



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
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830 South Gloster Street
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Dear Mr. Toppin:

This letter responds to your request on behalf of North Mississippi Health Services (NMHS) for an advisory opinion on whether NMHS may provide pharmaceuticals, at cost, to both the Good Samaritan Clinic and the Sanctuary Hospice House under the Non-Profit Institutions Act (NPIA). The NPIA exempts from the Robinson-Patman Act “purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.”¹ For the reasons explained below, we have concluded that the NPIA would apply to pharmaceuticals transferred by NMHS to both the Good Samaritan Clinic and the Sanctuary Hospice House.

Based on the facts you provided, the staff understands that NMHS is a non-profit corporation currently receiving preferential price treatment in its purchase of pharmaceuticals as permitted by the NPIA exception to the Robinson-Patman Act. NMHS purchases pharmaceuticals from a pharmaceutical wholesaler. The Good Samaritan Clinic is a non-profit institution funded entirely by donations, grants, and unpaid services by volunteer physicians, nurses and others, that provides free care to the working poor and their families in and around Lee County, Mississippi. The Sanctuary Hospice House is a non-profit corporation formed to establish a Medicare-certified inpatient hospice facility in Tupelo, Mississippi. The Sanctuary Hospice House is set to open shortly. NMHS pays a lower price for its pharmaceuticals than is currently available to the Good Samaritan Clinic and the Sanctuary Hospice House.

The NPIA applies only to pharmaceuticals purchased by a hospital for its “own use” – that is, for use in the care the hospital renders to its patients.² Since the patients of the Good Samaritan Clinic and the Sanctuary Hospice House are not NMHS’s patients, the NPIA would not apply to pharmaceuticals dispensed directly by the hospital to those individuals. The Commission,

¹ 15 U.S.C. § 13c.

² *Abbot Laboratories v. Portland Retail Druggists Ass’n*, 425 U.S. 1, 14 (1976).

however, has concluded that the NPIA does cover the transfer of supplies, at cost, from a non-profit hospital to another organization that is entitled to NPIA protection for its own purchases, so long as those supplies are for the receiving institution's "own use" within the meaning of the NPIA.³

Based on the information you have provided, both the Good Samaritan Clinic and the Sanctuary Hospice House appear to be non-profit charitable institutions entitled to purchase supplies under the NPIA, and it appears that they will use the pharmaceuticals they receive from NMHS for their "own use." Accordingly, NMHS's transfer of its discounted pharmaceuticals to the Good Samaritan Clinic and Sanctuary Hospice House at its cost would be covered by the NPIA. This reasoning would not apply, however, if the Good Samaritan Clinic or Sanctuary Hospice House in turn dispensed the pharmaceuticals in a manner that did not qualify as for their "own use," such as if the Good Samaritan Clinic filled prescriptions for walk-in customers.

Additionally, the exemption would be lost if NMHS sold pharmaceuticals to the Good Samaritan Clinic or Sanctuary Hospice House at a profit. As we concluded in *North Ottawa*, an institution making a transfer to another NPIA eligible institution may charge the receiving institution only its acquisition cost for the materials plus a fee sufficient to cover any additional costs it incurs as a direct result of making the transfer (but not overhead expenses that the institution would incur without regard to the transfer).⁴ NMHS will retain the protection of the NPIA, therefore, if it transfers pharmaceuticals to the Good Samaritan Clinic and to the Sanctuary Hospice House at a price that does not exceed its direct costs in purchasing and transferring the materials.

This letter sets out the views of the staff of the Bureau of Competition, as authorized by the Commission's Rules of Practice. Under Commission Rule § 1.3(c), 16 C.F.R. § 1.3(c), the Commission is not bound by this staff opinion and reserves the right to rescind it at a later time. In addition, this office retains the right to reconsider the questions involved and, with notice to the requesting party, to rescind or revoke the opinion if implementation of the proposed program results in substantial anticompetitive effects, if the program is used for improper purposes, if facts change significantly, or if it would be in the public interest to do so.

Sincerely yours,

David R. Pender
Acting Assistant Director

³ *St. Peter's Hospital of the City of Albany*, 92 F.T.C. 1037 (1978) (Commission advisory opinion).

⁴ FTC Staff Advisory Opinion, Letter from Michael D. McNeely to Sheldon Klein (*North Ottawa Community Hospital*) (October 22, 1996).