New York County Clerk's Index No. 156074/17

Court of Appeals

of the

State of New York

In re BROOKDALE PHYSICIANS' DIALYSIS ASSOCIATES, INC.
f/k/a Church Avenue Associates, Inc,

Petitioner-Respondent,

– and –

SAMUEL AND BERTHA SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION FUND, INC. f/k/a Samuel Schulman Institute for Nursing and Rehabilitation Fund, Inc.

Petitioner,

– against –

THE DEPARTMENT OF FINANCE OF THE CITY OF NEW YORK,

Respondent-Appellant.

OPPOSITION TO MOTION FOR LEAVE TO APPEAL BY PETITIONER-RESPONDENT BROOKDALE PHYSICIANS' DIALYSIS ASSOCIATES, INC. F/K/A CHURCH AVENUE ASSOCIATES, INC.

COZEN O'CONNOR
45 Broadway, Suite 1600
New York, New York 10006
Tel.: (212) 509-9400
Fax: (212) 509-9492

– and –

JACOB LAUFER, ESQ.
65 Broadway, Suite 1005
New York, New York 10006
Tel.: (212) 422-8500
Fax: (212) 422-9038

Attorneys for Petitioner-Respondent

Of Counsel:
MENACHEM J. KASTNER
AMANDA L. NELSON

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

INTRODUCTION

This brief is respectfully submitted on behalf of petitioner-respondent Brookdale Physicians' Dialysis Associates, Inc. f/k/a Church Avenue Associates, Inc. ("Brookdale Dialysis") in opposition to the motion of respondent-appellant The Department of Finance of the City of New York ("DOF") seeking leave to appeal to this Court the unanimous decision and order of the Appellate Division, First Department, dated December 3, 2019 (the "Appellate Division Order") which affirmed the decision and order of the Supreme court, New York County, dated August 2, 2018 (the "Trial Court Order").

This appeal concerns DOF's second unsuccessful attempt to revoke the long-standing tax-exempt status of a building owned by petitioner Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc. f/k/a Samuel Schulman Institute for Nursing and Rehabilitation Fund, Inc. ("Samuel Schulman"), a 501(c)(3) tax-exempt organization created to advance the charitable and hospital purposes of, *inter alia*, The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. (the "Nursing Institute") and The Brookdale Hospital Medical Center ("Brookdale Hospital"), and the use of the basement and first floor of that building (but ***not*** the second floor) by Brookdale Dialysis as an ambulatory dialysis center and renal research facility serving Brookdale Hospital and the surrounding the East New York/Brownsville community.

In its most recent submission, DOF relies on arguments which have been soundly rejected by this Court, and new arguments which are being improperly offered for the first time in seeking reversal of the Appellate Division Order.

First, under a variety of different headings, DOF returns to one of its initial arguments that, because Brookdale Dialysis is a for-profit entity, and profits "inure to its benefit," the entire building must be stripped of its tax exempt status. Such a contention has been repeatedly rejected by this Court and the various Appellate Divisions, with the oft-repeated pronouncement that "The

question is how the property is used, not whether it is profitable."[1] Here, the actual, physical use of the Building as the ambulatory dialysis center for Brookdale Hospital is plainly, at a minimum, incidental to the charitable purpose of both Samuel Schulman as well as Brookdale Hospital and the Nursing Institute – the charitable entities with which Samuel Schulman is affiliated, and whose assets Samuel Schulman has undertaken the task of supporting. Thus, this falls right in line with this Court's determination that an ambulatory x-ray unit is integral to the charitable purposes of a medical institution and, as such, is entitled to tax-exempt status under RPTL § 420-a irrespective of any profit which may be realized.[2] While RPTL § 420-(a)1 provides that the property must be used "exclusively" for the exempt purpose, this Court has recognized that this includes uses which are incidental to the primary charitable purpose. Here, the use of the building as an ambulatory dialysis unit is arguably much more integral to a charity focused on community healthcare than, for example, a food vendor,[3] a housing complex[4] or a beauty salon,[5] and yet all of these uses have been held sufficiently incidental to the enumerated charitable and hospital purposes to satisfy the statutory requirement that the property be used "exclusively and primarily" for such charitable and hospital purposes.

The Appellate Division correctly found – in accord with settled law, and not through unduly narrowing the definition of "incidental," as DOF contends – that DOF improperly revoked the building's tax exempt status, and there is no basis for the granting of the instant motion.

---

1 *See, e.g., Adult Home at Erie Station v. Assessor, City of Middletown,* 10 N.Y.3d 205 (2008).

2 *See Genesee Hosp. v. Wagner,* 47 A.D.2d 37 (4th Dep't 1975) *aff'd* 39 N.Y.2d 863 (1976).

3 *Pace College v. Boyland,* 4 N.Y.2d 528 (1958).

4 *Matter of St. Luke's Hospital v. Boyland,* 12 N.Y.2d 135 (1962).

5 *Matter of Southwinds Retirement Home v. City of Middletown*, 74 A.D.3d 1085 (2d Dep't 2010).

Next, DOF offers a new argument, relying on this Court's decision in *Matter of Lackawanna*,[6] asserting that the charitable purpose is not being performed "at" the tax exempt property. Aside from being improperly raised for the first time here, such a claim is meritless as revealed by the Record. The dialysis services which Samuel Schulman and Brookdale Hospital and the Nursing Institute rely are undisputedly performed ***in*** the Leased Premises, ***at*** the Building. Clearly, this situation is not on par with *Lackawanna*.[7]

Simply put, there is nothing within the Appellate Division Order which cries for this Court's consideration or intervention. Rather, after extensive oral argument, the Appellate Division considered the facts and settled law, and determined that DOF improperly – without any investigation into the use of the Building (as the Court admonished DOF was ***their*** burden), or even Samuel Schulman's (not Brookdale Dialysis') carrying costs and depreciation thereof – revoked the long-standing tax exempt status. The Appellate Division's determination was correct, and does not divert from this Court's precedent in any way. Simply, there is nothing "novel" in the Appellate Division's decision and, accordingly, DOF's motion should be denied.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Brookdale Dialysis submits the below factual and procedural background to address certain omissions and misstatements by DOF, and otherwise respectfully refers the Court to Respondents' appellate briefs and the Record on Appeal for the full factual and procedural background of this matter.

