DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Central Region

Food and Drug Administration
Waterview Corporate Center
10 Waterview Blvd., 3rd Floor
Parsippany, NJ 07054

Telephone (973) 526-6010

**WARNING LETTER**

October 31, 2006

**CERTIFIED MAIL**
**RETURN RECEIPT REQUESTED**

Mr. George Malmberg, R.Ph.
Owner
Wedgewood Village Pharmacy
405 Heron Drive
Swedesboro, New Jersey 08085

**06-NWJ-03**

Dear Mr. Malmberg:

On October 4-28, 2005, investigators from the U.S. Food and Drug Administration (FDA) inspected, your firm, Wedgewood Village Pharmacy, located at 405 Heron Drive, Swedesboro, New Jersey. This inspection revealed that your firm produces human and animal prescription drugs in various dosage forms and strengths. The inspection also revealed serious violations of the Federal Food, Drug, and Cosmetic Act (FDCA), including violations of its new drug, new animal drug, and misbranding provisions. In particular, and as explained below, the products compounded by your firm are drugs within the meaning of section 201(g) of the FDCA [21 U.S.C. § 321(g)]. These products are new drugs under section 201(p) of the FDCA [21 U.S.C. § 321(p)], and new animal drugs under section 201(v) of the FDCA [21 U.S.C. § 321(v)], because they are not generally recognized by qualified experts as safe and effective for their labeled uses. These new drugs and new animal drugs, and your production and distribution of them, violate the FDCA.

## A. Compounded Drugs Under the FDCA and FDA's Regulatory Approach to Compounding

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 is that compounded drugs are "new drugs" within the meaning of 21 U.S.C. § 321(p), because they are not "generally recognized, among experts . . . as safe and effective" for their labeled uses. *See Weinberger v. Hynson, Westcott & Dunning,* 412 U.S. 609, 619, 629-30 (1973) (explaining the definition of "new drug"). There is substantial judicial authority supporting FDA's position that compounded drugs are not exempt from the new drug definition. *See Prof'ls & Patients for Customized Care v. Shalala,* 56 F.3d 592, 593 n.3 (5th Cir. 1995) ("Although the [FDCA] does not expressly exempt 'pharmacies' or 'compounded drugs' from the new drug ... provisions, the FDA as a matter of policy has not historically brought enforcement actions against pharmacies engaged in traditional compounding."); *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 rarely FDA-approved and thus 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 policies with respect to the compounding of human drugs and compounding of drugs for use in animals are articulated in two Compliance Policy Guide (CPGs). 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)) addresses the compounding of human drugs.[1] CPG section 608.400 ["Compounding of Drugs for Use in Animals"], issued in revised form by FDA's Center for Veterinary Medicine on July 8, 2003, addresses the compounding of drugs for use in animals.

These CPGs identify 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 and unapproved new animal drugs. They further address compounding practices that result in significant violations of the new drug, adulteration, or misbranding provisions of the FDCA. As stated in the CPGs, the factors listed in the CPGs are not intended to be exhaustive. *See* CPG section 460.200 ["Pharmacy Compounding"] ("The . . . list of factors is not intended to be exhaustive.") and CPG section 608.400 ["Compounding of Drugs for Use in Animals"] ("The . . . list of factors is not intended to be all inclusive.")

---

[1] The status of Section 503A of the FDCA ["Pharmacy Compounding"] [21 U.S.C. § 353a] was addressed by the Supreme Court in *Thompson v. Western States Medical Center,* 535 U.S. 357 (2002).

## B. CPG on Compounding of Human Drugs [CPG 460.200]

CPG 460.200 addresses the factors that the agency considers in determining whether to exercise its enforcement discretion with respect to the compounding of human drugs. Some of the factors identified in the CPG on human compounding include considering whether a firm

- uses commercial scale manufacturing equipment or testing equipment for compounding drug products;
- compounds drugs that are copies, or essentially copies, of commercially available FDA-approved drug products without a documented patient-specific medical need.

## C. CPG on Compounding of Drugs for Use in Animals [CPG 608.400]

CPG 608.400 addresses the factors that the agency may consider in determining whether to initiate regulatory action with respect to the illegal compounding of drugs for use in animals. Some of the factors identified in this CPG include considering whether a firm:

- compounds drugs for use in animals where an approved new animal drug or approved new human drug used as labeled or in conformity with Title 21 Code of Federal Regulations Part 530 will, in the available dosage form and concentration, appropriately treat the condition diagnosed;
- compounds finished drugs from human or animal drugs that are not the subject of an approved application, or from bulk drug substances, other than those specifically addressed for regulatory discretion by the FDA, Center for Veterinary Medicine; or
- uses commercial scale manufacturing equipment for compounding drug products

As discussed below, our inspection revealed the scope and nature of your activities are clearly outside the bounds of traditional pharmacy practice and that these activities have resulted in significant violations of the new animal drug provisions of the FDCA.

