categories. Appellant attempted to address these issues with the vendor and was again assured the software could provide the data that Appellant needed for the report. The vendor pulled additional custom data for Appellant that was not part of the standard data report functions of the software, however even this custom data was insufficient to complete the OSHPD reports without manual counting of some items. Appellant has since implemented a new EMR software system due to the difficulties their vendor had in providing the data to comply with the OSHPD reporting requirements.

12. During this same time period, in or around early 2019, the previous CFO retired, and Appellant attempted twice to fill the position. This vacancy, as well as other staff vacancies in administration, were difficult to fill due to the Appellant's rural location. These vacancies complicated the already difficult situation for Appellant. During the time the Appellant was trying to fill their vacancies, the Appellant attempted to manually compile the data by hand counting and creating spreadsheets to obtain the information necessary to file the reports, a laborious and time-consuming process.

13. These facts, substantiated by oral statements made under oath by Mr. Behl and Ms. Colbert and written exhibits offered by Appellant, were not contested by OSHPD.

14. The parties offered no rebuttals following the initial statements.

15. OSHPD's representative confirmed that Appellant does have a history of filing required reports on time. Furthermore, Appellant's filing history shows that they filed their subsequent quarterly reports timely.

## 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 consolidated Hospital Quarterly Financial Utilization

Reports for Northern Inyo Hospital with RPE dates of September 30, 2019, December 31, 2019, and March 30, 2020 by March 15, 2020, May 2, 2020, and July 14, 2020 respectively, and whether the penalties 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.”<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> The determination of good cause in a particular context should utilize common sense based on the totality of the circumstances, including the underlying purpose of the statutory scheme.<sup>20</sup>

3. The substantiated facts show that Appellant did not have records available for the reports at the times needed for its multiple reports. Appellant testified that this was due to the limitations of its vendor’s EMR software and that the only workaround was custom data pulls that could only be done by the vendor. The substantiated facts also show Appellant took immediate steps to have the vendor rectify the issues, and that when it became apparent that the software was unable to perform all the functions that Appellant required it took steps to replace the software system at the hospital. In addition, the substantiated facts show that Appellant experienced turnover in key positions which further delayed their ability to compile the data

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<sup>17</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

<sup>18</sup> *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].

<sup>19</sup> 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.

<sup>20</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

manually to file the reports. No documentary or testamentary evidence refuted this assertion and Appellant’s testimony was credible.

4. A party’s diligence is a factor in determining good cause for an extension or a delay.<sup>21</sup> Here, Appellant contacted OSHPD multiple times to discuss the difficulties it was encountering. Additionally, Appellant replaced its software when it became clear that the vendor could not support the OSHPD reporting requirements. Furthermore, Appellant had previously submitted its reports timely, and submitted the following quarter’s report in a timely fashion despite ongoing impacts of COVID-19. These facts clearly demonstrate Appellant’s commitment to fulfilling its statutory obligations in a timely manner.

5. These facts demonstrate that circumstances outside of Appellant’s control related to limitation of its new EMR software contributed to the late filings and that Appellant acted with due diligence under the circumstances and with reasonable haste to provide the late reports. Therefore, the substantiated facts show good cause for waiver of the penalties.

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<sup>21</sup> *People v. Financial & Surety, Inc.* (2016) 2 Cal.5th 35, 47. See also *Wang v. Unemployment Ins. Appeals Bd.* (1990) 225 Cal.App.3d 412, 420.



PROPOSED ORDER

The assessed penalties for RPE dates September 30, 2019, December 31, 2019, and March 31, 2020 are waived for good cause.

Dated: August 16, 2021

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MICHELLE L. CHURCH-REEVES  
Hearing Officer  
Office of Statewide Health Planning and Development

DECISION

Pursuant to Health and Safety Code section 128775 and California Code of Regulations, title 22, section 97054, after due consideration of the record, the Proposed Decision is:

Accepted

Rejected

Dated: August 16, 2021

*//original signed//*

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ELIZABETH A. LANDSBERG  
Director  
Office of Statewide Health Planning and Development