

The Way Law Should Be Practiced

## Healthcare Department

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## Healthcare Update

### *So Swears the Affiant . . .*

*The vise continues to tighten on not for profit Illinois hospitals*

Consistent with other state and local agencies targeting the charity-care practices of tax exempt organizations in Illinois, the Cook County Assessor's Office is now requiring self-certification of the charitable status by exempt hospitals in Cook County. The annual affidavit required of exempt hospitals historically focused only on changes in ownership or use. However, more recent affidavits, including the 2007 Affidavit, include the following statement, which the affiant must swear under oath is true:

The [hospital] is entitled to be exempt from property taxes under 35 ILCS 200/15-65 (Charitable Purposes) and has at all times remained in compliance with such section of the Property Tax Code, including the standards articulated under *Methodist Old Peoples Homes v. Korzen*, 39 Ill. 2d 149 (1968).

We have received numerous inquiries concerning this language this year (perhaps due to the Illinois Department of Revenue's recent findings in the Provena matter) and offer the following thoughts.

In *Methodist Old Peoples Home*, the Illinois Supreme Court considered certain activities of a nonprofit retirement home, referring to a number of guidelines and criteria, which "should be generally applied" in determining whether property is exempt from property taxes. Generally, these guidelines provide that a charitable organization:

- Applies its charity for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare—or in some way reduces the burdens of government;
- Has no capital, capital stock or shareholders, and earns no profits or dividends;
- Derives its funds primarily from public and private charity and holds them in trust for the objects and purposes expressed in its charter;
- Dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses;
- Uses its property exclusively (primarily) for charitable purposes (note: must prove that it is used actually and factually as such—the statements of its agents and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes are not sufficient evidence of same).

We have been involved in recent state and local inquiries in which regulators specifically ask representatives of charitable organizations about their familiarity with the *Methodist Old Peoples Home* guidelines. They are then called upon to demonstrate how their organizations comport with such guidelines. Accordingly, and particularly for those in Cook County who must under oath swear compliance with the *Methodist Old Peoples Home* guidelines, we recommend that hospitals

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review and discuss the guidelines with their legal and business advisors and that at a minimum they are able to respond affirmatively to the following inquiries.

- Are you aware of the *Methodist Old Peoples Home* guidelines?
- Does your organization have a charity care policy that will allow those who are unable to pay to avail themselves of free or discounted care?
- Has this policy been implemented such that you are able to demonstrate the provision of charity care to all who need it?
- Is your charity care program publicized and available without obstacles to those who cannot afford to pay for health care?

Moreover, to the extent such guidelines are upheld as the ones to apply in determining whether hospital property is exempt, hospitals must be prepared to articulate on an annual basis how their operations comport with the primary charitable requirements of the statute and *Methodist Old Peoples Home* guidelines.

Organizations that struggle with the answers to these more fundamental charitable care questions may be facing an uphill battle in showing that the use of particular real estate is primarily charitable, especially as state and local rules and regulations hone in on charitable purpose and the delivery of charity care to those in need. For these organizations in particular, other possible avenues for exemption (based on religious or educational use of the property, for example) may merit consideration.

Understanding the developing issues associated with tax exemption is helpful in preparing to seek and maintain exemption. Being able to fully detail all charitable uses of each exempt property in a manner expected by state and local officials is the key to a successful presentation for tax exemption.

**Hold the date.** On the afternoon of February 26, 2007, Ungaretti & Harris will present its second annual update on the evolving Illinois regulatory environment in this area. Cook County Assessor James M. Houlihan will be joining us to discuss the Cook County property tax climate. We ask that you save the date and be prepared to join us to hear more about property tax matters and other significant state and local initiatives targeting the charity care practices and tax exemption of hospitals in Illinois. A formal announcement will follow.

The legal issues associated with the delivery of healthcare services have become substantially more complex. An evolving and complicated regulatory environment, new technologies and medical procedures, shifts in reimbursement programs, shrinking capital sources and market demands are just a few of the reasons why healthcare providers require specialized legal services.

**Ungaretti & Harris' Healthcare Department** remains devoted to meeting the changing needs of the healthcare industry. Our firm of 100-plus lawyers devotes a substantial portion of its firm-wide practice to the legal needs of healthcare providers and other related clients.

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