---

6 12 N.Y.3d 578 (2009)

7 This is far from the only distinguishing factor between this action and *Lackawanna*. Astoundingly, the DOF tries to equate the current situation - - involving the provision of life saving dialysis services in conjunction with a charitable, hospital institution - - with *Lackawanna*, where the exempt property was being used for purely profitable manufacturing.

A. The Parties

Samuel Schulman is a charitable, not-for-profit enterprise created for the purpose of promoting the health of the otherwise underserved community in which it is located – East New York/Brownsville – largely through providing funds and support to the Nursing Institute, a voluntary, not-for-profit residential healthcare facility licensed under Article 28 of the New York State Public Health Law ("PHL") dedicated to providing clinical care in a homelike environment, and Brookdale Hospital, a not-for-profit corporation licensed to operate a hospital under Article 28 of the PHL. (R. 137)[8] Samuel Schulman, the Nursing Institute and Brookdale Hospital are each exempt from federal income tax as charitable organizations under Section 501(c)(3) of the Internal Revenue Code. (R. 20-21; 58; 137)

At all relevant times, the Nursing Institute was located on the campus of Brookdale Hospital, which is located at One Brookdale Plaza, Brooklyn, New York, one block from the subject building located at 9701 Church Avenue, Brooklyn, New York (the "Building") and owned by Samuel Schulman. Brookdale Hospital, the Nursing Institute and the Building are located in the East New York/Brownsville section of Brooklyn.

Brookdale Hospital, founded in 1921, is one of Brooklyn's largest voluntary nonprofit teaching hospitals and a regional tertiary care center. Brookdale Hospital provides general and specialized inpatient care to thousands of people every year. In addition, Brookdale Hospital provides 24-hour emergency services, numerous outpatient programs and long-term specialty care. (R. 22)

Brookdale Hospital furnishes one of Brooklyn's largest, and most experienced full service emergency departments and a regionally recognized Level I Trauma Center. Brookdale Hospital

[8] All Record citations relate to the Record submitted to the Appellate Division, First Department by DOF in conjunction with the Appeal.

is also a New York State Department of Health ("DOH") designated Stroke Center. Brookdale Hospital's community centered organization provides numerous outpatient Ambulatory Care services in both on campus and off site facilities, as well as the Nursing Institute.[9] (R. 22; 143)

The Nursing Institute provides care and special rehabilitation services and treatment for patients after the acute phase of their illness, and further provides a range of specialty services through individualized units, including a Dementia Special Care Unit, a Sub-Acute Care Unit, Geriatric Care Units, HIV/AIDS Units, a Ventilator-Dependent Care Unit and a Hospice Care program under the supervision of Hospice of New York. (R. 58; 143)

The 448 bed Nursing Institute, as well as the 86 bed unit of senior assisted and independent living in the Arlene and David Schlang Pavilion, provide both long and short-term care and are located on the Brookdale Hospital campus. The Adult Day Care Program of the Nursing Institute provides a quality program for adults and seniors who have functional impairments that require this level of care. (R. 22; 144)

Brookdale Hospital, Samuel Schulman and the Nursing Institute are all corporately affiliated with each other by reason of being under common control of the same corporate parent, Brookdale Health System, Inc., a Section 501(c)(3) tax-exempt charitable organization. (R. 137) Moreover, there is substantial overlap in the composition of their respective governing boards. Additionally, around-the-clock medical care at the Nursing Institute is provided by Brookdale Hospital attending physicians. The Nursing Institute also provides rehabilitation services,

---

[9] A report generated by Northwell Health analyzed the current state of healthcare in Brooklyn, and provided a strategy for future improvements and advances. As particularly relevant to the community healthcare concerns of Brooklyn, one of the recommendations issued by Northwell was specifically to "protect capital dedicated to supporting ambulatory care development." *See https://www.northwell.edu/sites/northwell/files/20781-Executive-Summary-Brooklyn-Study_0.pdf*

occupational therapy, physical therapy and speech-language and audiology services and social services, all conducted by Brookdale Hospital employees. (R. 21)

Brookdale Dialysis is comprised of physicians who are responsible for the Brookdale Hospital's acute care dialysis facility and who render nephrology services to patients, the overwhelming majority of whom are patients of Brookdale Hospital and the Nursing Institute. Specifically, more than 80% of the patients seen at Brookdale Dialysis are seen through referrals from Brookdale Hospital physicians or Emergency Room personnel. (R. 23) The employees of Brookdale Dialysis, including nurses, technicians and staff, are actually Brookdale Hospital employees, who provide services for Brookdale Dialysis under a staffing agreement. The doctors are also part of the Brookdale Hospital Division of Nephrology and Hypertension, which is located on the Brookdale Hospital campus. (R. 59-60; 147)

Brookdale Hospital and Samuel Schulman do not have a dialysis facility apart from that operated by Brookdale Dialysis. Brookdale Hospital also does not own the necessary machines for dialysis treatment on the Brookdale Hospital campus. (R. 23) Rather, those machines which are in Brookdale Hospital and utilized for in-patient procedures are all owned and operated by Brookdale Dialysis. In addition to relying on Brookdale Dialysis to supply machines for in-patient services, Brookdale Hospital relies upon machines owned and utilized by Brookdale Dialysis in the Building in providing approximately 22,000 outpatient dialysis treatments every year. (R. 60; 138-139) Accordingly, Brookdale Hospital denotes and wholly relies upon Brookdale Dialysis as its dialysis unit in the Building, noting on the "Dialysis Unit" segment of its website at http://www.brookdalehospital.org/dialysis-unit.html:

> The Nephrology and Hypertension Division has the ability to provide chronic and acute hemodialysis for in-patient (sic) and nursing home patients in the hospital. For patients in a critical care

> setting we have the capacity, through our portable hemofiltration unit, to perform hemodialysis at the bedside.

In addition to hospital based hemodialysis, the Division operates at 28 station ambulatory dialysis setting locally. (R. 719)

Significantly, none of the foregoing facts were challenged by DOF in the Court below and cannot now be challenged by DOF for the first time.

B. The Property at Issue

Briefly, the motion at issue pertains to the leasing of the basement and first floor (the "Leased Premises") of the building located at 9701 Church Avenue, Brooklyn, New York (the "Building") by its owner, petitioner Samuel Schulman, to Brookdale Dialysis. (R. 60, 145, 242) The Building is a two story structure with a basement which was rendered exempt from real estate taxes when it was purchased by Samuel Schulman in or around 1975. (R. 137).

