STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Spectrum Health Primary Care Partners,
Petitioner,

v MTT Docket No. 15-001768

Grand Rapids Township,
Respondent.

Tribunal Judge Presiding
David B. Marmon

ORDER DENYING RESPONDENT'S MOTION FOR LEAVE TO FILE A RESPONSE TO PETITIONER'S MOTION FOR SUMMARY DISPOSITION UNDER MCL 211.7r

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION REGARDING AN EXEMPTION UNDER MCL 211.7o

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER REGARDING AN EXEMPTION UNDER MCL 211.7r

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION REGARDING AN EXEMPTION UNDER MCL 211.7o

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION REGARDING AN EXEMPTION UNDER MCL 211.7r

FINAL ORDER AND OPINION

INTRODUCTION

On May 23, 2016, Respondent filed a motion and brief, including 27 exhibits, requesting that the Tribunal enter summary disposition in its favor in the above-captioned case. More specifically, Respondent contends that it is entitled to Summary Disposition under MCR 2.116(C)(10), on the basis that Petitioner, as a matter of law, is not organized chiefly or solely for charity; that Petitioner offers its services on a discriminatory basis in choosing who among the class of individuals it purports to serve will receive its services, and finally, that Petitioner charges more than required for its successful maintenance.

On June 13, 2016, Petitioner filed a response to the Motion, originally filed under seal, and embedded as part of its Motion for Protective Order.[1] Attached to its response were 42 exhibits. The Response also asks for Summary Disposition, under MCR 2.116(I)(2), stating with documentation that it is a Michigan Non-profit corporation;[2] a recognized 501(c)(3) corporation,[3] and that its exemption under MCL 211.7o(1) has been illegally denied, as it meets the tests under this section, as well as under *Wexford Group v. City of Cadillac.*[4] Petitioner also argued that it was exempt for taxation under MCL 211.7(r) [sic].

On July 28, 2016, Respondent filed a Motion requesting leave to file its attached brief in response to Petitioner's response to Respondent's Motion for Summary Disposition. Said Motion was granted by the Tribunal in an Order dated August 24, 2016. Respondent's July 28th Response, which includes 5 attached exhibits argues that regardless of whether Petitioner and its affiliates are overall charitable, Petitioner failed to provide any documentation that the subject property is used for charitable purposes. Respondent further argued that Petitioner was disqualified under *Wexford* because it spent $48,000,000 to construct the facility, thus causing any losses to be temporary, and that its financial assistance policy, which requires any applicant to have applied for health insurance under the Affordable Care Act, was one that would not meet the non-discrimination requirement. Additionally, Respondent argues that writing off bad debts was not enough to indicate that Petitioner's purpose was overall charitable.

In response to Petitioner's June 13th response, the Tribunal ordered as part of its July 15, 2016 Order, that the parties exchange briefs on the issue as to whether Petitioner qualifies as a charity under MCL 211.7r. In response to this Order, Petitioner filed its Brief on October 12, 2016, which includes 30 exhibits, arguing that the subject's multi-specialty healthcare services qualify the subject's building as exempt under §7r. Further, Petitioner argues that unlike a typical private physician practice, it provides medical care to every patient seeking care regardless of ability to pay. It also argues that it benefits public health by providing various

[1] The Tribunal ordered Petitioner to immediately exchange the response with attachments on July 7, 2016, and scheduled an in camera review on the Motion for Protective Order. The result of the in camera review was incorporated into the Tribunal's Order of July 15, 2016.
[2] LARA On line Corporate Entity Details, Petitioner's Exhibit 1, and Restated Articles of Incorporation, Petitioner's Exhibit 2 attached to its June 13, 2016 filing.
[3] May 13, 2014 letter from IRS granting exemption, attached as Petitioner's Exhibit 7 to its June 13, 2016 filing.
[4] *Wexford Group v. City of Cadillac* 474 Mich 192;713 NW2d 734 (2006).

programs, along with training and medical education to health care providers, and by conducting and publishing research.

On October 13, 2016, Respondent filed a second Motion for Summary Disposition along with a brief on MCL 211.7r, which included 14 exhibits. In its brief, Respondent argues that Petitioner does not occupy the real property, and does not use the property for public health purposes.

On November 2, 2016, Petitioner filed a brief in response to Respondent's Motion for Summary Disposition under MCL 211.7r, including 7 Exhibits, asserting much of the same facts as in its October 12, 2016 Motion, and arguing its own reading of the relevant case law.

On November 23, 2016, Respondent filed its Notice of Supplemental Authority and Motion for Leave to File Response to Petitioner's Cross-Motion for Summary Disposition on Petitioner's MCL 211.7r Exemption Claim, to which Petitioner filed a Response on December 14, 2016. TTR 225(6) states:

> Pleading on motions shall be limited to the motion and a brief in support of the motion and a single response to the motion and a brief in support of the response. A brief in support of a motion or response, if any, shall be filed concurrently with the motion or response.

Respondent's Pleading of November 23, 2016 is well in excess of the one page limited Notice of Supplemental Authority, authorized in appellate practice under MCL 7.212(F), and goes well beyond the scope of the two recent appellate decisions attached. Considering that the Tribunal already has six briefs in this matter, (three from Respondent), and that oral argument was also granted, the Tribunal declines to consider this additional filing, or Petitioner's response, as unnecessary.[5] Oral Argument was held pursuant to both parties' requests, on the parties' Motions and Cross Motions for Summary Disposition, on January 5, 2017, with each side given 30 minutes to present their case. Respondent reiterated its arguments under both MCL 211.7o(1) and 7r. Petitioner used its time to show eleven elements of commonality the facts have with the Petitioner in *Wexford*, along with three differences.

The Tribunal has reviewed the Motions, responses, the evidence submitted, as well as the exploration of these issues at oral argument and finds that denying Respondent's Motions for

[5] The parties were informed of this decision from the bench on January 5, 2017 at the occasion of Oral Argument.

Summary Disposition and granting Petitioner's Motion as to MCL 211.7o(1) and MCL 211.7r is warranted at this time, and holds that the subject real and personal property is exempt from property taxation.

RESPONDENT'S CONTENTIONS

Charitable exemption under MCL 211.7o

In support of its Motions, Respondent contends that Spectrum is organized chiefly for the benefit of the physicians and the Spectrum network. In support of that contention, Respondent asserts that the demographics of the community surrounding the subject property are upscale, educated, and have health insurance.[6] Further, through mergers and acquisitions Petitioner has grown from 43 physicians in 2008 to 860 professionals.[7] On a related point, Respondent asserts that Spectrum, like private for-profit medical providers shifts unreimbursed costs from Medicare and Medicaid to all other payers.[8] Respondent also asserts that Spectrum's bylaws cite the goal of "seamless integration" of its specialties. Respondent further asserts that the sample employment agreement provided through discovery states under the heading "Clinical Collaboration," in relevant part:

> It is the expectation of the parties that you will utilize the physicians, providers, facilities and/or resources of Spectrum, including any affiliates and subsidiaries, with a preference for services provided by the Group, in the care and treatment of patients.[9]

Respondent argues that this, along with Petitioner's action of combining and consolidating medical practices from various tax-paying medical practices into one building is evidence of a chief purpose of propagating an in-network referral system, stifling competition, and increasing patient volume to generate revenue for Petitioner, rather than engaging in charity.

