

**PULLMAN
& COMLEY_{LLC}**
ATTORNEYS

HEALTH CARE ALERT

Loss of Hospital Tax Exemption Upheld

On March 18, 2010, in a precedent shattering and powerful opinion, the Illinois Supreme Court upheld a 2008 lower court ruling which revoked the tax exemption of 43 real estate parcels owned by Provena Covenant Medical Center, including the hospital facility itself.

The primary reasons cited by the court were (1) that in 2002, the tax year in question in the case, the hospital devoted only 0.7 percent of its total revenues to charity care; (2) only 196 patients received free care and but 106 patients' bills were discounted out of 110,000 admissions; and (3) most of its revenue was derived from governmental and private payors.

Mere ownership of a hospital by a public charity in Illinois, as in Connecticut, is insufficient by itself to obtain a local property tax exemption because the property (hospital) itself must be used exclusively for charitable purposes. (Connecticut has dealt with this issue in a more relaxed fashion, allowing minor incidental nonexempt uses to survive assessors' challenges.)

Faced with this paucity of financial outlay for charitable purposes, Provena had argued that because it had been established as a charity by its donors and founders, it was not required to give anything of financial value away. It was sufficient, Provena asserted, that it provides medical care, which is in itself a charitable activity because it relieves disease and suffering. This claim was tossed aside by the courts which concluded that if charitable use was satisfied at the time of the founding of the hospital, it could "thereafter . . . practice economic predation and nevertheless maintain its charitable status."

Insufficient financial commitment to charity care and lack of documentation other than a tiny amount of free and discounted care "sunk" Provena's case even though the court did not make it clear how much uncompensated care would suffice. Having spent more money on advertising than on free care and having taken in less than \$7,000 in charitable donations during 2002, Provena was seen more as a business than as a charitable entity.

The impact of the Illinois court's potentially earth shaking decision in Connecticut remains to be determined. Given Illinois rules, it may not be binding precedent in that state for the present time. However, a cash-strapped Connecticut municipality able to offer similar arguments may be tempted to reject an exemption request to test the issue here.

This alert was written by Pullman & Comley Health Care attorney Elliott B. Pollack. Please feel free to contact any of the attorneys listed below for more information.

Collin P. Baron	203.330.2219	cbaron@pullcom.com
Michael N. LaVelle	203.330.2112	mlavelle@pullcom.com
Elliott B. Pollack	860.424.4340	ebpollack@pullcom.com
Jennifer N. Willcox	203.330.2122	jwillcox@pullcom.com