

BEFORE THE  
DEPARTMENT OF HEALTH CARE ACCESS AND INFORMATION  
STATE OF CALIFORNIA

In the Matter of the Penalty Issued to:  <b>THE REUTLINGER COMMUNITY</b>  Appellant.	}	HCAI No. 21-043-LTC
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**PROPOSED DECISION**

This matter was heard before Michelle Church-Reeves, Hearing Officer, Department of Health Care Access and Information (“HCAI”), successor to the Office of Statewide Health Planning and Development (“OSHPD”),<sup>1</sup> State of California, on Wednesday, June 29, 2022, beginning at 10:31 a.m. PDT.

HCAI was represented by Ty Christensen, Manager, Accounting and Reporting Systems Section. Tina Tran, Associate Governmental Program Analyst, Accounting and Reporting Systems Section was also present on behalf of HCAI.

Eskaton, owner and operator of The Reutlinger Community,<sup>2</sup> collectively “Appellant,” was represented by Joe McFadden and Shannon Gardner, consultants, Axiom Healthcare Group (“Axiom”).

Both documentary and testamentary evidence was received. The matter was submitted

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<sup>1</sup> Stats. 2021, ch. 143, §§ 30, 31.

<sup>2</sup> The licensee, The Reutlinger Community, a non-profit corporation, has been owned by Eskaton, also a non-profit corporation, since July 3, 2020. Department of Public Health, Cal Health Find Database <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=140001185> [as of June 29, 2022].

for decision and the record was closed on Wednesday, June 29, 2022, at 10:49 a.m. PDT.

### PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by October 29, 2021.<sup>3</sup>
2. On November 9, 2021, HCAI assessed a penalty against Appellant in the amount of \$700 for the late filing of its Long-Term Care Annual Disclosure Report.<sup>4</sup>
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 23, 2021, postmarked November 23, 2021, and received by the HCAI Hearing Office on November 30, 2021.
4. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter.<sup>5</sup>
5. The hearing was conducted electronically using video and teleconferencing.
6. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 13 were found to be authentic and relevant and admitted to the record.
7. Appellant submitted a written statement to the Hearing Office and HCAI at the time of appeal. The written statement was found to be authentic and relevant and admitted to the record as Exhibit A.

### FACTUAL FINDINGS

1. On or around July 3, 2020, Eskaton purchased 100% of The Reutlinger Community nonprofit corporation.<sup>6</sup>

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<sup>3</sup> Health & Saf. Code, § 128755(b) and Exhibit 3.

<sup>4</sup> Health & Saf. Code, § 128770. *See also* exhibit 11.

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

<sup>6</sup> Department of Public Health, Cal Health Find Database  
<https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=140001185> [as of August 4, 2022].

2. On December 29, 2020, Eskaton contacted HCAI to request a fiscal year end change from June 30<sup>th</sup> to December 31<sup>st</sup> annually.<sup>7</sup> As there was no change in licensee, HCAI was able to make this change immediately. This resulted in a new fiscal year end of December 31<sup>st</sup> and triggered a 6-month report to cover the period of July 1, 2020 to December 31, 2020.<sup>8</sup>

3. Due to the COVID-19 emergency, the initial due dates for the report at issue were extended by three months.<sup>9</sup> Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file its report or request an extension by July 31, 2021.<sup>10</sup>

4. On May 26, 2021, Appellant requested and received both extensions. Following exhaustion of the extensions, Appellant was required Health and Safety Code section 128740 to file its report by October 29, 2021.<sup>11</sup>

5. HCAI mailed Appellant an Initial Delinquency Letter dated November 1, 2021 to Appellant using Global Logistics Services overnight mail.<sup>12</sup> The letter was delivered on Wednesday, November 3, 2021.<sup>13</sup>

6. Penalties accrued from October 30, 2021 until November 5, 2021 when Appellant filed the report at issue.<sup>14</sup>

7. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for seven days for the late filing of the report at issue, resulting in a penalty amount of \$700.<sup>15</sup>

8. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

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<sup>7</sup> Exhibit 1

<sup>8</sup> *Ibid.*

<sup>9</sup> Executive Order N-08-21 (June 11, 2021).