Additionally, Respondent asserts that Spectrum charges rates for its services which are significantly higher than its competitors.[10] Further, Respondent asserts that its key personnel are

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[6] Respondent's Exhibit 3 attached to May 23, 2016 Motion, citing Census.gov for Grand Rapids Twp.
[7] In support of this assertion, Respondent attached an article in Modern Healthcare, dated June 7, 2010, (Exhibit 7, attached to May 23, 2016 Motion,) and an M-Live article, dated March 28, 2014, (Exhibit 8 attached to May 23, 2016 Motion).
[8] October 11, 2011 testimony before Michigan House Insurance Committee regarding HB 4936, (Exhibit 15 attached to May 23, 2016 Motion).
[9] The employment agreement quoted from in part is covered by an order holding it to be confidential after an in camera review.
[10] Respondent cites a WOOD TV article, dated November 1, 2014 (Exhibit 14 attached to its May 23, 2016 Motion) in support of this assertion.

paid compensation that "are not reflective of those of an institution that is organized chiefly or solely for charity.[11] Respondent also asserts that Spectrum Health has a profit margin above 10%,[12] and had revenues less expenses for 2011 in excess of $10,000,000.[13]

As to whether Petitioner offers its services without discrimination to everyone, Respondent argues that Spectrum's financial assistance policy[14] fails to provide charitable or discounted care to those who qualify under the Affordable Care Act but fail to apply for insurance. Respondent also quotes from Petitioner's web site that financial assistance is "the account resolution of last resort." Finally, Respondent notes that Spectrum's situation is vastly different than that the subject of *Wexford* in noting that it does not sustain and bear notable financial losses from freely accepting Medicare and Medicaid because of gap coverage, and the Affordable Care Act, as well as through Priority Health, a wholly owned insurance subsidiary of Petitioner's parent company.

In Respondent's Brief in Opposition to Petitioner's Motion for Summary Disposition, filed on July 28, 2016, it argues that Summary Disposition should be denied to Petitioner because of Spectrum's failure to provide any evidence that the subject property is used for charitable purposes. Respondent further distinguished Petitioner from the facility in *Wexford*, asserting that Wexford provided health care in a federally designated health professional shortage area; did not exclude anyone whose income was up to twice the federal poverty level, and offered a significant number of services which were not provided by anyone else in the area. Rather, Respondent argues, that Petitioner, per its bylaws is very focused on making itself the biggest and best player in local healthcare.

Public Health Exemption Under MCL 211.7r

Respondent also filed a Motion for Summary Disposition regarding MCL 211.7r. It first argues that per *Liberty Hill*,[15] Petitioner cannot occupy what is leased to others, and therefore

[11] 2012 Form 990 Schedule J Part II attached as Exhibit 19 to May 23, 2016 Motion, p. 214- 215 enumerates the compensation without differentiation in title for officers, directors, trustees, key employees and highest compensated employees. Four individuals on this list received compensation between $1,000,000 and $2,000,000.
[12] March 10, 2016 article in Modern Healthcare, attached as Exhibit 26 to May 23, 2016 Motion.
[13] Form 990, p. 1, (Exhibit 19 attached to May 23, 2016 Motion).
[14] Questions and Answers from Petitioner's web site are attached as Exhibit 17 to Respondent's May 23, 2016 Motion.
[15] *Liberty Hill Housing Corp v Livonia*, 480 Mich 44; 746 NW2d 282 (2008)

cannot qualify under §7r. Respondent points out that Spectrum leases approximately 17% of the subject, including all hospital services.

Respondent next argues that Spectrum's services must improve community health, as opposed to individual health to be considered "public health services." Respondent cites the definition used by the Michigan Court of Appeals in *Rose Hill*[16] for the definition of public health:

> [t]he art and science of protecting and improving community health by means of preventative medicine, health education, communicable disease control, and the application of the social and sanitary sciences.

Respondent then cited several pre-*Wexford* cases that denied exemptions under §7r where medical services are offered on an individualized basis on the subject property, rather than to the benefit of the community at large.

PETITIONER'S CONTENTIONS

Charitable Exemption under MCL 211.7o(1)

In support of its response, and cross motion, Petitioner contends that its Non-Profit Articles of Incorporation, as well as its Bylaws state that it "shall be operated exclusively for charitable, educational and scientific purposes as a non-profit corporation.[17] Petitioner noted that it is exempt from federal taxes under IRC 501(c)(3).[18] Accordingly, Petitioner argues that it meets the first *Wexford* test.

Petitioner argues that its purpose is devoted to charitable works as a whole via its comprehensive charity care program, which includes unpaid costs incurred for Medicare and Medicaid programs, uninsured charity care provided, as well as discounted care and bad debts incurred.[19] These charitable initiatives have resulted in Petitioner delivering over $88 million dollars in Community Benefit to West Michigan since July of 2013, including over $70 million in Medicare and Medicaid losses and over $17.7 million for charity care from uninsured charity care and uninsured bad debts.[20] Similar to the nonprofit medical group in *Wexford*, since July 1,

[16] *Rose Hill Center Inc v Holly Twp*, 224 Mich App 28, 33; 568 NW2d 332 (1997).
[17] Petitioner's Exhibit 2, 3, attached to Petitioner's June 13, 2016 filing.
[18] IRS Determination Letter dated May 13, 2014, attached as Petitioner's Exhibit 7 to Petitioner's June 13, 2016 filing.
[19] Exhibits 11 and 13 attached to Petitioner's June 13, 2016 filing.
[20] Petitioner's Exhibit 11 attached to June 13, 2016 filing.

2013, Petitioner has consistently reported modest net income or losses in the pursuit of its charitable mission,[21] and needs to be subsidized by its parent Spectrum Health (and its affiliates) to continue operations. Thus it argues, Petitioner meets the second *Wexford* test.

In arguing that it meets the third *Wexford* test, Petitioner cites its website,[22] to show that the Medical Group serves any person who needs Petitioner's services. Petitioner, like every Spectrum Health affiliate, "cares for every patient, regardless of the ability to pay." In further support, Petitioner attached an audited estimate of its charity care.[23]

Petitioner argues it meets the fourth *Wexford* test citing examples from its Corporate Social Responsibility Report, including Spectrum Health's initiatives for healthier communities, clinical research, education, community engagement, inclusion and diversity, sustainability, employee engagement, innovation, regional relationships, and community benefit.[24] Moreover, its activities relieve bodies of disease, suffering or constraint.