Contrary to DOF's statement in the Question Presented for Review and Statement of the Case, Brookdale Dialysis leased only a portion of the Building, and not "the entirety of the subject property." Indeed, the trial Court and the Appellate Division both expressly noted this in their decisions.

At all relevant times, Brookdale Dialysis used the Leased Premises for the treatment of individuals suffering from renal failure or dysfunction, and operated the ambulatory dialysis division of Brookdale Hospital. (R. 137; 151-152) Brookdale Dialysis is comprised of physicians who are responsible for Brookdale Hospital's acute care dialysis facility and who render nephrology services to patients, the overwhelming majority of whom are patients of Brookdale Hospital and the associated Nursing Institute. Specifically, more than 80% of the patients seen at Brookdale Dialysis are seen through referrals from Brookdale Hospital physicians or Emergency Room personnel. (R. 23) The employees of Brookdale Dialysis, including nurses, technicians and

staff, are actually Brookdale Hospital employees, who provide services for Brookdale Dialysis under a staffing agreement. The doctors are also part of the Brookdale Hospital Division of Nephrology and Hypertension, which is located on the Brookdale Hospital campus. (R. 59-60; 147) All of the individuals working at Brookdale Dialysis in the Building are Brookdale Hospital employees, most of whom are members of 1199 SEIU United Healthcare Workers Union. The employees are "leased" to Brookdale Dialysis by Brookdale Hospital, and then paid by Brookdale Hospital. (R. 62; 147)

Brookdale Dialysis does not utilize any portion of the Building for private doctors' offices. Rather, the entirety of the Leased Premises is devoted to dialysis care and research. (R. 63; 147)

At all relevant times, Brookdale Hospital and Samuel Schulman did not have a dialysis facility apart from that operated by Brookdale Dialysis. Brookdale Hospital also did not own the necessary machines for dialysis treatment on the Brookdale Hospital campus. (R. 23) Rather, those machines which were in Brookdale Hospital and utilized for in-patient procedures are all owned and operated by Brookdale Dialysis. In addition to relying on Brookdale Dialysis to supply machines for in-patient services, Brookdale Hospital relied upon machines owned and utilized by Brookdale Dialysis in the Building in providing approximately 22,000 outpatient dialysis treatments every year. (R. 60; 138-139) Accordingly, Brookdale Hospital denoted and wholly relied upon Brookdale Dialysis as its dialysis unit in the Building, as reflected on its website at http://www.brookdalehospital.org/dialysis-unit.html. (R. 719) Indeed, Brookdale Dialysis was described as a "division" of Brookdale Hospital, offering hemodialysis for in-patient and nursing home patients. (R. 719)

For the twelve tax years of 2001-2013, Samuel Schulman received exemption from New York State real property taxation for the Building under RPTL § 420-a, and, accordingly, was not charged real estate taxes by DOF. (R. 417)

C. DOF's First 2013 Revocation of the Building's Tax-Exempt Status

By letter, dated March 22, 2013, DOF mailed a notice to "Samuel Schulman Institute c/o Brookdale Hospital Med. Center, Finance Dept.," advising that the tax-exempt status of the Building would be revoked pursuant to RPTL § 420-a. (R. 139) Thereafter, on or about May 20, 2013, and without conducting any hearing or investigation into the use of the Building or any other factors, DOF revoked the Building's tax-exempt status, and mailed to Samuel Schulman a Notice of Revised Property Tax Assessment (the "2013 Determination"). (R. 125-134; 139)

Brookdale Dialysis, as tenant, and Samuel Schulman, as owner, jointly commenced a hybrid Article 78/Declaratory Judgment Proceeding (the "2013 Proceeding") against DOF seeking, inter alia, the annulment of the 2013 Determination. (R. 105-119)

By Decision and Order of the Honorable Margaret A. Chan, dated February 10, 2014 (the "2014 Order"), the Court held that the Building's tax-exempt status was improperly revoked. (R. 37-39) Specifically, the Court held:

> [As] the DOF is revoking a previously granted tax-exemption, it has the burden of proof that the property is no longer eligible for the exemption. The DOF does not include any evidence to support its cross-motion. It relies on the fact that Brookdale Dialysis is a for profit corporation, and as such, it is not used for tax-exempt purposes. However, the Court of Appeals has stated that the exclusive use language of RPTL § 420-a is not to be read literally. In that Brookdale Dialysis performs a great deal to further the charitable activities of Brookdale Hospital and the Nursing Institute, and is apparently quite enmeshed with them in terms of staffing, whether its service is reasonably incidental to or in furtherance of the exempt purpose must be considered. No such consideration was presented here. (citations omitted). (R. 39)

The 2014 Order was neither appealed nor contested by DOF and the tax-exempt status was reinstated.

D. DOF Again Revokes, And Then Reinstates, The Building's Tax-Exempt Status in 2015

In or around January 2015, DOF issued to Petitioner Samuel Schulman real property tax invoices including taxes assessed against the entire Building. (R. 41-42) Counsel for Brookdale Dialysis then reached out to DOF, providing a copy of the February 10, 2014 Order. (R. 44-49) Upon receipt of the February 10, 2014 Order and, without the need for any further investigation by DOF, DOF promptly reversed course, issuing a new assessment in March of 2015 reflecting the Building as tax-exempt.

E. DOF Again Revokes The Building's Tax-Exempt Status in 2016

One year later, in or around August 2016, and notwithstanding the 2014 Order, DOF once again revoked the Building's tax exempt status and imposed property taxes assessed against the entire Building. (R. 44-45) And, again, DOF did not conduct any investigation into the actual use of the Building (as the 2014 Order had directed), much less Brookdale Hospital's carrying costs and depreciation value of same, before revoking the long-standing exemption. Contrary to the intimation in DOF's Question Presented for Review, there was ***never any investigation*** into, nor evidence of, "the owner receiving rental income greater than its carrying expenses." Indeed, during oral argument before the Appellate Division, DOF's counsel admitted that DOF did not fully investigate Samuel Schulman's expenses, any mortgages on the Building, the depreciation of the Building or anything else to be set off against the rent it received to determine the profit, if any, it realized from renting the Building.[10]

[10] Such a demonstration would be required for a RPTL § 420-a(2) claim, which DOF appears to have abandoned.

