



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

corporations are part of Doylestown Health and the same executive team manages both organizations.^{4,5}

Doylestown Health Physicians has approximately 100 primary and specialist physicians practicing in 23 locations in the Doylestown area. Several of the offices are located on Doylestown Hospital's campus and most primary care offices are within 10 miles of the hospital. The physicians treat their patients requiring inpatient or outpatient care at Doylestown Hospital. Doylestown Health Physicians' purpose includes conducting exclusively charitable, scientific and educational activities within the meaning of Section 501(c)(3) of the Internal Revenue Code . . . including directly or indirectly managing and supporting the provision of health care and related services and making donations and other transfers to or for the benefit of the Village Improvement Association, Doylestown Health Foundation and Doylestown Hospital.⁶

Doylestown Hospital is a community hospital with 271 beds that serves Bucks County and part of Montgomery County, Pennsylvania, and parts of Hunterdon and Mercer Counties, New Jersey. Doylestown Hospital's purpose includes operating and maintaining a community hospital . . . for the benefit of all persons and in general promoting public health in general.⁷

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We understand from your letter that on Doylestown Health Physicians office will purchase

plans are charitable institutions under the NPIA, the court in *Dev. Kaiser Foundation Health Plan* recognized that all nonprofit organizations which promote health are considered charitable under the law of charitable trusts. We concluded in an earlier FTC staff advisory opinion that a nonprofit charitable multispecialty clinic qualified as an eligible entity.

While multispecialty physician group practices are not one of the types of institutions specifically enumerated in the NPIA, we believe that it qualifies as an eligible entity under the NPIA as a charitable institution operated for profit. In fact, Doylestown Health Physicians currently purchases discounted pharmaceuticals and medical devices for its physicians to treat their patients in the base of our letter. Doylestown Hospital, a nonprofit hospital, also appears to be an eligible entity under the NPIA and could itself qualify to purchase NPIA-discounted pharmaceuticals and medical devices in accordance with the own use requirement discussed below.

2. Doylestown Health Physicians Provision of Discounted Pharmaceuticals and Medical Devices to Doylestown Hospital Appears to Be for Doylestown Health Physicians Own Use

We next consider whether the proposal involves the purchase of supplies

to finance other student activities and improvements to the university because physicians and hospitals use pharmaceuticals and medical devices on their activities of treating patients, we also find that they are supplies within the NPIA.

b. Own Use

The term "own use" means a eligible entity use that is a part of and promotes the [entity's] intended institutional operation. The principal authority on the meaning of the "own use" requirement is the Supreme Court's decision in *Abbott Laboratories v. Portland Retail Druggists Ass'n*.²¹ In *Abbott*, not-for-profit hospitals purchased discounted pharmaceuticals from manufacturers and resold them to hospital patients. Ruckelshaus challenged the discounted sale of pharmaceuticals to the hospitals under the Patman Act. The Supreme Court held that the NPIA exemption is limited and does not give hospitals a blank check for all purchases of supplies. Rather, the Court held that the exemption applies to purchases for a hospital's own use, and that "own use" means what reasonably may be regarded as use by the hospital in the sense that such use is a part of and promotes the hospital's intended institutional operation in the care of persons who are its patients.²² The Supreme Court determined that not-for-profit hospital's purchases of pharmaceuticals are for its own use when dispensed to patients for treatment at the hospital.²³

Whether the exemption applies to Doylestown Health Physicians' purchases of pharmaceuticals and medical devices for Doylestown Hospital's inpatient patients depends on whether this use is part of and promotes Doylestown Health Physicians' institutional mission.²⁴ Based on Doylestown Health Physicians' stated purpose in its Articles of Incorporation, Doylestown Health Physicians' purchases would appear to promote managing and supporting the provision of health care and related services, including making donations and other transfers to or for the benefit of . . . Doylestown Hospital. As a part of an integrated health system, the physicians treat their patients requiring inpatient care at Doylestown Hospital. Doylestown Health Physicians' purchase of discounted pharmaceuticals and medical devices for Doylestown Hospital's patients will support the provision of health care and related services at Doylestown Hospital. Consistent with *Abbott*, we find that the NPIA exemption appears to cover Doylestown Health Physicians' proposal to offer discounted pharmaceuticals and medical devices to Doylestown Hospital. Similarly, Doylestown Hospital's purchase of these supplies from Doylestown Health Physicians appears to be for Doylestown Hospital's use because it will use the supplies to further its

²⁰ 378 F.2d at 212 (sale of bowling equipment and lanes to a university was exempt from the Patman Act under the NPIA).

²¹ *Abbott Labs. v. Portland Retail Druggists Ass'n*, 425 U.S. 14 (1976)

²² *Id.*

²³ *Id.* at 13.

²⁴ *Id.* at 14.

²⁵ *Id.*

institutional purpose to operate a community hospital . . . for the benefit of all persons and promote public health.

We emphasize that this opinion is premised on your representation that Doylestown Hospital's for-profit joint ventures will not have access to the discounted pharmaceuticals and medical devices and your assurance that the joint ventures or any other for-profit entities will not benefit financially from the proposed arrangement in any way.

Conclusion

As discussed above, and with the noted caveats, it is our opinion that Doylestown Health Physicians' proposal to extend the sales of discounted pharmaceuticals and medical devices to its affiliate, Doylestown Hospital, as described in your April 16, 2021 letter, would fall within the NPIA exemption to the Robinson-Patman Act.

This letter sets out the views of the staff of the Bureau of Competition, as authorized by the Commission's Rules of Practice based on the facts you have presented to the 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 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 fs sav(th)2 (e04 Tw [Ch(r)-5 (e)61 (s)-1 h)-4