As to the fifth Wexford factor, Petitioner asserts that Spectrum Health reports on its website that "[w]e carefully control our costs and consistently are in the lowest 25 percentage of costs compared to hospitals of similar size in the nation. This, per Petitioner, translates to prices that are significantly less than other hospitals' prices."[25] Petitioner further states that Spectrum Health's prices are revised each year on July 1 and are subject to change during the year. To establish prices, Spectrum considers many factors including: i) the cost of providing staff, equipment, facilities, medications and other supplies; ii) the amount of time its facilities and staff are involved in providing services; iii) insurance company contracts; and iv) information provided by the Centers for Medicare and Medicaid Services, the federal agency that manages the Medicare and Medicaid program.[26] Regarding compensation of employees, Petitioner notes that it uses a compensation system using independent surveys, and reports salaries to the IRS on form 990.[27] Petitioner also cites Petitioner's recent financial information showing reported modest net income of $1.6 million for the 34-Month Period, including a $4.5 million loss for FYE 6/30/2014 through 4/30/2016. Petitioner's losses are subsidized by Spectrum Health and its

[21] Petitioner's Exhibits 16 and 17 attached to June 13, 2016 filing.
[22] Excerpts attached as Exhibit 9 to Petitioner's June 13, 2016 filing.
[23] Petitioner's Exhibit 11 attached to Petitioner's June 13, 2016 filing.
[24] Petitioner's Exhibit 9 attached to Petitioner's June 13, 2016 filing
[25] Petitioner's Exhibit 23, Page 3, FAQ's regarding fees, published at www.spectrumhealth.org/body.cfru?id=998.
[26] Spectrum FAQ's, Petitioner's Exhibit 23 attached to Petitioner's June 13, 2016 filing.
[27] Petitioner's Exhibit 24 attached to Petitioner's June 13, 2016 filing outlines its compensation system.

subsidiaries.[28] Petitioner argues that it would be more profitable for the 34-Month Period without the $88 million in Community Benefit expenses incurred, including over $70 million in Medicare and Medicaid shortfalls.[29] Petitioner asserts that its current year losses, are generated in substantial part, by Medicare and Medicaid shortfalls, and uninsured charity care.

As to *Wexford* Factor 6, Petitioner asserts that it contributes $88 million in community benefit in the past 34 months and has given $18 million in charitable care over the past 34 months. Combined with its involvement in medical education of fellows, residents, and medical students, it qualifies as a charitable institution.

As to Respondent's argument that Petitioner's campus is in a wealthy area, Petitioner asserts that its physicians provide services at many other locations throughout western Michigan which are poorer than Grand Rapids Township. As to the employment agreement cited by Respondent as evidence of Petitioner's non-charitable nature, Petitioner quotes the very next provision:

> You are not expected to utilize the physicians, providers, facilities and/or resources of Spectrum if (i) the patient expresses a preference for a different provider, practitioner or supplier, (ii) the patient's insurer determines the provider, practitioner, or supplier or (iii) the referral is not, in your judgment, in the patient's best medical interests. This Section 3-E shall not apply to any services provided by you that are outside the scope of this Agreement.[30]

Public Health Exemption Under MCL 211.7r

In its October 12, 2016 filing, Petitioner enumerated the various health services provided on the subject property, including Urgent Care; Balance Center; Neurology & Neuropsychology; Obstetrics & Gynecology; Occupational Health; Orthopedics; Rehabilitation Services; Internal Medicine & Pediatrics; Family Medicine; Psychiatry & Behavioral Medicine; and Laboratory, Radiology, including X-ray, Ultrasound, Mammography, Bone Density, CT and MRI, among other services.[31]

Petitioner relies upon its charitable care, as well as certain community services, to distinguish it from a typical private physician practice. Among the services listed is a neurology

[28] Petitioner supports this assertion with an affidavit by its president, Seth Wolk, (Petitioner's Exhibit 3, and by financial statements, Petitioner's Exhibit 16, both attached to Petitioner's June 13, 2016 filing).
[29] Petitioner's Exhibit 11, unaudited Community Benefit Schedule attached to Petitioner's June 13, 2016 filing.
[30] The referenced employment agreement is part of a confidentiality order signed by the Tribunal after in-camera review.
[31] Petitioner relies on its Answer to Second Set of Interrogatories, attached as Exhibit 2 to its June 13, 2016 filing.

center, giving occupational speech and physical therapy at no charge. Also an amyotrophic lateral sclerosis (ALS) clinic is operated by Petitioner, including a nurse navigator, a social worker, a physical therapist and speech personnel. A similar team is available for Parkinson's patients, again without charge for the non-physicians on the team. Petitioner also points to public health presentations, seminars, group education presentations, telehealth services, and other community activities, along with professional training and research and publication to distinguish it from a typical private pay medical practice.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[32] In this case, Respondent moves for summary disposition under MCR 2.116(C)(10). In its response, Petitioner also moves for summary disposition under (C)(10), as well as MCR 2.116(I)(2) which allows the court to enter an Order for summary disposition against the moving party. The Tribunal finds that the following standards apply to the Motion and Response filed in this case:

MCR 2.116(C)(10)

Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.[33] In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.[34]

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.[35] The moving party bears the initial burden of

[32] See TTR 215.
[33] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).
[34] See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).
[35] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

supporting its position by presenting its documentary evidence for the court to consider.[36] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[37] Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.[38] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[39]

MCR 2.116(I)(2)

Summary disposition under MCR 2.116(I)(2) is appropriate "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment . . . ," and as such, the court may render judgment in favor of the opposing party.[40]

CONCLUSIONS OF LAW

The Tribunal has carefully considered each party's Motion(s) and Responses, (6 filings in total), under MCR 2.116 (C)(10) and (I)(2) and finds that granting Petitioner's Motion and denying Respondent's Motions are warranted.

Respondent alleges that Petitioner cannot prevail for an exemption under MCL 211.7o because it is not a charity. Specifically, Respondent states that there is no issue of material fact that Petitioner is a physician's group organized chiefly for the benefit of the physicians that work there, rather than for the public; that Petitioner offers its charitable care on a discriminatory basis, and that Petitioner's charges for its services do not approximate their cost and rarely constitute a "gift" to patients. In furtherance of this argument, Respondent also argues that Petitioner shifts its cost of its purported charity to the business community through a "hidden tax", and that the federal and state government have reduced its charitable activities by providing Petitioner with a new pool of newly insured patients under the Affordable Care Act, and Medicaid group coverage.

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[36] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[37] *Id.*
[38] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[39] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).
[40] See also *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000).

For factual support, Respondent relied upon Petitioner's Answers to Interrogatories that showed the occupancy of eleven formerly "stand alone" physicians' practices were "subsumed" into Petitioner at its current location. Among the practices referenced in Respondent's Motion are practices in family medicine, internal medicine, pediatrics, neurology and neuropsychology, psychiatry, OB-GYN, orthopedics, urgent care occupational health, rehabilitation and laboratory services. Only 530 square feet of the facility is licensed on a limited basis to a private physician on an annual basis.

Exemption Claim under MCL 211.7o(1)

MCL 211.7o(1) states:

> (1) Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.

"Own and occupy"

Ownership and occupancy is not at issue. Respondent, has attached a Warranty Deed showing the subject as being owned by Petitioner.[41] As to occupancy, with the exception of the small amount of leased or licensed space, as well as the hospital space which is leased to a related affiliate, Respondent states that the subject is occupied by Petitioner. However, in its October 13, 2016 filing, Respondent argues (albeit, in the context of MCL 211.7r),[42] that leased space cannot be "occupied" by the lessor. The term "occupied" occurs twice in §7o(1). Per *Liberty Hill Housing Corp v City of Livonia*[43] its use as part of the phrase of "owned and occupied" is a separate requirement from its later occurrence from "occupied . . . solely for the purposes for which that . . . institution was incorporated." Should Petitioner fail to meet either occupancy test, it cannot qualify for an exemption under section 7o(1).