F. The 2017 Article 78 Proceeding

By Notice of Petition and Petition (jointly, the "Petition"), dated July 5, 2017, Brookdale Dialysis and Samuel Schulman again jointly commenced an Article 78 proceeding against DOF to address this most recent revocation of the tax-exempt status of the Building. (R. 13-35; 368-388)

In opposition, DOF sought dismissal of the Petition and argued, *inter alia*, that, as Brookdale Dialysis was utilizing the Building for profit-making purposes and the owner was purportedly realizing a profit from the rental, that Petitioners had not demonstrated entitlement to tax-exempt status.[11] (R. 361-366) As to substantive arguments, DOF primarily (and erroneously) relied on the contention that "RPTL § 420-a(2) provides that if any portion of such [exempt] real property is leased or used for other, non-exempt purposes, then that portion shall be subject to taxation," and "the legally determinative factor for tax-exempt status is whether the property is used for profit-making purposes." (R. 682-683)

G. The Trial Court Holds That DOF's Revocation of The Building's Tax-Exempt Status Was Improper

By decision and order, dated August 2, 2018 (the "Trial Court Order") and entered August 3, 2018, the trial Court granted the Petition and denied DOF's cross-motion. (R. 9-12) In so deciding, the Court noted that the pertinent facts were unchanged from the prior Article 78 proceeding, including the undisputed fact that DOF had not investigated or considered the actual use of the Building prior to revoking the tax-exempt status as Court directed in 2014 Order. (R. 10)

---

[11] Among other issues, DOF improperly shifted the burden to Petitioners to demonstrate an entitlement to exemption. It is undisputed that, with respect to DOF's revocation of an existing tax exemption, the burden lies with DOF to substantiate the grounds for such revocation. *See, e.g., New York Botanical Garden v. Assessors of Washington*, 55 N.Y.2d 328 (1982).

The Court further noted that, while DOF acknowledged that it bore the burden of demonstrating that the revocation of tax-exempt status was proper, DOF nonetheless tried to shift that burden to Petitioners. (R. 11) Ultimately, the Court found that DOF had failed – yet again – to satisfy its burden to demonstrate that it had properly revoked the tax-exempt status of the Building. As to DOF's principal argument that Samuel Shulman had realized a profit in the receipt of rent from Brookdale Dialysis (even though DOF did not conduct an analysis of Samuel Schulman's carrying costs and depreciation and profits), the Court noted that the inquiry does not end at whether there is a profit but, rather, as this Court has mandated, the actual use of the exempt property must be considered. (R. 12) The Court then held that DOF failed (again) to consider the use of the exempt property – a failure which DOF repeatedly acknowledged in its appeal of the Trial Court Order – and therefore failed to satisfy its burden of establishing that the revocation of tax-exempt status was proper. (R. 12)

H. DOF's Appeal to The Appellate Division, First Department

Over one year after the issuance of the Trial Court Order, after securing the vacatur of the automatic dismissal due to DOF's failure to timely appeal, DOF perfected its appeal of the Trial Court Order. In the appeal, DOF acknowledged that it bore the burden of demonstrating that the revocation was proper and admitted that it had failed to conduct any analysis in to the actual ***use*** of the Leased Premises or the Building. Nonetheless, DOF argued, *inter alia*, that Brookdale Dialysis should be treated as though it were, in essence, a not-for-profit entity in its own right, and that, as Samuel Schulman receives a profit via renting the Leased Premises to Brookdale Dialysis, the Building is no longer entitled to tax exempt status.[12]

[12] How DOF reached such a conclusion is mystifying. As noted above, it did not conduct any investigation into Samuel Schulman's expenses or profits.

I. The Appellate Division Order Affirming the Trial Court

Following oral argument, the Appellate Division, First Department issued its Order, dated December 3, 2019, unanimously affirming the Trial Court Order. In brief, the Appellate Division held that Brookdale Dialysis' use of the Leased Premises is "reasonably incident" to Samuel Schulman's charitable purpose, and thereby covered by RPTL § 420-a(1). The Court further noted that Brookdale Dialysis' use of the Leased Premises is "closely analogous" to the use at issue in *Genesee Hospital*,[13] undertaking a detailed discussion of that case and this Court's rationale in finding that the ambulatory x-ray unit in *Genesee Hospital* was entitled to tax exempt status.

J. The Appellate Division Order Denying Leave to Appeal

After entry of the Appellate Division Order, DOF moved the First Department for leave to appeal to this Court. In so doing, DOF argued, for the first time, that the Appellate Division erred in finding the revocation of the tax exempt property to be improper inasmuch as the use of the leased premises served the "primary" charitable purpose of the ***owning*** entity, rather than a purpose "incidental" to that primary purpose.

By decision and order, dated and entered March 19, 2020, the Appellate Division denied DOF's motion for leave.

K. The Instant Motion For Leave to Appeal

Now, nearly nine months after entry of Appellate Division Order denying leave, DOF has moved this Court for leave to appeal. DOF has named Brookdale Dialysis as the sole "Petitioner-Respondent" in this motion, and has reflected that Samuel Schulman is merely a "petitioner" in the underlying proceeding, with no role in the requested appeal to this Court.

---

[13] 47 A.D.2d 37 (4th Dep't 1975) *aff'd* 39 N.Y.2d 863 (1976).

ARGUMENT

POINT I

THE INSTANT MOTION SHOULD BE DENIED OUTRIGHT AS PROCEDURALLY DEFECTIVE

Before addressing the substance of DOF's motion for leave to appeal, the fatal defect of same must be addressed.

To this end, Petitioners in the proceeding below consisted of Brookdale Dialysis and Samuel Schulman. Both Petitioners brought the Article 78 Proceedings, defended against DOF's appeal to the Appellate Division, First Department and opposed DOF's prior motion for leave to appeal. Yet, DOF has named only Brookdale Dialysis as the sole "petitioner-respondent" in this motion, and, consequently, as the sole respondent on any appeal to this Court, should leave be granted. As the owner of the Building (and the party responsible for payment of taxes thereon), Samuel Schulman has a vested interest in any appeal of the Appellate Division Order.

The failure to identify Samuel Schulman as a respondent is therefore fatal to the relief sought and, as such, the instant motion should be denied outright.

