

June 2006

**CLIENT ALERT: MICHIGAN SUPREME COURT GRANTS WEXFORD MEDICAL
PROPERTY TAX EXEMPTION**

Honigman succeeds in Michigan Supreme Court's
first charitable institution exemption decision in decades

Once again, after an arduous struggle through the Tax Tribunal and Court of Appeals, Honigman recently prevailed in the Michigan Supreme Court in a momentous property tax decision. In *Wexford Medical Group v. City of Cadillac*, the Michigan Supreme Court has held Wexford Medical Group, a non-profit health care corporation, exempt from property taxation as a "charitable institution" under the Michigan General Property Tax Act. The Court's significant decision ends a string of Tribunal and Court of Appeals decisions that had denied the charitable institution and public health exemptions to non-profit health care providers, including Wexford. The Court did not address, but did vacate the Court of Appeals and Tribunal holdings that Wexford had failed to satisfy the public health exemption.

In the Tax Tribunal and the appellate courts, Wexford based its charitable institution exemption claim upon facts such as the following:

1. In 1999, Wexford's charitable parents established it because the largest primary care provider in Wexford County was going to be ceasing operations due to financial difficulties.
2. Wexford served the public on a first-come, first-serve basis, in a designated health professional shortage area, with charity care policies that insured treatment for everyone.
3. Wexford did not in any way restrict Medicare or Medicaid patients.
4. Even with its designation as a rural health clinic, Wexford's open access policies resulted in financial losses of almost \$2 million from Wexford's inception until December 31, 2001; losses that Wexford's charitable parents shouldered.

The Tax Tribunal held that under *ProMed Healthcare v. City of Kalamazoo*, 249 Mich. App. 490, 644 N.W.2d 47 (2002), Wexford did not constitute a charitable institution because it did not provide the requisite free care. Wexford had argued that *ProMed* was distinguishable because there the exemption claim was based merely on a stipulation that ProMed had a charity care policy to "provide an appropriate level of charity care...." However, the Tribunal ruled that under *ProMed*, Wexford was taxable because it had up to 44,000 patient visits per year, a \$10 million annual budget, and in over two years it provided free medical care to 13 patients at a cost of about \$2,400. The Tribunal also held that Wexford's open access policies were simply a "policy chosen by (Wexford's) parents."

Finding that Wexford's free care was incidental to its operations, the Court of Appeals affirmed the Tribunal's denial of exemption under *ProMed*. The Court also agreed that Wexford's open-door policy and resulting losses "did not render it a charitable institution." Additionally, the Court affirmed because of its holding that Wexford's goal was to be profitable.

The Michigan Supreme Court reversed. In outlining the key factors that militate in favor of qualifying as a charitable institution, the Michigan Supreme Court noted that a charitable institution:

- 1) is a non-profit institution;
- 2) is organized chiefly, if not solely, for charity;
- 3) "serves any person who needs the particular type of charity being offered" (i.e., it does not offer its charity on a discriminatory basis by choosing whom, among the group it purports to serve, deserves the services);
- 4) "brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government";
- 5) "can charge for its services as long as the charges are not more than what is needed for its successful maintenance"; and
- 6) "need not meet any monetary threshold of charity" as long as its overall nature is charitable.

Applying these factors, the Court found that Wexford qualified as a charitable institution. The Court noted that Wexford was "not only organized as a charitable institution as reflected in its statement of purpose and its bylaws, but it devotes itself to charitable works on the whole." Unlike the decisions below, the Court held that Wexford's losses from its open-access policies supported its exemption claim: "Although petitioner sustains notable financial losses by not restricting the number of Medicare and Medicaid patients it accepts, it bears those losses rather than restricting its treatment of patients who cannot afford to pay."

Cadillac had argued that governmental burdens were increased because of Wexford's utilization of the Medicare and Medicaid programs. However, the Court held that "(i)mplicit in the definition (of charity) is that relieving bodies from disease or suffering is lessening the burden of government." Additionally, the Court agreed with Wexford that it lessened "the government's burden of covering the full cost of a person's care" by subsidizing Medicare and Medicaid patients, "in light of the government's underpayment...."

In rejecting the Court of Appeals holding that Wexford's goal of profitability precluded exemption, the Court pointed out that as in *Auditor General v R B Smith Mem Hosp Ass'n*, 293 Mich 36, 41; 291 NW 213 (1940), a charity could be exempt, notwithstanding its having years with surpluses. What was

critical was that a charity's funds would be utilized in the furtherance of its charitable mission rather than to reward an agent or shareholder.

As to the last of the six factors, the Court criticized the decisions below for erroneously focusing solely upon the monetary amount of charity care that Wexford provided rather than considering, in totality, its charitable nature. The Court pointed out that only the legislature should establish a charity dollar amount threshold and address the myriad of difficult issues that such an undertaking would require. In repudiating the Court of Appeals concern that exempting Wexford would risk every Michigan medical clinic becoming exempt, the Court saw this as very unlikely given that this had never been a problem even with the Court's prior decisions, which supported exempting Wexford. Furthermore, the Court said that such a development would be one for the legislature alone to remedy.

Health care facilities and other non-profits should take note of this highly-favorable decision, and contact us with any inquiries. **For more information about this or any other property tax matter, call Stewart Mandell at 313-465-7420 or Michael Shapiro at 313-465-7622.**

This Alert provides general information only and does not constitute legal advice for any particular situation. ©Honigman Miller Schwartz and Cohn LLP 2006. All rights reserved.