In *Liberty Hill*, Petitioner, a non-profit, leased housing unit to low income and disabled individuals. In applying the first occupancy requirement under §7o(1), the Supreme Court stated:

> The dissent would hold that a charitable institution may occupy property by using it without maintaining a physical presence there. Such an interpretation leads to one

[41] Respondent's Exhibit 4 attached to its May 23, 2016 Motion; Tab 2 attached to its October 13, 2016 filing.
[42] Respondent argues that *Liberty Hill* applies under §7r as well as 7o, because both statutes use the phrase "owned and occupied."
[43] *Liberty Hill Housing Corp v City of Livonia* 480 Mich 44; 746 NW2d 282 (2008).

> of the following two unsatisfactory conclusions: (1) a charitable institution can occupy property without actually being physically present or (2) a charitable institution need only use the property sporadically or perhaps even once to occupy it. Neither of these conclusions is consistent with proper meaning of the term "occupy." Rather, a charitable institution must maintain *a regular physical presence* on the property to occupy the property under MCL 211.7o.[44]

Accordingly, the gravamen of the occupancy requirement is maintaining a regular physical presence. Clearly, Petitioner has a regular physical presence throughout the 82.82% of the building not leased or licensed.[45] It is uncontested that Petitioner meets the first occupancy requirement under §7o(1), and *Liberty Hill* for 82.82% of the building. What is less clear is whether the 16.94% of the building occupied by Spectrum Health Hospitals, ("SHH") meets this test. Petitioner asserts that the hospital is functionally integrated with Petitioner, and a related entity whose rent is merely an internal book-keeping entry. However, the Michigan Court of Appeals recently decided *Trinty Health – Warde Lab LLC v Pittsfield Twp*,[46] which held that even though Petitioner was wholly owned and dominated the lab's management to the point that the two were essentially the same entity, it was error for the Tribunal to grant an exemption under §7o and or §7r, when the lab was organized as a "for profit" entity, when both statutes clearly require the taxpayer to be organized as a non-profit. In the present case, SHH is also incorporated in the state of Michigan as a non-profit.[47] Also, unlike the Petitioner in *Trinity*, the Petitioner in the present case is the owner of the property. Accordingly, *Trinity Health- Warde Lab* is distinguishable. Furthermore the Tribunal holds that the occupancy requirement for the area leased by SSH comports with *Liberty Hill.* As a related entity with a related mission, it is disingenuous to argue that there is no regular physical presence by Petitioner in this section of the building, when the hospital is part of the subject property; an integrated care center.

The main issue in this case as set forth by Respondent is whether or not Petitioner is a nonprofit charitable institution. Crucial to resolving the issue under MCL 211.7o(1) is the Supreme Court's *Wexford* decision which sets forth six factors:

<u>*Wexford* Factors</u>

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[44] *Id*., at 61-62, (emphasis added).
[45] See Petitioner's Answer #6 to First Discovery Request, attached as Exhibit 5 to Respondent's October 13, 2016 filing. The hospital portion is 16.94% of the building, while .23% is licensed to a Dr. Daniels.
[46] *Trinty Health – Warde Lab LLC v Pittsfield Twp*,__ Mich App ___; __ NW2d ___,(COA Docket No 328092 (issued November 3, 2016)
[47] Exhibit 5 attached to Petitioner's May 23, 2016 Motion.

> (1) A "charitable institution" must be a nonprofit institution.
>
> (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
> (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
> (4) A "charitable institution" 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) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
> (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

Factor (1) is not in dispute, as Petitioner has been incorporated as a nonprofit corporation,[48] and has received a designation from the Internal Revenue Service as a 501(c)(3) organization.[49]

Factor (2) states:

> (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.

Respondent asserts that Factor 2 cannot be met because per its Articles and Bylaws is organized chiefly to manage, employ and benefit physicians and to create a referral network for and within the Spectrum Health family for its own financial prosperity, rather than charity. The Articles as well as the bylaws state:

> (a) To conduct activities, either directly, through related organizations or in cooperation with organizations exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, or comparable provisions of subsequent legislation (the "Code"), in order to provide access to high quality primary care and specialty care and specialty medical services to patients in the communities served by Spectrum Health System; facilitate an integrated continuum of care for patients through internship/externship rotations; ensure primary care and specialty physician participation in medical research; and otherwise further the tax exempt purposes of Spectrum Health System, and its related affiliated organizations,

[48] Restated Articles of Incorporation, Respondent's Exhibit 5 attached to May 23, 2016 Motion.
[49] IRS Letter dated May 13, 2014, Petitioner's Exhibit 7 attached to June 13, 2016 filing.

> subject, however, to all limitations on the nature or extent of such activities applicable, from time to time, to organizations exempt from tax under Section 501(c)(3) of the Code;
>
> (b) To improve the quality of health care through the interdisciplinary coordination of physicians' efforts and Spectrum Health System through the universal use of evidence-based guidelines for care, and through other methods of process improvement and safety that result in better patient outcomes and experiences of care across time and space;
>
> (c) To better serve the health care needs of the patients and communities served by the Spectrum Health System through the employment of or affiliation with primary care and specialty physicians[.]

Rather than supporting Respondent's assertion, the block quote taken from Petitioner's Articles of Incorporation and echoed in its bylaws completely contradicts this assertion. There is nothing incompatible with charity in striving to provide access to high quality medical care, or to train physicians, or improving processes and safety. Nor is there anything incompatible with being a charitable institution in stating in its by-laws "to develop and position [Petitioner] as the pre-eminent multi-practice specialty group in West Michigan …". A charitable institution is not required to strive for mediocrity as a condition of its being considered a charitable institution. Petitioner also happens to be in an industry that has undergone tremendous consolidation, where small practices are gobbled up by larger practices, and hospital systems gobble up other hospital systems. While acquisitiveness or bigness in not in and of itself a charitable goal, it may be a necessary one in terms of survival. By the same token, there is no discussion under *Wexford*, or any other authority that requires a charity to be small, mediocre in quality, or to lose money. As *Wexford* states:

> Respondent argues that petitioner's goal of profitability negates its claim that it is a charitable institution. We find that argument hollow. Petitioner's bylaws do not allow any individual to profit monetarily from the petitioner's clinic; thus, "profitability" has a different meaning for this institution than it would for an entity whose goal it was to reward its agents or shareholders with profits. And the idea that an institution cannot be a charitable one unless its losses exceed its income places an extraordinary—and ultimately detrimental—burden on charities to continually lose money to benefit from tax exemption. A charitable institution can have a net gain—it is what the institution does with the gain that is relevant. See *R. B. Smith Mem. Hosp.*, supra at 36, 41, 291 N.W. 213 (1940). When the gain is

> invested back into the institution to maintain its viability, this serves as evidence, not negation, of the institution's "charitable" nature.[50]

Not stated, but assumed in this decision is the premise that business success or survival is not incompatible with having a charitable purpose under our property tax exemption statutes. The Tribunal would be exceeding its authority to change the statutory requirements for an exemption to disqualify large acquisitive non-profits.

Respondent next argues that the physician's employment agreement which requires its physicians to "utilize the physicians, providers, facilities and/or resources [of Petitioner]…" is proof that Petitioner's true purpose is to stifle competition and increase patient volume to generate revenue for Petitioner, and thus has nothing to do with charity. While the Tribunal agrees that stifling competition and increasing revenue is not charitable in nature, the sample employment agreement by itself does not establish that Petitioner is not organized chiefly, if not solely for charity. Further, as pointed out by Petitioner, Respondent has *selectively quoted* the employment agreement. The next clause states:

> You are not expected to utilize the physicians, providers, facilities and/or resources of Spectrum if (i) the patient expresses a preference for a different provider, practitioner or supplier, (ii) the patient's insurer determines the provider, practitioner, or supplier or (iii) the referral is not, in your judgment, in the patient's best medical interests. This Section 3-E shall not apply to any services provided by you that are outside the scope of this Agreement.[51]

Accordingly, while Petitioner's physician employment agreement decidedly favors in-system referrals, it is not evidence of an anti-competitive purpose. Rather, using other providers within the same medical group furthers the goal of better health care through integration and coordination.