POINT II

DOF FAILS TO IDENTIFY ANY BONA FIDE NOVEL ISSUES OF PUBLIC IMPORTANCE, OR CONFLICTS WITH THIS COURT'S PRIOR DECISIONS TO WARRANT THIS COURT'S REVIEW OF THE APPELLATE ORDER

Despite loudly proclaiming that the Appellate Division "disregarded" this Court's precedent, DOF has not identified any bona fide conflict with this Court's precedential holdings, nor has it identified any split in authority among the Judicial Departments of the Appellate Divisions which would warrant this Court's consideration of the Appellate Division Order that relate to this case. *See* N.Y. Comp. Codes R. & Regs. tit. 22, § 500.22(b)(4); *Handy v. Butler*, 183 A.D. 359 (2d Dep't 1918). Rather this Court, and each of the Appellate Divisions are aligned, and

the Appellate Division, First Department issued the Appellate Division Order in accordance with same, as more fully discussed below.

Further, the underlying proceeding did not consider an issue of far-reaching impact which effects "all taxing authorities and entities in this State." Rather, it considered a highly unique and specific factual scenario –the unrefuted use of the Leased Premises by Brookdale Dialysis for a purpose serving the charitable purposes of the non-profit owner of the Building, DOF's failure to conduct investigation as the Supreme Court directed, and DOF's failure to ascertain Samuel Schulman's carrying changes and depreciation of the Building. The mere fact that this matter involves RPTL § 420-a and the exemption which has been applicable to the Building for decades does not make it of wide-spread import. And, simply that DOF does not (in this instance) agree with settled law that a tenant may operate on a for-profit basis in a way which still serves the primary purpose of the non-profit owner, thereby preserving the exemption, does not render this matter suitable for further intervention.

Similarly, DOF's dire claim that the Appellate Division's decision "threatens to erode the tax base of municipalities across the State," is simply unfounded. Again, this was a very specific ruling, based on a very specific set of facts and circumstances, including the clear failure of DOF to meet its burden of demonstrating that the revocation of the Building's tax exempt status was proper.

Simply there is nothing drastic, far-reaching or of public import in this matter or the Appellate Division Order which warrants this Court's time and energy. The motion should be denied.

POINT III

THE APPELLATE DIVISION CORRECTLY AFFIRMED THE TRIAL COURT ORDER GRANTING THE PETITION

Beyond the lack of any special circumstances warranting review of the Appellate Division Order by this Court, the absence of legal merit or a likelihood of success on DOF's part warrants the denial of the instant motion. Simply stated, the Appellate Division correctly found that DOF improperly revoked the tax-exempt status of the Building.[14]

RPTL § 420-a codifies the legislature's intent that real property owned by charitable institutions – including hospitals – shall be exempt from real estate taxes. As relevant to the instant motion, RPTL § 420-a(1) states:

> (a) Real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in this section.

In the context of RPTL § 420-a(1), "exclusively" has been understood to mean "principally" or "primary," or even incidental to the charitable purposes of the owner entity. *See, e.g., Matter of Adult Home at Erie Sta., Inc. v. Assessor & Bd. of Assessment Review of City of Middletown, supra*; *Hapletah v. Assessor of Fallsburg*, 79 N.Y.2d 244 (1992) ("Real Property Tax Law § 420-a(1)(a) provides that real property owned by a corporation or association organized or conducted exclusively for religious purposes, if used exclusively for such purposes, shall be exempt from taxation. The term 'exclusively', in this context, has been broadly defined to connote

[14] Indeed, DOF went well beyond its authority and revoked the tax-exempt status of the entire Building owned by Samuel Schulman, despite the fact that only a portion thereof was leased to Brookdale Dialysis notwithstanding DOF's erroneous assertion to the contrary.

'principal' or 'primary' such that purposes and uses merely 'auxiliary or incidental to the main and exempt purpose and use will not defeat the exemption.'"). *See also Congregation Rabbinical Coll. of Tartikov, Inc. v. Town of Ramapo*, 72 A.D.3d 869 (2d Dep't 2010) *aff'd* 17 N.Y.3d 763 (2011) ("The crucial issue in determining whether property is tax exempt pursuant to Real Property Tax Law § 420-a(1) is whether the primary or principal use of the property is a tax-exempt purpose of its owner.").

Thus, as recognized by this Court, the legislature has explicitly carved out an exception where the real property is utilized by an entity not otherwise entitled to tax-exempt status, requiring the satisfaction of two criteria: (i) the real property be owned by a charitable institution; and (ii) the real property be used "exclusively" or "primarily" for carrying out the charitable function. *Matter of Greater Jamaica Dev. Corp. v. N.Y.C. Tax Comm'n*, 25 N.Y.3d 614, 634 (2015) ("Pursuant to Real Property Tax Law § 420-a (1)(a), real property is mandatorily exempt from taxation if it satisfies two criteria. First, the property must be owned by a nonprofit corporation or association organized or conducted exclusively for one or more specified purposes (religious, charitable, hospital, educational or moral or mental improvement of men, women or children); second, the property must be used exclusively for carrying out one or more of the enumerated purposes.").

With this settled law, and with the broad reading of "primarily" in mind, the Appellate Division considered the facts in great detail, finding that Brookdale Dialysis provided "a critical healthcare service" to Samuel Schulman and its affiliates, and that Brookdale Dialysis' use of the Leased Premises for hemodialysis and peritoneal dialysis services "is 'reasonably incident' to Schulman's purpose of funding and supporting its healthcare affiliates," and the Building was therefore entitled to retain its tax-exempt status.

DOF's contention that the Appellate Division "relaxed the standard on what should be a narrowly construed tax exemption" is wholly erroneous. To the contrary, the Appellate Division Order was wholly in line with New York State caselaw where it has been held time and again that the "exclusive" language of RPTL § 420-a has been understood to mean "principally" or "primarily." *See, e.g., Matter of Adult Home at Erie Sta., Inc. v. Assessor & Bd. of Assessment Review of City of Middletown, supra; Hapletah v. Assessor of Fallsburg, supra.*

Indeed, if anything, as the Appellate Division implicitly acknowledged, Brookdale Dialysis' use of the Leased Premises is ***more*** in line with the mandates of the statute than the other uses addressed in the cases recited by DOF in its motion and irrefutably entitles the Building to the continuation of its long-standing tax-exempt status. *See, e.g., St. Luke's Hospital v. Boyland, supra* (1962) (For profit apartment housing leased to hospital employees was determined to be utilized for the hospital's charitable purpose, and therefore not subject to taxation); *Pace College v. Boyland, supra* (1958) (For profit food vendor operated in a college by an outside organization.); *Matter of Southwinds Retirement Home v. City of Middletown, supra* (2d Dep't 2010) (For-profit salon in a retirement home).