## D. Inspectional Findings

As a result of our inspection of your firm, our findings include the following:

1. Your firm produces finished drug products that are essentially copies of commercially available products, and your firm does not document a medical need for particular patients for these versions of otherwise commercially available products. These products include:

   Enrofloxacin (veterinary)
   Pyrimethamine/Sulfadiazine (veterinary)
   Cyclosporine Ophthalmic (veterinary)
   Altrenogest (veterinary)
   Flunixin Meglumine (veterinary)
   Ketoprofen (veterinary)
   Acetic Acid 2% solution (human)

Dipyridamole 5 mg/mL injections (human)
DMSO (Dimethylsulfoxide) 50% aqueous solutions (human)
EDTA (Edetate Disodium) 150 mg/mL injections (human)
Estradiol Valerate Oil 10 mg/mL and 20 mg/mL injections (human)
Hyaluronidase 150 units/mL injections (human)
Isosulfan injections (human)
Lidocaine 2% surgical jelly (human)
Mesalamine 500 mg suppositories (human)
Mitomycin Ophthalmic solutions (human)
Naloxone HCl 1 mg/mL injections (human)
Progesterone in Oil 50 mg/mL injections (human)
Ranitidine 15 mg/mL solutions (human)
Sodium Tetradecyl Sulfate 3% injections (human)
Tacrolimus 0.1 % ointments (human)
Tinidazole 500 mg capsules (human)

2. Your facility and equipment are of a scale capable of producing large quantities of products and are thus indicative of practice beyond traditional pharmacy compounding. Specifically, your facility contains [redacted] rooms used for production, including raw material storage, weighing, and [redacted] sterile suites. Equipment contained within these processing rooms is capable of producing large quantities of drug products. For example, the [redacted] encapsulator is capable of producing [redacted] capsules per hour and the [redacted] Mixer has a capacity of [redacted]. This manufacturing equipment produces large quantities of drugs, including lot sizes of drugs that are inconsistent with traditional pharmacy compounding. Examples of lot sizes produced by your firm include, but are not limited to:

Diethylstilbestrol 1mg capsule – [redacted] capsules (veterinary or human)
Dipyrone 500 mg/ml injection – [redacted] (veterinary)
Flunixin Meglumine paste 1.5 mg/30 ml – [redacted] (veterinary)
Girseofulvin 2.5 gm/10 gm packet – [redacted] packets (veterinary)
17-alpha Hydroxyprogesterone Caproate injection – [redacted]
(veterinary or human)
Lidocaine 2% jelly 1000 ml – [redacted] (human)

Your firm purports to be a compounding pharmacy. But our inspection revealed that your firm engages in activities that fall outside the traditional practice of pharmacy compounding of drugs. We base this conclusion on the factors in CPG 460.200, and CPG 608.400 including the factors identified above. Your firm is engaged in the large-scale manufacturing of unapproved drugs, including copies of commercially available FDA-approved drugs, which raises safety concerns and poses a significant threat to the new drug approval process of the FDCA.

## E. Violations of the FDCA

Based on the foregoing findings, your firm and the drugs that your firm produces violate the following provisions of the FDCA:

1. Unapproved New Drugs Under Section 505 of the FDCA [21 U.S.C. § 355]

The human drug products produced by your firm are unapproved new drugs within the meaning of section 505 of the FDCA [21 U.S.C. § 355] and may not be introduced into interstate commerce without an FDA-approved drug application.

2. Misbranded Drugs Under Section 502(f)(1) of the FDCA [21 U.S.C. § 352(f)(1)]

Your human and animal drug products 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 use. These products are not exempt from section 502(f)(1) under 21 C.F.R. § 201.115 because they are new drugs within the meaning of section 201(p) of the FDCA [21 U.S.C. § 321(p)], or new animal drugs within the meaning of section 201(v) of the FDCA [21 U.S.C. § 321(v)], and they lack approved applications filed pursuant to sections 505 or 512 of the FDCA [21 U.S.C. §§ 355 and 360b].

3. Adulterated Animal Drugs Under Section 501(a)(5) of the FDCA [21 U.S.C. § 351(a)(5)]

The animal drugs that you compound from bulk active pharmaceutical ingredients (bulk APIs) are unsafe within the meaning of section 512 of the Act (21 U.S.C. § 360b) since they are not the subject of approved New Animal Drug Applications. As such, they are adulterated under section 501(a)(5) of the Act (21 U.S.C. § 351(a)(5)). Sections 512(a)(4) and (5) of the Act (21 U.S.C. §§ 360b(a)(4) and (5)), and their implementing regulations, allow some extralabel use of approved animal and human drugs, including compounding from approved animal and human drugs. These provisions, however, apply only to approved drugs and do not permit compounding from bulk APIs (see 21 C.F.R. § 530.13(a)).

4. Misbranded Drugs Under Section 502(o) of the FDCA [21 U.S.C. § 352(o)]

The human and animal drugs produced by your firm are misbranded under section 502(o) of the FDCA [21 U.S.C. § 352(o)] in that they are manufactured in an establishment not duly registered under section 510 of the FDCA [21 U.S.C. § 360], and the drugs have not been listed as required by section 510(j) of the FDCA [21 U.S.C. § 360(j)]. Your facility is not exempt from registration and drug listing under section 510(g) of the FDCA [21 U.S.C. § 360(g)] or 21 C.F.R. § 207.10.

We note that it is also your responsibility to assure that you comply with current Good Manufacturing Practice (GMP) as delineated in 21 C.F.R. Parts 210 and 211. Future inspections will assess your compliance with these regulations.

## F. Conclusion

The above violations are not intended to be an all-inclusive list of deficiencies. You should take prompt action to correct these deviations. Failure to promptly correct these deviations may result in additional regulatory action without further notice, including seizure of your products or injunction against you or your firm. Federal agencies are routinely advised of the issuance of warning letters so that they may take this information into account when considering the award of government contracts.

Please notify this office in writing within 15 working days of receipt of this letter of any steps you will take to correct the noted violations, including an explanation of each step being taken to prevent the recurrence of similar violations. If corrective action cannot be completed within 15 working days, please state the reason for the delay and the time frame within which the correction will be completed.

You should address your reply to this letter to the U.S. Food and Drug Administration, New Jersey District, 10 Waterview Boulevard, 3rd Floor, Parsippany, New Jersey 07054, Attn: Sarah A. Della Fave, Compliance Officer.

Sincerely,

Douglas I. Ellsworth
District Director
New Jersey District