Respondent also argues that the goal of providing integrated continuum of care is not a charitable goal. As stated by its counsel at oral argument:

> Good things are not necessarily charitable things. And when we actually drill down on more of what's the fundamental nature of this particular organization of Petitioner, you can see, again, there's the repeating here, not of providing affordable care, which what Wexford's Bylaws were focusing on, but the very fundamental nature of this is to develop and position SHMG, Petitioner, as the preeminent multi-

[50] *Wexford*, 474 Mich at. 217-218.
[51] Petitioner's Exhibit 28 to June 23, 2016 filling at Page 5, Sec. 3(E). Said agreement is covered by the Tribunal's confidentiality Order.

> specialty practice group in West Michigan. And they're going to focus, of course, on improving the delivery of health care through coordination and integration of the whole system together. So this is what they're focusing on, not a charitable focus of "let's make sure it's affordable for everyone like Wexford did, but let's develop and position ourselves as the preeminent medical or multi-specialty practice group in West Michigan." That's the focus.[52]

The Tribunal disagrees that there is a dichotomy between the goals of better care versus more affordable care that somehow conflict with being organized chiefly, if not solely, for charity. First of all, there is a theory, (although perhaps unproven) that integrative care results in *both* lower costs and better outcomes.[53] Even if there is a dichotomy between cost and integration, there is no authority for the proposition that a charity must provide low cost care at the expense of quality. Stated another way, §7o does not give an incentive to provide inferior care.

Respondent next argues that Petitioner pays its directors, officers and employees amounts not reflective of an institution that is organized chiefly for charity. While the exhibits attached show some impressive salaries, there is no showing that the amounts paid are above market.[54] Even if Respondent's statement of the law is correct, Petitioner has put forth unrebutted evidence as to how Petitioner sets the salaries of its personnel in conformity to market standards.[55] Respondent's find of a single story done by a local television station of one instance of a higher price on one procedure is not reliable evidence as to how Petitioner decides compensation of its personnel. Accordingly, summary disposition in favor of Respondent is improper concerning Factor 2 under *Wexford*.

As to whether Petitioner has established that it is organized chiefly, if not solely for charity, Petitioner pointed out what gifts it is giving to the community. Petitioner noted, as with the Petitioner in *Wexford*, both gifted medical services in excess of what each was paid under Medicare and Medicaid; there is the gift of substantial write-downs on patient accounts that can never be paid, there is pure charity care under its policy. Petitioner submitted documentation

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[52] Transcript of Oral Argument, January 5, 2017, ("Transcript"), p. 4-5

[53] See Wang, Chang, LaClair and Paz, *Effects of Integrated Delivery System on Cost and Quality*, Vol 5 # 19. Am Journal of Managed Care (2013), found as Petitioner's Exhibit 29 attached to June 13, 2016 filing.

[54] Respondent cites several MTT decisions for the proposition that a charity's employees must receive no remuneration, nominal compensation or less compensation than given by a private employer. However, all of those decisions were decided in 1993 or earlier, and predate *Wexford*. Not only is the Tribunal not bound by those decisions, the Tribunal finds them unpersuasive, given the *Wexford* decision in 2006.

[55] Petitioner's Exhibits 32 and 33, attached to its June 13, 2016 filing are two nationally recognized physician surveys showing ranges of average salaries of physicians in the U.S., and the Midwest, which show that Petitioner is in line with the market.

indicating that these losses due to Medicare and Medicaid alone exceed $70,000,000, and $17.7 million for bad debt write off and charity care since July 1, 2013.[56]Additionally, it is undisputed that Petitioner provides a variety of health-based community services provided, including public health education presentations on the internet and TV, women's multiple sclerosis support group, community seminars and videos, free financial aid consulting services, free orthopedic seminars, and training of mental health professionals.[57] Most importantly, Petitioner states its policy, reflected on its web site is that it "cares for every patient, regardless of ability to pay."[58]

All of these elements were pointed to in the Supreme Court's *Wexford* decision in finding that Petitioner to be a charitable institution. The differences per both parties, is that the Petitioner in *Wexford* was organized in a designated area of need, while Petitioner is not headquartered in such an area. As Petitioner's counsel pointed out at oral argument, the Supreme Court mentioned that fact in the opinion, but did not discuss it as a factor in granting the exemption. The Tribunal agrees that this is a distinction without a difference, and the observation appears to be made in passing. Another difference pointed out by Respondent is that *Wexford* was decided before the advent of the Affordable Care Act.[59] Setting aside the high probability that the ACA will be repealed or highly modified, the fact remains that even under the ACA, many patients that were not covered prior to its enactment are now covered by Medicaid, which Petitioner accepts, and which does not pay full freight. In a similar vein, Respondent has made much of Petitioner's practice of so called "cost shifting," and attempts to differentiate the Petitioner here from the Petitioner in *Wexford*. The Tribunal does not accept that Petitioner's practice of receiving more money from private pay in part to make up for public pay, or no pay is any different from the conduct of Petitioners in *Wexford*, or different from any other entity that provides medical care. If this were so, no one providing uncompensated, or below cost care could survive very long. To paraphrase the quote above from *Wexford*, charitable status does not require failure. Accordingly, the Tribunal finds that per the standard

[56] In support, Petitioner provided as Exhibit 11, attached to its October 13, 2016 filing its unaudited estimate of community benefit, containing these figures.
[57] Petitioner relies upon its discovery responses, attached to its October 12, 2016 filing as Exhibits 6 through 12.
[58] Exhibit 9, attached to Petitioner's June 13, 2016 filing, and exhibits 7-9 attached to Petitioner's October 12, 2016 filing. This assertion will be discussed in more detail under Wexford Factor 3.
[59] Even if the Tribunal were to accept Respondent's argument that the ACA somehow eliminated the need for charitable care, we lack the authority to overrule *Wexford*.

set forth in deciding motions under MCR 2.116(C)(10), Petitioner has established that it is organized chiefly, if not solely, for charity, and meets the second *Wexford* test.

The third *Wexford* Factor is:

> (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered**.**

The Tribunal notes that Factor 3 as it is currently understood under case law may in the near future be substantially modified. The Supreme Court on April 1, 2016, directed the Clerk to schedule oral argument on whether to grant application or take other action in *Baruch SLS, Inc v Tittabawassee* SC Docket No. 152047. The Order states:

> The parties shall file supplemental briefs within 42 days of the date of this order addressing: (1) whether *Wexford Medical Group v City of Cadillac*, 474 Mich 192 (2006), correctly held that an institution does not qualify as a "charitable institution" under MCL 211.7o or MCL 211.9 if it offers its charity on a "discriminatory basis"; (2) if so, how "discriminatory basis" should be given proper meaning; (3) the extent to which the relationship between an institution's written policies and its actual distribution of charitable resources is relevant to that definition; and (4) whether, given the foregoing, the petitioner is entitled to a tax exemption.