Consequently, as the actual, physical use of the Leased Premises for dialysis services as a "division" of Brookdale Hospital plainly falls within the realm of RPTL § 420-a(1), the Building is entitled to retain its tax-exempt status. *See, e.g., Symphony Space, Inc. v. Tishelman,* 60 N.Y.2d 33 (1983) (Finding petition for tax-exemption should be granted, noting "A 'commercial patina' alone is not enough to defeat tax-exempt status especially when such rentals are merely incidental or auxiliary to the main exempt purpose and do not realize a profit but are used to cover petitioner's costs.")*; St. Luke's Hospital v. Boyland, supra.*

Glaringly absent from the DOF's motion is any discussion on *Genesee Hospital v. Wagner*, 47 A.D.2d 37 (4th Dep't 1975) *aff'd* 39 N.Y.2d 863 (1976) – a case on which DOF relied extensively in its earlier motion and appeals, and which the Appellate Division discussed extensively in the Appellate Division Order.

The Court in *Genesee Hospital* considered several different uses of the building which the tax assessor claimed rendered the building subject to taxation – including the utilization of suites in the building for private doctor's offices, separate and apart from the services those doctors were providing within the hospital, ***and the use of separate space for an ambulatory x-ray unit***, a dietary unit and a lab, office and research area for the chief of surgery. The *Genesee Hospital* Court noted the private doctor's offices to be "only incidentally related to the hospital's function of providing health care to the community" and "in direct competition with privately developed professional buildings in an area which serves the identical function as far as the private practice of medicine is concerned." *Id.* at 46.

However, drawing a clear distinction between uses which are "incidental" to the charitable purpose and uses which are "primarily" for the charitable purpose, the x-ray premises remained entitled to an exemption. The Leased Premises are specifically (and "primarily") utilized in furtherance of the hospital and charitable purposes of Samuel Schulman. Likewise significant is that the very employees who perform the dialysis services and research at the facility are actually employed by Brookdale Hospital. (R. 62) Lastly, there can be no contention that Brookdale Dialysis – as the only dialysis treatment center in the area, and receiving 80% of its patients from Brookdale Hospital -- could feasibly be considered to be in direct competition with any local commercial enterprises, unlike the private offices in *Genesee Hospital*.

Thus, the Appellate Division Order correctly considered *Genesee Hospital* in the context applicable (and analogous) to this matter – to wit, the continuation of tax exempt status for that portion of the property utilized as an ambulatory x-ray unit. And, DOF, in its present motion, simply chose to ignore *Genesee Hospital*.

There is no indication, nor could there be any, that an ambulatory dialysis unit satisfies a "hospital purpose" any less than an ambulatory x-ray unit does. Indeed, DOF conceded as much by arguing in the motion before the Appellate Division that Brookdale Dialysis' use of the Leased Premises "undoubtedly" amounts to a hospital purpose, and thus serves the "primary" purpose of the owner entity. Consequently, as the Appellate Division correctly held, the revocation of the Building's tax-exempt status was improper and there is no basis for the granting of the instant motion. *Id. See also, Matter of Viahealth of Wayne v. VanPatten*, 90 A.D.3d 1700 (4th Dep't 2011) ("Where property is being used in support of a general hospital for various outpatient services and care, such as the services provided here by the physicians and staff of RGH and by petitioner's X-ray units and laboratories, the property is tax-exempt inasmuch as those services fulfill primary hospital purposes.").

A. The Appellate Division Order Does Not Conflict With This Court's Holdings

In the proceedings before the trial Court and the Appellate Division, DOF argued extensively that this Court's decision in *Genesee Hospital* warranted the reversal of the Trial Court Order. Evidently recognizing that *Genesee Hospital* actually supports Brookdale Dialysis' position – and not DOF's as the Appellate Division Order held – DOF now asserts that the Appellate Division Order "conflicts with this Court's decision in *Matter of Lackawanna*, 12 N.Y.3d 578 (2009)." This contention is meritless.

In *Lackawanna*, this Court considered a situation where a non-profit development corporation leased a building to Now-Tech Industries, Inc., a for-profit entity, which subsequently

subleased the property to PCB Now-Tech, Inc., another for-profit entity. As especially relevant to the question of whether the property could maintain its tax-exempt status, the leased building was used solely by the for-profit tenant for manufacturing purposes. *Id.* at 580. This Court went on to clarify that "It is the actual or physical use of the property that the Real Property Tax Law is concerned with when it exempts from taxation property 'used exclusively for carrying out thereupon one or more' exempt purposes," and then ultimately determined that the actual use of the building for manufacturing purposes by the for-profit sub-tenant did not meet this standard. Specifically, the Court rejected the notion that the manufacturing use of the property amounted to an exclusive use in accordance with the petitioner's charitable goal of "'bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs,' and 'encouraging the development of, or retention of, an industry in the community or area,'" noting that such an interpretation would create a "tax loophole." The Court further noted "if the Legislature had intended to provide a blanket real property tax exemption for local development corporations, it would have done so expressly, as it has in other contexts." *Id.* at 582.

DOF now focuses on the direction in *Lackawanna* that the exempt use must "actually occur [ ] at the property," improperly contending, for the first time, that the "Appellate Division ignores completely this requirement." (DOF Affirmation, paras. 28-29) Such a claim is remarkable for two distinct reasons. <u>One</u>, this is the first time DOF has ever contended – directly or otherwise – that the Building is no longer entitled to exemption because the exempt use does not occur ***at*** the Building. Why the Appellate Division "ignores completely" such a claim is therefore clear – the argument was never before it. <u>Two</u>, it is implicit in the Appellate Division decision that the Leased Premises were being used for an exempt purpose, with that exempt purpose occurring ***at*** the Leased Premises. Indeed, in the very second paragraph of the Appellate Division Order, the Appellate

Division noted that the Building is "used for the provision of a critical healthcare service." The Appellate Division went on to state: "As provided for in the lease, Brookdale Dialysis provides dialysis services ***in the building***. Eighty percent of the patients treated at Brookdale Dialysis are referred ***there*** by Brookdale Hospital or the Nursing Institute. Brookdale Dialysis is staffed exclusively by physicians and other employees of Brookdale Hospital." (emphasis added) Clearly, the Appellate Division found that, unlike in *Lackawanna*, the services provided not only served the primary charitable purposes of the owner, but also actually occurred ***at*** the Building.

