



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

Bureau of Competition
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Bruce J. Toppin, Esq.
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North Mississippi Health Services
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

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).