The Tribunal also notes that the Supreme Court heard oral argument on this issue on December 8, 2016, and that a decision is likely to be imminent. It appears to the Tribunal that this *Wexford* factor is likely to be substantially modified, if not completely abrogated.

As the law currently stands, Respondent argues that the enactment of the Affordable Care Act reduces the amount of charitable care that Petitioner will have to provide.[60] Further, Respondent asserts that Petitioner's financial assistance policy excludes persons who are eligible for insurance but fail to purchase that insurance, and that such an exclusion fails to serve persons who need the particular type of charity being offered by Petitioner. Petitioner's Financial Assistance Eligibility Policy also states:

> Spectrum Health will provide, without discrimination, care for emergency medical conditions to individuals regardless of their ability to pay or eligibility for financial assistance. Spectrum Health will not engage in actions that discourage individuals

[60] The holding in *Wexford*, and related to Factor 6 below is a declaration that there is no specific monetary threshold of charity given. Rather, if the overall nature of the institution is charitable, it is a charitable institution. In *Wexford*, the Court found that Petitioner qualified as a charitable institution, even though a very small percentage of persons it treated were treated without charge.

> from seeking emergency medical care, and, to that end, emergent care will be provided without interference from debt collection or demands for prepayment of services prior to treatment as further described in the Emergency Medical Treatment and Active Labor Act.[61]

In its response, Petitioner summarily claims that it complies with Factor 3, and points to its Exhibit 11, reporting certain financial data, in support "Petitioner provides a tremendous amount of nondiscriminatory charity care to the West Michigan community." Petitioner also points to its website,[62] for additional support for its assertion that it "cares for every patient regardless of the ability to pay."

At oral argument, Petitioner's counsel argued that Petitioner's policy is precisely that of the Petitioner in *Wexford*. Petitioner further argued that Spectrum has provided far more charitable care than Wexford Medical Group. In *Wexford*, the Supreme Court pointed to a relatively miniscule amount of charity care provided under its policy. The Court noted that only 2 patients took advantage of its charity care in 2000, and only 11 patients in 2001 out of 44,000 visits a year. The total amount of pure charity care given was a paltry $2,400 out of an annual budget of $10,000,000. In the present case, Petitioner, at the subject property has provided $370,000 in care to the uninsured under its charity policy.[63] Accordingly, the Tribunal finds that Respondent's argument that Petitioner fails to meet the non-discrimination factor is completely unsupported, while Petitioner provided documentary evidence that it accepts anyone for care regardless of their ability to pay. Accordingly, the Tribunal holds that under MCR 2.116(C)(10), Petitioner satisfies Factor 3, and serves any person who needs the particular type of charity being offered.

The fourth factor in *Wexford* states:

> (4) A "charitable institution" 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.

Respondent has not disputed that Petitioner meets the qualifications under this factor as a medical institution. Further, as a medical institution, Petitioner satisfies as a matter of

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[61] Respondent's Exhibit 16 to its May 26, 2016 Motion.
[62] Petitioner's Exhibit 9 to its June 13, 2016 filing
[63] Exhibit 11 to Petitioner's June 13, 2016 filing

law that it relieves people's bodies from disease, suffering and constraint, and meets the fourth *Wexford* factor.

The fifth *Wexford* Factor states:

> (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.

Respondent asserts in its Motion that that Petitioner fails under the fifth factor. In support Respondent relies upon Petitioner's 990 tax returns showing revenue in 2012 in excess of Ten Million dollars. Respondent also cites testimony by Petitioner's Director of Governmental Affairs before the Michigan House Insurance Committee, to the effect that shortfalls it receives under Medicare and Medicaid are "shifted" to other insurance programs, such as workman's compensation, automobile no-fault and commercial insurance policies.[64] Respondent also cites articles by Crain's Business Journal, showing them to have positive revenue margins above 10% and a smaller group of uninsured because of the Affordable Care Act.[65] Further, Respondent argues that any loss reported by Petitioner for 2014 is due to the fact that it was its first year in business. Finally, as to Factor 5, Respondent argues that Petitioner's parent company owns Priority Health, and thus can negotiate lower rates with itself.

Petitioner counters that it carefully controls its costs, and are in the lowest 25 percentage of costs compared to hospitals nationwide. Further, Petitioner asserts that it adjusts its fees each July 1, and are subject to change throughout the year. Petitioner also claims that its largest expense, (employee compensation) is governed by its employee compensation system, which reflects fair market rates, are commercially reasonable, and do not exceed what is required for Petitioner's successful maintenance.[66] Petitioner also points to its modest income of $1.6 million for the 34 month period, and a $4.5 million loss for Fiscal year ending June 30, 2016 as shown in its attachments. The losses, it argues, are for Medicaid shortfalls, and uninsured charity care, as in *Wexford*.

The Court in *Wexford* as quoted above in the discussion of Factor 2 held that one is not required to lose money to be a charity. Rather, it is what is done with the profits that determine its charitable nature.[67] As in *Wexford*, Petitioner's Articles and By-laws to not allow any

[64] Respondent's Exhibit 15 attached to its May 23, 2016 Motion.
[65] Respondent's Exhibit 26 and 27 attached to its May 23, 2016 Motion
[66] Petitioner attached a document labelled Compensation System as Exhibit 24 to its June 13, 2016 filing.
[67] *Wexford*, 474 Mich at 217-218.

individual to profit from activities. Respondent implies that Petitioner uses its excess revenue to acquire smaller medical practices, which formerly paid property taxes. There is no question that Petitioner is an affiliate of a health system with assets in the hundreds of billions.[68] However, bigness in and of itself has not been designated by the legislature or the courts as a disqualifying factor for an exemption under §7o. Nor is a charity's rate of growth been singled out as a disqualifying factor. At oral argument, Petitioner's counsel pointed out that both Petitioner and Wexford were owned by large health systems. Wexford Medical Group was owed jointly by Trinity Health Care and Munson Health Care, two other 501(c)(3) organizations.[69] The Tribunal concludes that Petitioner does not differ in any meaningful way from the petitioner in Wexford, and therefore satisfies Factor (5) of *Wexford*.

The sixth *Wexford* Factor states as follows:

> (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

This factor sums up the other five factors, and, per *Wexford's* direct holding, strikes down any quantitative test as to whether or not an institution is charitable. Specifically, the Supreme Court found that a non-profit medical facility by its very nature was charitable. The fact that an infinitesimally small percentage of free care was actually given out by the Petitioner in *Wexford* was not determinative of its charitable nature. Rather, its overall nature of being a medical institution, as well as its willingness to accept needy patients without limitation, and its acceptance of Medicare and Medicaid patients (which do not cover the costs of medical care) qualified it as a charitable institution.