DOF's contention that "there is no claim by Petitioners that services are provided for free to the community" not only fails to demonstrate the applicability of *Lackawanna*, but is wholly irrelevant. (DOF Affirmation, para. 29-31) As this Court and the Appellate Divisions have soundly held, it is immaterial whether the tenant realizes a profit in the use of the exempt property, nor is there any mandate that services be provided gratis. *See, e.g., Adult Home at Erie Station v. Assessor, City of Middletown, supra* ("[A]n economic benefit to a charitable organization does not by itself extinguish a tax-exemption. The question is how the property is used, not whether it is profitable."). *See also Congregation Rabbinical Coll. of Tartikov, Inc. v. Town of Ramapo*, 72 A.D.3d 869 (2d Dep't 2010) *aff'd* 17 N.Y.3d 763 (2011); *In re United Church Residences of Fredonia, N.Y., Inc. v. Newell*, 10 N.Y.3d 922 (2008).

And, again, seeking to draw a comparison to *Lackawanna* where none exists, DOF actually misrepresents the facts. The Building was not, ***in its "entirety***," "leased to and used exclusively by, a for profit entity."[15] (DOF Affirmation paras. 18, 29) Rather, only the basement and first floor

[15] Likewise, DOF's contention that "there is absolutely no use of the subject property by the not-for-profit owner," is wholly unsupported. (DOF Affirmation on para. 34) Indeed, the trial Court pointed out in the 2014 Order that DOF had conducted no investigation at all as to the use of the Building in the Trial Court Order, and invited DOF to conduct such an investigation. DOF ignored the Court and failed to do so, simply revoking the long-standing tax exempt status again, without cause or factual basis.

were leased to Brookdale Dialysis, with the remainder of the three story building being held and utilized by Samuel Schulman, a not-for-profit entity. But, despite the Trial Court's direction in the determination of the 2013 Article 78 Proceeding, DOF never examined the use of the remainder of the Building. (R. 39)

Consequently, DOF has not demonstrated that the Appellate Division Order conflicts with this Court's holding in *Lackawanna*.

B. That Brookdale Dialysis Is A For-Profit Entity Does Not Alter The Building's Entitlement to Tax Exempt Status

DOF next resorts to the argument that Brookdale Dialysis' profits "inure solely to the benefit of itself," and, therefore, the Building is no longer permitted an exemption.[16] (DOF Affirmation Para. 37) Presumably, DOF is actually repurposing its initial argument that, Brookdale Dialysis' status as a for-profit entity renders the Building, *ipso facto*, ineligible for exemption, and the long-standing exemption was therefore properly revoked. Inasmuch as DOF never presented any evidence whatsoever as to whether Brookdale Dialysis realized any profits in its operation of the Leased Premises, the focus is intended to be on Brookdale Dialysis being a for-profit entity, and not whether it earned any profit in the course of conducting the dialysis services from the Leased Premises. In any event, whether Brookdale Dialysis did or did not earn a profit (or whether it is a for-profit entity) is irrelevant to the exemption of the Building.

Contrary to DOF's contentions, as noted above, this Court has made clear that it is the actual use of the property which is determinative as to tax-exempt status under RPTL § 420-a(1),

---

[16] As admitted by DOF's counsel during oral argument before this Court, DOF did not fully investigate Brookdale Hospital's expenses to be set off against the rent it received to determine the profits, as would be required by RPTL § 420-a(2). In particular, counsel expressly acknowledged that DOF did not know whether there was an existing mortgage on the Building, which would be considered as a set off against any rental "profits." In any event, DOF has now abandoned its prior claim premised on RPTL § 420-a(2), and simply relies on the general proposition that, contrary to well settled law, the mere realization of a profit defeats the tax exemption.

not whether rent is paid or a profit is made. *See, e.g., Matter of Adult Home at Erie Sta., Inc. v. Assessor & Bd. of Assessment Review of City of Middletown, supra* ("That these people (or the government agencies that support them) pay market rents, and that [owner] may even benefit economically from its rental income, does not change this result … an economic benefit to a charitable organization does not by itself extinguish a tax exemption.").

DOF relies solely on *Matter of Greater Jamaica v. New York City Tax Commission*, 25 N.Y.3d 614 (2015) in support of the contention that Brookdale Dialysis "is undeniably a for-profit business being operated on property enjoying tax exemption status. Thus, it was wholly improper for the Appellate Division to permit the 420-a tax exemption to stand." (DOF Affirmation paras. 45-46) Such reliance – as well as the conclusion which DOF reaches – is wholly misplaced.

In *Greater Jamaica*, the Court considered the tax exempt status of several parking lots in Queens, New York, and DOF's revocation of the tax-exempt status of these parking lots on the argument that the exemption was issued erroneously in the first place, inasmuch as the parking lots were "neither owned nor operated exclusively for a charitable purpose." *Id.* at 622. The Appellate Division held that, as a result of the owner/petitioner's Internal Revenue Code § 501(c)(3) status, the parking lots were both owned and used for a charitable purpose within the meaning of RPTL § 420-a, and annulled the revocation of the tax exempt status.

On appeal of the Appellate Division's order, this Court first considered whether the property was owned by a qualifying entity, noting that DOF demonstrated that "Jamaica First was established for the sole purposes of acquiring, owning, developing and operating public parking facilities to promote Greater Jamaica's primary purpose of promoting commerce and business growth in Jamaica." This Court further noted that merely being a 501(c)(3) organization does not create a presumption that the entity is entitled to a tax exemption under section 420-a. *Id.* at 627.

Ultimately, it held that the owner did not fall within one of the charitable categories (to wit, for purposes related to "religious, charitable, hospital, educational or moral or mental improvement of men, women or children."). Clearly, here, Samuel Schulman qualifies as a property owner engaging in both charitable and hospital purposes under §420-a(1), and DOF has never contended otherwise.