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

<sup>11</sup> Exhibits 2 and 3.

<sup>12</sup> Exhibits 8 and 9.

<sup>13</sup> *Ibid.*

<sup>14</sup> Exhibit 10.

<sup>15</sup> Health & Saf. Code, § 128770(a) and Exhibit 12.

9. Appellant submitted a written statement with its appeal and made oral statements of facts it believes show good cause why the extension for its reports was not requested in a timely manner.

10. Mr. McFadden testified on behalf of Appellant that the facility experienced a change in operators at some point in mid to late 2020. The new operator, Eskaton, requested a change in fiscal year from June 30<sup>th</sup> to December 31<sup>st</sup> each year to align with its other facilities on or around December 29, 2020 through its internal report preparer.<sup>16</sup> The same internal report preparer was working on the Medicare Cost Report, which was prepared and filed prior to the July 2021 federal deadline, as well as preparing the report at issue. Appellant believed the report at issue was substantially complete when their internal report preparer left the company in or around August or September of 2021. Appellant contracted with Axiom to prepare the report at issue in or around late October 2021. However, Axiom discovered that the report was not substantially complete. Rather, there were substantial gaps in information and other issues that were identified by Axiom's audit. Staff worked quickly to gather the necessary information and prepare the report at issue which was filed with a seven-day delay.

11. These facts were substantiated by oral statements made under oath by Mr. McFadden at the hearing.

12. HCAI's exhibit 13 shows that Appellant has filed its previous reports in a timely manner.

## 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 its facility by October 29, 2021, and whether the penalty should be reduced or waived.

2. 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>17</sup> In *Waters v. Superior Court*, the

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<sup>16</sup> Exhibit 1.

<sup>17</sup> Health & Saf. Code, § 128770(c).

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>18</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>19</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>20</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>21</sup>

3. A party’s diligence is a factor in determining good cause for an extension or a delay.<sup>22</sup> The substantiated facts show that the operator of the facility changed operators in or around July 2020 due to the purchase of the nonprofit corporation by Eskaton. Eskaton requested the fiscal year end change from June 30<sup>th</sup> to December 31<sup>st</sup> each year on or around December 29, 2020, which was immediately approved by HCAI and triggered the report at issue for the 6-month transition period. HCAI’s exhibits showed that Appellant requested the available extensions on May 26, 2021. These substantiated facts demonstrate that Appellant was aware of the update to the fiscal year and the associated due date prior to that time. Furthermore, the fiscal year end change was at Appellant’s request and within its control.

4. The substantiated facts also show that Appellant’s report preparer left the company in or

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<sup>18</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

<sup>19</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>20</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 November 15, 2020]. See also *Waters, supra*, 58 Cal.2d 885, 893.

<sup>21</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

<sup>22</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.

around August or September 2021, after preparing and filing the Medicare Cost Report in July. The facts also showed that Appellant mistakenly believed the report at issue had been substantially completed by its internal report preparer and that Axiom would be able to complete and file the report in a timely manner despite these circumstances. As there were no additional extensions available to Appellant, the report was submitted as soon as it was completed, seven days late.

5. Appellant’s representative was unable to testify exactly when the internal report preparer left the company, what circumstances led to their departure, or what steps were taken to obtain a new report preparer prior to contracting with Axiom. It was unclear from the documentary and testamentary evidence whether the internal report preparer quit or was fired, nor how much notice was given. However, even if the report preparer left the company at the end of September, approximately one month remained prior to the deadline. Axiom was not contracted with until late October, several weeks later at the earliest. This leaves several weeks and possibly as much as two months, unaccounted for during which due diligence should have been exercised by Appellant.

6. These facts do not demonstrate that Appellant was impacted by circumstances clearly outside its control and that it acted with due diligence under the circumstances. Therefore, the substantiated facts do not show good cause for waiver or reduction of the \$700 penalty.

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PROPOSED ORDER

The assessed penalty is upheld.

Dated: August 11, 2022

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MICHELLE L. CHURCH-REEVES  
Hearing Officer  
Department of Health Care Access and Information

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: 9/6/2022

//original signed//  
ELIZABETH A. LANDSBERG  
Director  
Department of Health Care Access and Information