In the present case, Respondent argues that unlike the facility in *Wexford,* Petitioner is not located in an underserved area, and that the amount of charity provided by Petitioner is shrinking due to the implementation of the Affordable Care Act. These arguments appear to be in the nature of the quantity of charity provided; an argument specifically rejected in the *Wexford* decision. The Tribunal concludes that Petitioner has demonstrated through documentary

[68] See Petitioner's Consolidated form 990 for 2013
[69] *Wexford*, 474 Mich at 196

evidence that there is no genuine issue of material fact that Petitioner meets Factor 6 as a matter of law.[70]

"Occupied solely for the purposes for which that nonprofit charitable institution was incorporated

Lastly, to qualify under MCR 211.7o(1), a taxpayer must show that it occupies the subject property solely for the purposes for which it was incorporated. Respondent, in its Response to Petitioner's Cross-motion for Summary Disposition filed on July 28, 2016, argues that Petitioner has failed to demonstrate that the subject property is used for charitable purposes. Respondent relies upon *Michigan Baptist Homes & Dev Co v Ann Arbor*,[71] where a charitable organization failed to operate a particular facility in a charitable manner, and was thus denied an exemption. Specifically, Petitioner in *Baptist Homes* was denied an exemption because it selected only relatively hardy and well healed individuals to be residents of its senior living complex. Respondent argues that because Petitioner failed to offer any proofs as to its charitable activities at the subject itself, the Tribunal must deny Petitioner's cross motion for summary disposition.

The Tribunal disagrees. Petitioner's Exhibit 11[72] breaks out the amount of charitable benefits it delivers at the subject property. Further, Petitioner's Exhibit 3, affidavit of Seth Wolk details activities at the subject, including profits and losses. Petitioner's counsel also detailed various community programs, which in answer to a question from the bench, that communicable disease screening, medical educational training, research studies, multiple sclerosis support group, and community seminars, all take place at the subject.[73]

Petitioner's counsel closed its oral argument regarding MCL 211.7o, summing up 11 similarities and 3 differences with *Wexford*, and stated:

> When you take these facts, this case is so strikingly similar to . . . Wexford, that when you apply those facts to the law and analysis in *Wexford*, it's clear that the Petitioner is entitled to summary disposition. There are no material issues of facts and Petitioner is entitled to summary disposition on 211.7o and r as a matter of law.[74]

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[70] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).
[71] *Michigan Baptist Homes & Dev Co v Ann Arbor*, 396 Mich 660; 242 NW2d 749 (1976).
[72] Exhibit 11 attached to its June 13, 2016 filing.
[73] Transcript, p. 29-30
[74] Transcript, p. 37

The Tribunal agrees, and concludes that Petitioner is entitled to Summary Disposition in its favor and finds it to be exempt under MCL 211.7o(1).

Exemption Claim under MCL 211.7r.

As the Tribunal has found that Petitioner is entitled to an exemption over the subject property, the issue of whether either party is also entitled to Summary Disposition under MCL 211.7r is perhaps moot. However, given the likelihood that this decision will be appealed to the Michigan Court of Appeals, and given the fact that the Tribunal ordered the parties to brief this issue, we would be remiss if we then failed to make a ruling as to the applicability of this section. Section 7r, by definition only applies to the buildings on the subject. The vacant land on the subject would not be entitled to an exemption.

MCL 211.7r states as follows:

211.7r Certain clinics.
Sec. 7r.

> The real estate and building of a clinic erected, financed, occupied, and operated by a nonprofit corporation or by the trustees of health and welfare funds is exempt from taxation under this act, if the funds of the corporation or the trustees are derived solely from payments and contributions under the terms of collective bargaining agreements between employers and representatives of employees for whose use the clinic is maintained. *The real estate with the buildings and other property located on the real estate on that acreage, owned and occupied by a nonprofit trust and used for hospital or public health purposes is exempt from taxation under this act, but not including excess acreage not actively utilized for hospital or public health purposes and real estate and dwellings located on that acreage used for dwelling purposes for resident physicians and their families.* [Emphasis added].

Petitioner touches upon this section in its Brief filed on June 13, 2016, arguing that it applies to its facility, and requesting Summary Disposition under MCR 2.116(I)(2). The Tribunal ordered supplemental briefs from both parties on this issue, which were received on October 12, and 13, 2016.[75] Respondent concedes that Petitioner, as a non-profit corporation meets the definition of "a non-profit trust" under §7r, which is the first element of this exemption.[76]

[75] Respondent's filing was in the form of a Motion, which was responded to by Petitioner on November 2, 2016.
[76] The parties rely upon *Oakwood Hospital v STC*, 385 Mich 704, 708; 190 NW2d 105 (1971). The Tribunal agrees with the parties' conclusion.

Petitioner is not a hospital, although a portion of the building is in fact rented to a related affiliate which is a hospital. Respondent argues that per *Liberty Hill*, which defined the meaning of "owned and occupied under §7o applies, as the identical phrase is found in §7r. The Tribunal agrees. However, as discussed in relation to §7o, the Tribunal holds that Petitioner maintains "a regular physical presence" in the hospital section of the building, thus the 16.94% of the building, which qualifies under §7o also qualifies under §7r.

The rest of the building is not a hospital. The issue herein is whether or not it is being used for "public health purposes" as defined in the statute. Pre-*Wexford* authority makes a distinction between private health purposes and public health purposes. In *Rose Hill Center Inc v Holly Twp*,[77] the Michigan Court of Appeals adopted a dictionary definition of public health purposes:

> *The American Heritage Dictionary: Second College Edition* defines "public health" as
>
> [t]he art and science of protecting and improving community health by means of preventative medicine, health education, communicable disease control, and the application of the social and sanitary sciences.[78]

In *Rose Hill*, the Court of Appeals held that a treatment facility for mental health patients qualified for an exemption under MCL 211.7r, even though the facility was not licensed under a public health statute.

Both parties have argued that private medical care does not meet this definition since the Court of Appeals decision in *ProMed Healthcare v Kalamazoo*.[79] The Court of Appeals actually held that the Petitioner was not entitled to an exemption on real or personal property under §7r because it did not own the real estate.[80] However, the Court of Appeals did comment that a typical family medical practice could not qualify under either 7o or 7r, stating that

> we would in effect be granting tax-exempt status to every doctor's office in the state, as well as every organization offering health- related services, as long as those organizations are structured as nonprofit corporations and maintain policies of offering some " appropriate" level of charity medical care to indigent persons. We cannot conclude that the Legislature intended M.C.L. § 211.7o and 211.7r to create such a result.[81]

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[77] *Rose Hill Center Inc v Holly Twp*, 224 Mich App 28; 568 NW2d 332 (1997)
[78] *Id*., at 33.
[79] *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).
[80] *Id*., at 497-498.
[81] *Id*., at 500-501

The Supreme Court rejected *ProMed's* reasoning that to grant a charitable exemption to Petitioner would open the floodgates. The Supreme Court stated:

> The *ProMed* Court also reasoned that to allow *ProMed* a charitable exemption, it "would in effect be granting tax exempt status to every doctor's office in the state, as well as every organization offering health-related services, as long as those organizations are structured as nonprofit corporations and maintain policies of offering some 'appropriate' level of charity medical care to indigent persons." ProMed,supra at 500–501. We reject that reasoning for two reasons. Most importantly, the Court inappropriately based its statement on its subjective fear of the outcome of applying the clear statutory language, rather than simply applying the language of the statute itself, which says nothing about an "appropriate" level of care. And even if the Court's concern were relevant, we find it somewhat overblown in that it is doubtful that any significant number of profitable medical institutions would forgo their for-profit status in exchange for property tax exemption. In any event, the charitable institution exemption has been in place for over 100 years, and we discern no sign of rampant abuse of it. Nor, apparently, has the Legislature because it has not altered the exemption in any significant way since we first interpreted it in 1897.[82]

Respondent makes a similar floodgate argument, which we must reject, not only based on the above quote from *Wexford*, but because such policy decisions as this quote implies, are a legislative, rather than a judicial, (or in our case, quasi-judicial) prerogative.