This Court next considered whether the parking lots were used exclusively "for carrying out thereupon one or more of [***section 420-a's***] purposes." *Id.* at 628 (emphasis added) In so considering, this Court held "The parking facilities may very well provide a 'public benefit,' but the overall use to which these facilities are put, i.e., to further economic development and lessen the burdens of government, cannot be deemed 'charitable' within the meaning of section 420-a (1) (a)." *Id.* at 629-30. The Court further noted that "Nor can it be said that the operation of the parking facilities is 'incidental' to a charitable purpose," distinguishing the situation from ones where, for example, a parking garage used by hospital personnel was held incidental to the charitable (hospital) purpose.[17]

Here, we are not considering commercial parking facilities, nor a property owner specifically created to develop parking lots. This is a case involving the provision of vital dialysis services, well beyond the level of services which "may in some manner, be beneficial to the community," as DOF so blithely presents it. (DOF Affirmation, paras. 43-44) Contrary to DOF's misstatement, Petitioners did not argue – and the Appellate Division did not find – that the Building's exemption was warranted "merely because dialysis is a ***useful service*** that is being offered to the community." (DOF Affirmation, para. 49, emphasis added) Simply, we are speaking

---

[17] *Matter of St. Francis Hosp. v. Taber*, 76 A.D.3d 635 (2d Dep't 2010) (partial exemption granted for parking garage adjacent to nonprofit hospital that was utilized by hospital's visitors, patients and staff, finding it to be "necessarily incidental" to the hospital's exempt purpose).

of medical services provided in conjunction and furtherance of the charitable, hospital purposes of the property owner – a far cry from the situation considered in *Greater Jamaica*. DOF's attempt to rewrite the Record before this Court in order to downplay the significance of the services Brookdale Dialysis provided – and the reliance of Samuel Schulman, Brookdale Hospital and the Nursing Institute on such services – should not be condoned.

Further, unlike the owner in *Greater Jamaica*, it is clear that the Building is owned by an entity which satisfies the tax exempt requirements of RPTL § 420-a, inasmuch as Samuel Schulman was created for the purpose of promoting the health of the community in which it is located through Brookdale Hospital and the Nursing Institute. This comports with both the charitable and the hospital designations of § 420-a. Indeed, DOF has never asserted otherwise, making the reliance on *Greater Jamaica* somewhat perplexing.

Likewise, as the Appellate Division held, it is clear that Brookdale Dialysis' actual use of the Leased Premises is, at a minimum, incidental to Samuel Schulman's charitable purpose, providing life-saving dialysis treatments which Brookdale Hospital did not have the capacity to conduct, and becoming a de facto division thereof.

Consequently, the question of whether a profit was realized by Samuel Schulman through its collection of rent for the Leased Premises (or by Brookdale Dialysis for its use of the Leased Premises) is immaterial to the applicability of RPTL § 420-a, and this Court's holding in *Greater Jamaica* does not support the reversal (or consideration) of the Appellate Division Order.

C. DOF's Contentions Regarding The Profits Purportedly Realized By Samuel Schulman Are Misplaced

DOF next complains of the Appellate Division's dicta regarding Samuel Schulman utilizing the rental income received from Brookdale Dialysis for Samuel Schulman's charitable

purposes. Again, such contentions get DOF nowhere inasmuch as it is the use of the property, not whether a profit was realized therefrom, which is relevant for a § 420-a exemption.

On point with the instant matter, where the entire basis for the revocation of tax-exempt status was that the rent received exceeding the Building's carrying costs, is *Congregation Rabbinical College of Tartikov, Inc. v. Town of Ramapo, supra*. In *Congregation Rabbinical College of Tartikov*, the tax assessor contended that the property was no longer eligible for tax-exempt status because it was being leased to a for-profit entity, and because "plaintiff's annual income from the property exceeded the carrying, maintenance, and depreciation charges of the property." The Second Department rejected the assessor's claims and found the tax-exempt status was improperly revoked, noting "The crucial issue in determining whether property is tax-exempt pursuant to Real Property Tax Law § 420-a(1) is whether the primary or principal use of the property is a tax-exempt purpose of its owner. The fact that the property is leased or licensed to other parties, or the fact that the owner derives some profit from the use of the property, does not defeat a tax-exemption pursuant to Real Property Tax Law § 420-a(1), so long as the primary or principal use of the property is for a tax-exempt purpose of its owner" and finding that the assessor failed to meet its burden. 72 A.D.3d at 871. Notably, this Court unanimously affirmed the holding of the Second Department, holding "an economic profit made by a religious corporation 'does not by itself extinguish a tax exemption.'" 17 N.Y.3d at 765.

Congregation Rabbinical College of Tartikov is directly on point with this matter, where DOF admittedly did not give any consideration to the actual, physical use of the Building but rendered its decision entirely and solely on the notion "that the income exceeds the expenses for the property" – to wit, that Samuel Schulman received a profit from its rental of the Leased

Premises. (R 55; 408). Clearly, "an economic benefit made by [an exempt] corporation does not by itself extinguish a tax exemption."

It is further dispositive that DOF did not conduct ***any*** inquiry into Samuel Schulman's operating costs of the Building, nor the depreciation costs for same. Consequently, DOF's contentions as to what Samuel Schulman did with the rent it received – as well as the thinly veiled assertion that the use of the Leased Premises for dialysis is a "guise or pretense" – are nothing but smoke and mirrors. *See, e.g., Matter of Greentree Found. v. Assessor & Bd. of Assessors of Cnty. of Nassau, supra* (2d Dep't 2016) (Finding tax exempt status was improperly revoked, stating, inter alia, "Nor is there any evidence that Greentree's exempt use of the property was 'a guise or pretense' for a use which primarily benefitted only Greentree.").

As such, there is nothing for the Court of Appeals to address, and DOF's motion should be denied in its entirety.

CONCLUSION

For these reasons, Respondents ask that the Court deny the motion for leave to appeal.

Dated: New York, New York
December 21, 2020

Respectfully submitted,

COZEN O'CONNOR

By: _____

Menachem J. Kastner, Esq.
Amanda L. Nelson, Esq.
45 Broadway, 16th Floor
New York, NY 10006
(212) 453-3950 (telephone)
(917) 521-5739 (facsimile)
Attorneys for Brookdale Dialysis

CORPORATE DISCLOSURE STATEMENT

Pursuant to 22 NYCRR § 500.1(f), Petitioner-Respondent Brookdale Dialysis states that it has no parents, subsidiaries or affiliates.