



December 19, 2002

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Dockets Management Branch (HFA-305)  
Food and Drug Administration  
Department of Health and Human Services  
Room 1061  
5630 Fishers Lane  
Rockville, MD 20852

Re: Docket 02P-0312

On July 10, 2002, CollaGenex Pharmaceuticals, Inc. ("CollaGenex") submitted a citizen petition stating that, because Periostat (doxycycline hyclate) 20 mg capsules ("the capsules") were voluntarily withdrawn from sale, FDA must: 1) refuse to approve any ANDA for a generic version of the capsules until the agency determines that they were not withdrawn for reasons of safety or effectiveness; 2) refuse to receive or approve any ANDA that is not accompanied by a petition seeking a determination that the capsules were not withdrawn for reasons of safety or effectiveness (a "§ 314.122 petition"); and 3) rescind any previous receipt or approval of an ANDA that refers to the capsules as the listed drug. CollaGenex also filed a petition asking FDA to stay action on any ANDA for a generic version of the capsules until the agency responds to its citizen petition.

West-ward Pharmaceutical Corporation ("West-ward") responded to the CollaGenex petitions on August 28, 2002, arguing that its ANDA for a generic version of the capsules (ANDA 65-103) was submitted before the capsules were withdrawn from sale and, therefore, there is no need for FDA to determine whether the capsules were withdrawn for reasons of safety or effectiveness before approving the ANDA. West-ward also argued that a § 314.122 petition was not necessary, but submitted one nevertheless on August 13, 2002 (Docket 02P-0367).

West-ward's arguments are without merit. First, whether West-ward's ANDA was submitted to FDA before the capsules were withdrawn from sale is simply irrelevant to the requirement that FDA must refuse to approve any ANDA for a generic version of the capsules until it determines that they were not withdrawn for reasons of safety or effectiveness. FDA regulations provide that: "[a] determination whether a listed drug that has been voluntarily withdrawn from sale was withdrawn for safety or effectiveness reasons may be made by the agency at any time after the drug has been voluntarily withdrawn from sale, but must be made...prior to approving an abbreviated new drug application that refers to the listed drug[.]" 21 C.F.R. § 314.161(a)(1). See also 21 C.F.R. § 314.127(a)(11)(providing that one of the grounds for refusing to approve an ANDA is when "the agency has not determined whether the withdrawal [of the listed drug referred to by the ANDA] is for safety or effectiveness reasons"). There is nothing in the regulations to suggest that if an ANDA is submitted (or received) before the listed drug is withdrawn from sale, such a determination is unnecessary. Indeed, the regulations provide that the agency must make a determination about whether a listed drug is withdrawn for reasons of safety or effectiveness even when the withdrawal

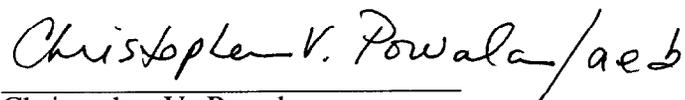
02P-0312

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occurs after ANDAs referring to the listed drug have been approved. 21 C.F.R. § 314.161(a)(2).

Second, although the timing of West-ward's ANDA submission is relevant to whether it should have been accompanied by a § 314.122 petition, the capsules were in fact withdrawn from sale before West-ward submitted its ANDA. According to a November 4, 2002 letter from attorneys for West-ward, the ANDA was "filed earlier this year," meaning at some time during 2002. (A copy of the letter is attached as Exhibit A.) According to West-ward's response to the CollaGenex petitions, the ANDA was submitted on August 30, 2001. If either of these statements is accurate, the capsules were withdrawn from sale before the ANDA was submitted. A drug is "considered to have been 'withdrawn from sale' if the applicant has ceased its own distribution of the drug[.]" Preamble to Proposed ANDA Regulations, 54 Fed. Reg. 28872, 28907 (July 10, 1989). The capsules were withdrawn from sale, therefore, when CollaGenex ceased distributing them on August 8, 2001.<sup>1</sup> As a result, West-ward's ANDA should have been accompanied by a § 314.122 petition.<sup>2</sup>

Sincerely,



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1. This date is reflected in the Form 2657 submitted to FDA by CollaGenex.

2. In its citizen petition, CollaGenex acknowledged that it was not possible to learn from the usual public sources that the capsules had been withdrawn from sale because of FDA's failure to move the capsules to the "Discontinued Drug Product List" in the Orange Book when CollaGenex notified FDA of their withdrawal from sale and its failure to publish a Federal Register notice regarding the withdrawal of the NDA for the capsule even though CollaGenex notified the agency of the withdrawal in September 2001. FDA remedied its first failure in August 2002, a month after CollaGenex filed its citizen petition and nearly a year after the agency was notified of the capsules' withdrawal from sale. FDA has yet to remedy the second failure.