DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
Cincinnati District Office
Central Region
6751 Steger Drive
Cincinnati, OH 45237-3097
Telephone: (513) 679-2700
FAX: (513) 679-2771

WARNING LETTER
CIN-07-28792-06

VIA FEDERAL EXPRESS

December 1, 2006

William Michael Leake, Owner
Spoonamore Drug Co., Inc.
4014 Dutchmans Lane
Louisville, KY 40207

Dear Mr. Leake:

From November 17 through December 9, 2005, an FDA investigator inspected your firm, Spoonamore Drug Co., Inc., located in Louisville, KY. This inspection revealed that your firm compounds human prescription drugs including domperidone capsules, progesterone [redacted] mg capsules, testosterone 5% gel, and nicotine lollipops.

FDA's position is that the Federal Food, Drug, and Cosmetic Act (FDCA) establishes agency jurisdiction over "new drugs," including compounded drugs. FDA's view that compounded drugs are "new drugs" within the meaning of section 201(p) of the FDCA (21 U.S.C. § 321(p)), because they are not "generally recognized, among experts ... as safe and effective," is supported by substantial judicial authority. *See Weinberger v. Hynson, Westcott & Dunning,* 412 U.S. 609, 619, 629-30 (1973) (explaining the definition of "new drug"); *Prof'ls & Patients for Customized Care v. Shalala,* 56 F.3d 592, 593 n.3 (5th Cir. 1995) (the FDCA does not expressly exempt pharmacies or compounded drugs from its new drug provisions); *In the Matter of Establishment Inspection of: Wedgewood Village Pharmacy,* 270 F. Supp. 2d 525, 543-44 (D.N.J. 2003), *aff'd, Wedgewood Village Pharmacy v. United States,* 421 F.3d 263, 269 (3d Cir. 2005) ("The FDCA contains provisions with explicit exemptions from the new drug . . . provisions. Neither pharmacies nor compounded drugs are expressly exempted"). FDA maintains that, because they are "new drugs" under the FDCA, compounded drugs may not be introduced into interstate commerce without FDA approval.

The drugs that pharmacists compound are not FDA-approved and lack an FDA finding of safety and efficacy. However, FDA has long recognized the important public health function served by traditional pharmacy compounding. FDA regards traditional compounding as the extemporaneous combining, mixing, or altering of ingredients by a pharmacist in response to a physician's prescription to create a medication tailored to the specialized needs of an individual patient. *See Thompson v. Western States Medical Center,* 535 U.S. 357, 360-61 (2002). Traditional compounding typically is used to prepare medications that are not available commercially, such as a drug for a patient who is allergic to an ingredient in a mass-produced product, or diluted dosages for children.

Through the exercise of enforcement discretion, FDA historically has not taken enforcement actions against pharmacies engaged in traditional pharmacy compounding. Rather, FDA has directed its

enforcement resources against establishments whose activities raise the kinds of concerns normally associated with a drug manufacturer and whose compounding practices result in significant violations of the new drug, adulteration, or misbranding provisions of the FDCA.

FDA's current enforcement policy with respect to pharmacy compounding is articulated in Compliance Policy Guide (CPG), section 460.200 ["Pharmacy Compounding"], issued by FDA on May 29, 2002 (*see Notice of Availability*, 67 *Fed. Reg.* 39,409 (June 7, 2002)).[1] The CPG identifies factors that the Agency considers in deciding whether to initiate enforcement action with respect to compounding.

These factors help differentiate the traditional practice of pharmacy compounding from the manufacture of unapproved new drugs. They further address compounding practices that result in significant violations of the new drug, adulteration, or misbranding provisions of the FDCA. These factors include considering whether a firm compounds finished drugs from bulk active ingredients that are not components of FDA-approved drugs, without an FDA sanctioned investigational new drug application (IND). The factors in the CPG are not intended to be exhaustive and other factors may also be appropriate for consideration.

Compounded Domperidone Drug Products

Your firm compounds and distributes domperidone [redacted]mg, [redacted]mg, and [redacted]mg capsules. Domperidone is not an active ingredient contained in any FDA-approved drug products. FDA does not sanction its use in pharmacy compounding and will not exercise enforcement discretion with respect to products that contain domperidone.

FDA is concerned with the public health risks associated with the compounding of domperidone. There have been several published reports and case studies of cardiac arrhythmias, cardiac arrest, and sudden death in patients receiving an intravenous form of domperidone that has been withdrawn from marketing in several countries. FDA has become aware of the use of domperidone by lactating women to increase breast milk production because of its effect on prolactin levels. While domperidone is approved in several countries for the treatment of gastric stasis and gastroparesis, domperidone is not approved in any country for enhancing breast milk production in lactating women. In several countries where the oral form of domperidone continues to be marketed, labels for the product note that domperidone is excreted in the breast milk of lactating women and recommend that women taking domperidone avoid breast-feeding. Because of this, FDA recommends that breastfeeding women not use domperidone to increase milk production.

We acknowledge receipt of your letter dated December 8, 2005, stating that you will continue to compound drug products containing domperidone. During the inspection, the investigator asked if you had an investigational new drug application (IND), or if any of the physicians prescribing domperidone capsules have an IND. You said that your firm does not have an IND and that you did not know whether any of the physicians prescribing domperidone capsules had an IND for domperidone.

