



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

**Bureau of Competition**

~  
**Jeffrey W. Brennan**  
Assistant Director  
Health Care Services & Products  
Direct Dial  
(202) 326-3688

January 6, 2004

Judy Erb  
Vice President  
Dunlap Memorial Hospital  
832 South Main Street  
Orrville, Ohio 44667

Dear Ms. Erb:

This letter responds to your request on behalf of Dunlap Memorial Hospital for an advisory opinion whether Dunlap's provision of pharmaceuticals to the Viola Startzman Free Clinic would fall within the scope of 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."<sup>1</sup> For the reasons explained below, we have concluded the NPIA would apply to pharmaceuticals transferred by Dunlap to the Free Clinic.

As we understand the facts based on the information you provided, Dunlap is a non-profit hospital. The Free Clinic is a non-profit institution, funded entirely by donations, grants, and unpaid services of volunteer physicians, that provides free medical care to adults in and around Wayne County, Ohio. Dunlap purchases pharmaceuticals through Amerinet, a hospital purchasing group. The hospital pays a lower price than is currently available to the Free Clinic, which purchases drugs prescribed by Clinic doctors from a local pharmacy at the average wholesale price plus a dispensing fee. You have asked whether the NPIA would apply to drugs purchased by Dunlap and then transferred to the Free Clinic, where they would be dispensed to patients of the Clinic. You also ask whether Dunlap could charge a fee to cover its cost of providing the pharmaceuticals to the clinic.

The NPIA applies only to pharmaceuticals purchased by a hospital for its "own use" – that

---

<sup>1</sup> 15 U.S.C. § 13c.

---

<sup>2</sup> *Abbott Laboratories v. Portland Retail Druggists Assn*, 425 U.S. 1, 14 (1976).

<sup>3</sup>