

In the  
**Supreme Court of Ohio**

AKRON GENERAL MEDICAL CENTER	:	
	:	
Appellant,	:	Case No. 2014-0876
	:	
v.	:	
	:	On Appeal from the
JOSEPH W. TESTA,	:	Ohio Board of Tax Appeals
TAX COMMISSIONER OF OHIO, et al.	:	
	:	BTA Case No. 2012-426
Appellees.	:	

**APPELLEES' JOINT RESPONSE TO APPELLANT'S MOTION FOR ORAL ARGUMENT BEFORE THE FULL COURT**

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**APPELLEES' JOINT RESPONSE TO APPELLANT'S MOTION FOR ORAL  
ARGUMENT BEFORE THE FULL COURT**

This case is a routine, real property charitable exemption case. Appellant Akron General Medical Center (“AGMC”) requested exemption pursuant to R.C. 5709.12 and R.C. 5709.121 for a large building containing medical facilities and a fitness center (“Fitness Center”). The Tax Commissioner granted exemption for the bulk of the facility, but denied the exemption for the portion devoted to the Fitness Center.

On appeal, the Board of Tax Appeals (the “Board”) affirmed the denial of exemption for the Fitness Center, relying on the controlling and applicable precedent of *Bethesda Healthcare, Inc. v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749, 806 N.E.2d 142. The Board found that the facts presented by AGMC in its appeal, when compared to those in *Bethesda Healthcare, Inc.*, were materially the same and presented the same applicable legal standards for exemption; therefore, the Board reached the same result: AGMC’s use of the fitness center was not a charitable use of property and exemption pursuant to R.C. 5709.12 or R.C. 5709.121 was properly denied.

Thus, the issue in this case is *whether a fitness center is entitled to exemption*. In this regard, the Board applied the controlling, guiding, and outcome determinative precedent:

*Bethesda Healthcare, Inc.* An examination the totality of the circumstances showed that the Fitness Center is a state-of-the-art, award-winning, members-only facility, providing very limited community access and even more limited financial assistance to those who could not afford the membership fees. *Bethesda Healthcare, Inc.* at ¶ 39. Because the applicable law is clear and dispositive, the Board’s decision was correct. And because this is a matter that is guided by clear and dispositive precedent, this case lacks the broader, state-wide appeal typically present in cases that are argued before the full Court. *See, e.g., Cunningham v. Testa*, S.Ct. Case No. 2014- 0532 (in which domicile status and evidentiary burdens of proof are reviewed in context of state resident income taxation); *City of Cincinnati v. Testa*, S.Ct. Case No. 2014-0531 (in which property used in private-public partnerships is determined to be eligible for the public purpose exemption); *Hillenmeyer v. City of Cleveland Board of Review*, S. Ct. Case No. 2014-0235 (in which an equal protection challenge is raised against municipal income taxation of professional athlete’s income). In other words, this is a matter to which the default rule of S.Ct.Prac.R. 17.07(A)(1) applies: “[a]ppeals from the Board of Tax Appeals shall be referred to a regular or special master commissioner for oral argument[.]”

As a consequence, there is a final way in which this case is just like *Bethesda Healthcare, Inc.*: in that case, the appellant property owner also filed a motion for oral argument to be held before the full Court. In response, this Court *denied* that request and scheduled oral argument before a master commissioner pursuant to S.Ct.Prac.R. 17.07(A)(1). The Court should follow the same course in this appeal.

Because of the clear applicability of *Bethesda Healthcare, Inc.*, AGMC has completely failed to acknowledge that this precedent determines any portion of this matter. In fact, in its

motion, AGMC did not recognize *Bethesda Healthcare, Inc.* at all and AGMC has failed to cite the case for any proposition whatsoever.

AGMC's approach has been to characterize this case as something else. But this is not a case that involves a denied exemption request for property used as a hospital (or property in the provision of hospital-related services). To the contrary, the Tax Commissioner granted exemption for the portions of the property used in that exempt manner.

Nor is this a case that involves AGMC's traditional charity care policies pertaining to the medical services rendered to AGMC hospital patients, such as the Hospital Care Assurance Program, the Discount Program for the Uninsured (CARE), the Traditional Charity Care Program, and the Self-Pay Qualified Adjustment (for uninsured hospital patients). As a consequence, AGMC and amicus Ohio Hospital Association's contention that this case is not about unreimbursed medical care, or what amount of unreimbursed medical care, is necessary for a health care entity to obtain a charitable exemption is a mischaracterization. *See, e.g., Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, 938 N.E.2d 329. In fact, that question is raised in a different matter that is presently pending before the Court: *Rural Health Collaborative of Southern Ohio, Inc. v. Testa*, S.Ct. Case No. 2014-0963. The only charity policy at issue in this appeal is the Fitness Center's policy which provides very limited *memberships* to the Fitness Center. Charitable medical services are not an issue in this appeal.

Moreover, because this case is guided by clear applicable precedent, the broad-appeal typically present in matters that are argued before the full Court is lacking. Namely, this case is of primary interest to the parties in the appeal: (1) AGMC because it owns the property at issue and is challenging the denial of real property exemption by the Tax Commissioner and the Board of Tax Appeals, (2) the School District because of the potential loss of tax revenue available for

the provision of school services to the District's residents, and (3) the Tax Commissioner because of the need to ensure the consistent and proper application of the State's laws pertaining to real property taxation. This Court has acknowledged that cases such as this generally receive limited interest when it denied the property owner's request for oral argument to the full Court in the *Bethesda Healthcare, Inc.* case and the Court set the matter for argument before a master commissioner, as contemplated by S.Ct.Prac.R. 17.07(A)(1).

Even AGMC's contention that the presence of the OHA somehow makes this case "significant" is hardly as conclusive as AGMC would like. OHA's presence in this case is not necessarily indicative of its interest in this appeal. Rather, as demonstrated by AGMC's own Exhibit A, OHA's filing of an amicus brief is an indicator of OHA's expansion of its amicus practice over the past several years. Since 1993, OHA has filed 35 amicus briefs, but in the past 14 years, OHA has been filing an average of 2 briefs a year, on matters as benign as an interpretation of a rule of evidence, (2012-0797), to matters as important as the state expansion of Medicaid (2013-1668).

Overall, AGMC would like this Court to believe that it has been denied an exemption from taxes for real property it uses as a hospital or in the provision of hospital-related services, or that the care provided pursuant to AGMC's charity care policies is directly implicated and central to the question presented. To the contrary, the facts and law in this matter are straightforward and involve a clear application of the established and relevant precedent of *Bethesda Healthcare, Inc.* This case is of limited significance to this particular practice area and there is no need for this Court's guidance or additional clarity.

Accordingly, AGMC's motion for oral argument before the full Court should be denied and the matter should be set for oral argument before a master commissioner, as contemplated by S.Ct.Prac.R. 17.07(A)(1).

Respectfully Submitted,

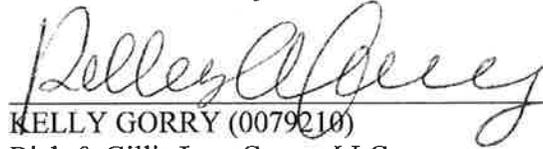
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**CERTIFICATE OF SERVICE**

I certify that a copy of the Appellees' Joint Motion in Opposition to Oral Argument Before Full Court was served by regular U.S. mail on this 23<sup>rd</sup> day of December, 2014 upon the following:

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