---

[1] Although Section 503A of the FDCA (21 U.S.C. § 353a) addresses pharmacy compounding, this provision was invalidated by the Supreme Court's ruling in *Thompson v. Western States Medical Center,* 535 U.S. 357 (2002), that Section 503A included unconstitutional restrictions on commercial speech. And those restrictions could not be severed from the rest of 503A. In *Thompson v. Western States Medical Center,* 535 U.S. 357 (2002), the Supreme Court affirmed the Ninth Circuit ruling that the provisions in question violated the First Amendment.

As discussed above, the agency is seriously concerned with the public health risks associated with, and will not tolerate, the compounding of domperidone products. FDA understands that some patients with gastroparesis may need domperidone to maintain their quality of life. In response to this concern, the agency encourages physicians who would like to prescribe domperidone for their patients with severe gastrointestinal disorders that are refractory to standard therapy to open an IND. An IND is a request for FDA authorization to administer an investigational drug to humans. Such authorization would allow the importation, interstate shipment, and administration of the drug, subject to certain legal restrictions and conditions, even though it is not approved for sale in the U.S.

For questions relating to domperidone INDs please contact Ms. Maureen Dewey, Regulatory Project Manager, Division of Gastroenterology Products. Ms. Dewey can be reached at (301) 796-0845 or maureen.dewey@fda.hhs.gov. Additional information is available at the website: http://www.fda.gov/cder/news/domperidone.htm.

Compounded Progesterone [redacted] mg Capsules

Your firm compounds and distributes progesterone [redacted] mg capsules. This product is essentially a copy of an FDA-approved progesterone [redacted] mg capsule product. Typically, FDA will not exercise its enforcement discretion for compounded drugs that are essentially copies of FDA-approved, commercially available drugs when there is no patient-specific medical need to justify the difference.

You claim that your compounded product is not a copy of a commercially available drug because it lacks peanut oil, to which some patients are allergic. Yet you were not able to document a single instance of a patient taking your product for this reason. We do not view the absence of peanut oil as a meaningful difference between your product and the FDA-approved, commercially available product.

Compounded Testosterone 5% Gel Products

Your firm compounds and distributes testosterone HPC 5% gel in a [redacted] milliliter dose. This product is a copy or essentially a copy of an FDA-approved product. As noted above, FDA will generally not exercise enforcement discretion for drugs that are essentially copies of FDA-approved, commercially available drugs when there is no patient-specific medical need to justify the difference.

You claim that your product differs from its FDA-approved competitors because it delivers an equivalent level of testosterone in a smaller dosage size. The availability of a different dosage size is not a meaningful difference between your product and the approved products because the amount of testosterone ([redacted] mg) is the same in both products.

FDCA Violations

In light of the above discussion, FDA will not exercise enforcement discretion for the domperidone, progesterone [redacted] mg, and testosterone HPC 5% gel products compounded by your firm. These products are drugs within the meaning of section 201(g) of the FDCA (21 U.S.C. § 321(g)). They are also new drugs under section 201(p) of the FDCA (21 U.S.C. § 321(p)), and may not be introduced or delivered for introduction into interstate commerce under section 505 of the FDCA (21 U.S.C. § 355) because no approval of an application filed pursuant to section 505(b) or (j) of the FDCA (21 U.S.C. § 355(b),(j)) is in effect for such drugs.

In addition, the drugs are misbranded under section 502(f)(1) of the FDCA (21 U.S.C. § 352 (f)(1)) in that their labeling fails to bear adequate directions for their use, they are not exempt from this requirement under 21 CFR § 201.115, and do not otherwise comply with section 505(i) of the FDCA (21 U.S.C. 355(i)). Section 301(k) of the FDCA (21 U.S.C. § 331(k)) prohibits any act with respect to a drug if the act is done while the drug is held for sale after shipment in interstate commerce and results in the drug being misbranded.

The above violations are not intended to be an all-inclusive list of deficiencies at your facility. It is your responsibility to ensure adherence to each requirement of the FDCA and its regulations. Federal agencies are advised of the issuance of all warning letters about drugs so they may take this information into account when considering the award of contracts.

You should take prompt action to permanently correct these deviations and prevent their recurrence. Failure to do so may result in regulatory action without further notice. Such actions include seizure and/or injunction.

Please be advised that, if the domperidone, progesterone [redacted] mg, and testosterone HPC 5% gel products compounded by your pharmacy leave the state of Kentucky, then they would violate section 505(a) of the FDCA (21 U.S.C. § 355(a)). We also note that your firm provides promotional material on compounded nicotine lollipops. The nicotine lollipops made by your firm may be misbranded under section 502(f)(2) of the FDCA (21 U.S.C. 352(f)(2)) if their labeling fails to bear adequate warnings against use by children where their use may be dangerous to health. Further, if you are using nicotine salicylate to compound these lollipops, please be advised that this ingredient is not a component of an FDA approved drug, and the use of nicotine salicylate would not be consistent with the compounding CPG.

Please notify this office in writing, within 15 working days of receipt of this letter, of the specific steps that you have taken to correct the noted violations, including an explanation of the steps taken to prevent their recurrence. If corrective actions cannot be completed within 15 working days, state the reason for the delay and the time within which corrections will be complete.

Your reply should be directed to the attention of Stephen J. Rabe, Compliance Officer, at the letterhead address. If you have questions concerning the violations noted, please contact Mr. Rabe at (513) 679-2700 extension 163.

Sincerely,

Carol A. Heppe
District Director

Cc: William Michael Leake,
Spoonamore Drug Co., Inc.
P.O. Box 726
Danville, KY 40423-0726