DEPARTMENT OF HEALTH & HUMAN SERVICES

FOI

Food and Drug Administration
Rockville MD 20857

OCT 15 1998

TRANSMITTED VIA FACSIMILE

William A. Carter, M.D.
Chief Executive Officer
Hemispherx Biopharma, Inc.
One Penn Center
1617 JFK Boulevard
Philadelphia, PA 19103

Re: Ampligen
Macmis # 7146

Dear Dr. Carter:

This letter concerns materials released by Hemispherx Biopharma, Inc. (Hemispherx) regarding its drug, Ampligen, which currently has investigational new drug status with the Food and Drug Administration. As part of its monitoring program, the Division of Drug Marketing, Advertising and Communications (DDMAC) has reviewed the Hemispherx Products Page on the Hemispherx website, a press release issued by Hemispherx on September 21, 1998, and a Hemispherx Biopharma teleconference recorded on September 23, 1998.

After reviewing these materials, DDMAC has determined that Hemispherx is promoting Ampligen as a safe and effective drug prior to its approval for marketing. Promoting drugs prior to their approval for marketing violates the Federal Food, Drug, and Cosmetic Act, and regulations promulgated thereunder.

The regulations at 21 C.F.R. 312.7, specifically state that a "sponsor, investigator, or any person acting on behalf of a sponsor or investigator, shall not represent in a promotional context that an investigational new drug is safe or effective for the purposes for which it is under investigation or otherwise promote the drug." The intent of the regulation is not to inhibit the exchange of scientific findings, but to prevent dissemination of promotional claims of safety or efficacy of an investigational drug, and to "preclude commercialization of the drug before it is approved for commercial distribution."

Hemispherx has made promotional claims about Ampligen as DDMAC has outlined below (not all inclusive):

Hemispherx Products Page on Website

- **Chronic Fatigue and Immune Dysfunction Syndrome (CFIDS)**

"Ampligen . . . has shown efficacy and safety in a completed Phase II study; recent clinical trials in Belgium have shown an 80% complete recovery in CFS patients."

- **Hepatitis B and C**

"Interferon-alpha, the only drug approved for treating Hepatitis B, is not effective in a majority of cases. Indications are that Ampligen can be a treatment for those patients."

- **HIV/AIDS**

"Phase II clinical studies using Ampligen in combination with AZT have shown three year survival advantage in HIV infected patients. Ampligen stabilizes CD4 cell levels and restores cell mediated immunity and may play a critical role in the new protease 'anti-viral cocktail.'"

Press Release issued by Hemispherx on September 21, 1998: Hemispherx Biopharma, Inc.: CFS Advocacy Group Says Ampligen Works and is Needed Immediately!!

- " . . . Ampligen is an especially safe drug."
- "The disease has gone down a rocky path, and then after some 15 years of futile research as to the cause of the illness or a cure, a drug emerges that has shown tremendous promise. Life is now meaningful, because a debilitated person who cannot climb a flight of stairs is now able to climb unassisted. A person who cannot rise from a toilet before therapy is able to stand, walk, and perform household chores. Life that was spent in bed, resting and looking at the ceiling, is now spent cherishing moments of opportunity in a lifetime ahead of fulfilling personal goals, all due to the intervention of Ampligen therapy."
- "In short, the defective immune systems of many CFS patients have been repaired by Ampligen."
- " . . . people who have made major sacrifices in finding the money to be on this life-saving, life-reclaiming drug."

Hemispherx Biopharma Teleconference (recorded September 23, 1998)

- Ampligen provides "statistical improvement in physical performance, mental skills, etc., and in the constellation of activities we call medically, the quality of life."
- Severely debilitated patients have had "substantial improvements . . . without any major side effects." There were minor side effects often in the beginning but the side effects are not different from clinical symptoms that are related to the disease. We have not seen any major toxicity in the seventy to eighty patients. So it's completely out of the question that there's any toxicity. A lot of women have had children and they're completely normal.
- Ampligen is the only effective, promising treatment for Chronic Fatigue Syndrome.

- Decreasing hospitalizations and decreasing morbidity continues to look extremely good.
- The company continues to assert that all the data which it has supports the potential for efficacy and a very favorable side effect profile. Side effects here are very minimal and they're transitory, and seen in only a small percentage of patients.
- In studies going on today in HIV disease using our drug (Ampligen) as monotherapy, we've demonstrated what we believe to be statistically significant reductions in the virus load through a new mechanism, which is immunological switching.
- A majority of patients demonstrated quantitative improvements.

Hemisphérx should immediately discontinue the dissemination of materials that make claims of safety or efficacy for Ampligen. In addition, Hemispherx should acknowledge receipt of this letter by October 29, 1998, describe its plans to discontinue the use of the aforementioned materials and similar violative promotional activities, and indicate the date on which Hemispherx has ceased all violative promotion of Ampligen.

Hemispherx should direct its response to the undersigned by facsimile at (301) 594-6771, or by written communication at the Food and Drug Administration, Division of Drug Marketing, Advertising and Communications, HFD-40, Rm 17B-20, 5600 Fishers Lane, Rockville, MD, 20857. In all future correspondence regarding this matter, please refer to MACMIS ID #7146. DDMAC reminds Hemispherx that only written communications are considered official.

Sincerely,

Sherrie Shade, R.Ph., J.D.
Regulatory Review Officer
Division of Drug Marketing,
Advertising and Communications