While ruling upon the exemption found under §7o, The Supreme Court in *Wexford* stated the following concerning §7r:

> Petitioner also argued that it was entitled to the exemption offered under MCL 211.7r to organizations serving a "public health purpose." Because we find that petitioner is exempt as a charitable institution under MCL 211.7*o*, there is no need to delve any further. Thus, we leave further examination of the meaning of "public health purpose" for another day. *We do, however, vacate the part of the Court of Appeals judgment that held that petitioner did not qualify for this exemption.*[83]

While arguably *obiter dictum*, it is unusual for a court to take an action such as vacating a lower court's decision "in passing." Yet, no analysis was put in place to guide future litigants, courts or tribunals on this issue. Interestingly, the Court of Appeals had consolidated *Wexford* with *McLaren Regional Medical Center v City of Owosso*,[84] relied on it part by Respondent, which

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[82] *Id.,* footnote 10
[83] *Id*., at 221, (emphasis added).
[84] *McLaren Regional Medical Center v City of Owosso, (*on remand*)* 275 Mich App 401; 738 NW2d 777 (2007).

was also vacated. On remand, the Court of Appeals in *McLaren* also declined to rule on the issue of an exemption under §7r.[85]

Since the Supreme Court's vacating of two lower court's decisions under MCL 211.7r, the appellate courts have not ruled on the meaning of "public health purpose" under §7r. While the Supreme Court chose not to elaborate on what "public health purpose" means, its explicit disapproval of *ProMed's* floodgates rationale for its finding that a typical medical practice cannot be exempt under either §7o or §7r is no longer viable. Left undisturbed, (or at least not exfoliated) by *Wexford* is the Court of Appeals' 1997 holding in *Rose Hill*.

In applying a definition equating public health purposes with community health purposes, the Court of Appeals stated:

> In the instant case, the tribunal found that petitioner was engaged in the provision of services to mentally ill patients. These services include psychiatric evaluation and diagnosis, the prescription and dispensation of medication, and rehabilitation and reintegration programs. Petitioner is staffed by a psychiatrist, psychiatric nurses, and social workers and provides twenty-four-hour care to its patients. Petitioner is open to mentally ill adults without regard to race, religion, or sex. Petitioner accepts patients covered by Medicare and Medicaid, as well as by private sources.
>
> After considering these facts, we believe that petitioner can reasonably be considered to be operating a facility for "public health purposes." The tribunal's decision constitutes a reasonable interpretation of the statute and is therefore entitled to deference.[86]

Interestingly, the Court of Appeals was silent as to any benefit to the community at large. A review of the Tribunal decision appealed in *Rose Hill* concentrates on the health aspects of care available at the facility, along with its non-profit status and apparent "open-door" policy, rather than on any benefit provided to the community at large.[87] The Tribunal relied upon its earlier decision in *Brookcrest Nursing Home Inc v City of Grandville,*[88] where a nursing home was deemed to qualify as exempt under MCL 211.7r. Subsequently, the Tribunal has also held that a nursing home qualifies as exempt under the same statute. See *Henry Ford Continuing Care Corp*

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[85] *Id*., footnote 4.
[86] *Rose Hill,*224 Mich App at 33-34
[87] *Rose Hill Center v Holly Twp*., 8 MTT 530 (1995).
[88] *Brookcrest Nursing Home Inc v City of Grandville,* 5 MTT 1 (1986).

v *City of Roseville*,[89] and *Father Murray Nursing Center v City of Centerline*.[90] In both cases, the Tribunal focused on the facility's similarity in purpose to a hospital. The Tribunal stated in *Father Murray*, "[t]hus, it is clear that while Petitioner is not a hospital in the strictest sense of the word, it provides the same services that hospitals with long-term care units provide."[91]

In *Rose Hill, Henry Ford,* and *Father Murray,* all petitioners provide *individual* health care. However, while not articulated in these decisions, the very existence of an open door facility that treats and cares for chronically ill persons contributes to community health. Without the availability of such facilities to treat the chronically ill, the infirm, or the mentally ill, a community's health would suffer if such persons had no alternative but to possibly wander the streets or go to jail. It is somewhat unclear that a group medical practice by itself has the same impact on community health as the facilities in the cases cited above.

Respondent has cited several other pre-*Wexford* cases dealing with other organizations where the Tribunal and the courts have rejected exemptions under MCL 211.7r. In *Healthlink Medical Transp Services v City of Taylor*,[92] the Michigan Court of Appeals affirmed the Tribunal's denial of an exemption for an ambulance company. The Court of Appeals also rejected an exemption claim of an HMO in *The Wellness Plan v City of Oak Park.*[93] In both cases, the court distinguished between providing individual health care as their primary purpose, rather than community health care.

Petitioner agrees that for a medical practice group to qualify for an exemption under §7r, it must go beyond providing individual health care. Accordingly, it lists seven areas of activity designed to benefit the community at large, rather than individual patients. Examples include its neurology center with an ALS multi-disciplinary team and Parkinson's clinic, public health presentations, group education presentations, telehealth services, community seminars and videos and websites, medical education and medical research and publishing.

In reviewing the filing and exhibits on MCL 211.7r, the Tribunal concludes that Petitioner does engage in community activities that serve a public health purpose. Further, its

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[89] *Henry Ford Continuing Care Corp v City of Roseville*, 8 MTT 334 (1993)
[90] *Father Murray Nursing Center v City of Centerline* 15 MTT 507 (2006).
[91] *Id*., at 529-530
[92] *Healthlink Medical Transp Services v City of Taylor*, unpublished per curiam opinion of the Michigan Court of Appeals, Docket No 249969, (Feb. 15, 2005).
[93] *The Wellness Plan v City of Oak Park*, unpublished per curiam opinion of the Michigan Court of Appeals, Docket No 249587 (Dec 14, 2004).

existence in the community as a multi-disciplined medical practice group with an open door policy, while providing benefits to individual patients, also provides a benefit to the community as a whole. The availability of primary care, as well as the care of specialists, and ancillary personnel such as nurses, occupational and speech therapists, and social workers contributes to the public health. Accordingly, the Tribunal agrees that the structures on the subject property would also be exempt from property taxation under MCL 211.7r.

JUDGMENT

IT IS ORDERED that Respondent's Motion for leave to file a Response to Petitioner's Motion for Summary Disposition under MCL 211.7r is DENIED, and neither Respondent's attached filing, of November 23, 2016, nor Petitioner's response to said filing on December 14, 2016 shall be considered.

IT IS FURTHER ORDERED that Respondent's Motions for Summary Disposition under MCR 2.116(C)(10) are DENIED, and Petitioner's Motions for Summary Disposition under MCR 2.116(C)(10), and (I)(2) are GRANTED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.[94] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the

[94] See MCL 205.755.

judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, and (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[95] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[96] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[97] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[98]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[99] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on

[95] See TTR 261 and 257.
[96] See TTR 217 and 267.
[97] See TTR 261 and 225.
[98] See TTR 261 and 257.
[99] See MCL 205.753 and MCR 7.204.

appeal.[100] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[101]

By: David B. Marmon

Entered: January 30, 2017

[100] See TTR 213.
[101] See TTR 217 and 267.