



FEB _ 5 2004

WARNING LETTER

Food and Drug Administration
Center for Devices and
Radiological Health
2098 Gaither Road
Rockville, MD 20850

Via Federal Express

Randall V. Ehrlich, M.D.
Montefiore Medical Center
3400 Bainbridge Avenue
Bronx, New York 10467-2243

Dear Dr. Ehrlich:

This Warning Letter informs you of the objectionable conditions found during a Food and Drug Administration (FDA) inspection conducted at your clinical site, [REDACTED] and your former site, [REDACTED]. We note that the study was moved from the [REDACTED] to the [REDACTED] based on a decision between you and the study sponsor, [REDACTED]. This letter also requests that prompt corrective actions are implemented in response to the violations cited.

Mr. Andrew B. Paglia, an investigator from FDA's New York District Office, conducted the inspection at both sites during the period of September 15 through October 8, 2003. The purpose of the inspection was to determine if your activities and procedures as a clinical investigator for the study of the [REDACTED] [REDACTED] complied with applicable regulations. The [REDACTED] is a device as that term is defined under Section 201(h) of the Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C. 321(h)].

The inspection was conducted under a program designed to ensure that data and information contained in applications for Investigational Device Exemptions (IDE), Premarket Approval (PMA), and Premarket Notification [510(k)] submissions are scientifically valid and accurate. Another objective of the program is to ensure that human subjects are protected from undue hazard or risk during the course of scientific investigations.

Our review of the inspection report prepared by the New York District Office reveal violations of requirements of Title 21, Code of Federal Regulations (21 CFR), Part 50 - Protection of Human Subjects and Part 812 - Investigational Device Exemptions. You received a Form FDA 483, "Inspectional Observations," at the conclusion of the inspection that listed the deviations noted and discussed with you. The violations noted on both the Form FDA 483 and in our subsequent review of the inspection report are summarized below:

Failure to obtain and to document adequate informed consent. (21 CFR 812.100, 50.20, and 50.27)

The basic elements required of informed consent are set forth in 21 CFR 50.25(a) and include, among other things, the requirement that informed consent include a description of the procedures to be followed in an investigation. Investigators are responsible for ensuring that informed consent is obtained in accordance with FDA regulations per 21 CFR 812.100.

During the inspection, you mentioned that approximately 41 subjects were enrolled in the study of the [REDACTED] at the [REDACTED] and that a signed informed consent document (ICD) was obtained for each of the subjects. However, the inspection revealed that there were no signed ICDs available for review. Also noted was the enrollment of 40 subjects in the study of the [REDACTED] at the [REDACTED] where there were also no ICDs available for review. In addition, at the [REDACTED] site, review of four patient files from the studies of the [REDACTED] revealed that the ICDs were either not available for review or lacked necessary signatures by the persons obtaining consent and witnesses.

Failure to maintain accurate, complete, and current subject records. (21 CFR 812.140(a))

During the inspection, a complete review of the study records for the [REDACTED] was conducted at the [REDACTED] and the [REDACTED]. The review revealed that you failed to maintain accurate, complete, and current records relating to your investigation. For example:

- limited documentation was available for review concerning correspondence with the Investigational Review Board, the sponsor ([REDACTED]), and the monitor ([REDACTED]), including required reports;
- no records were available documenting the receipt of the device, the names of all persons who used the device and when the device was returned to the sponsor;
- for subjects in the [REDACTED] study, no documents were available for review, including records of each subject's case history, informed consent, or medical records;
- no documents were available for review concerning adverse device events (whether anticipated or unanticipated), information and data on the condition of

each subject upon entering and during the course of the investigation, including information about relevant medical history and the results of all diagnostic tests; and

- no documents were available for review concerning a record of exposure of each subject to the investigational device, including the date and time of each use and any other therapy.

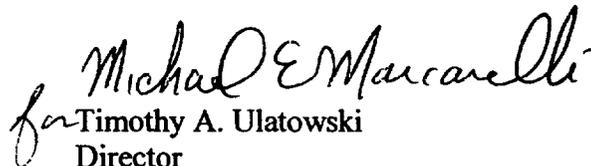
The violations listed above are not intended to be an all-inclusive list of violations at your site. As a clinical investigator, it is your responsibility to ensure that investigations in which you participate are conducted in accordance with applicable FDA regulations. Failure to adhere to FDA regulations regarding recordkeeping, and obtaining informed consent can adversely affect the results obtained.

Please acknowledge receipt of this letter **within fifteen (15) working days**, and provide in writing the specific steps you will take to correct all of the violations discussed in this letter and to prevent the recurrence of similar violations in this study and future studies. Please send this information to the Food and Drug Administration, Center for Devices and Radiological Health, Office of Compliance, Division of Bioresearch Monitoring, Program Enforcement Branch II (HFZ-312), 2098 Gaither Road, Rockville, Maryland, 20850, Attention: Contress Braxton. Failure to respond could result in further regulatory action, including the initiation of investigator disqualification procedures.

A copy of this letter has been sent to FDA's New York District Office, 158-15 Liberty Avenue, Jamaica, New York 11433. We request that a copy of your response also be sent to that office.

If you have any questions, feel free to contact Ms. Contress Braxton at (301) 594-4723, ext. 138.

Sincerely yours,

Handwritten signature of Michael E. Marcarelli in cursive script.

for Timothy A. Ulatowski
Director
Office of Compliance
Center for Devices and
Radiological Health

Purged Copies to:

IRB

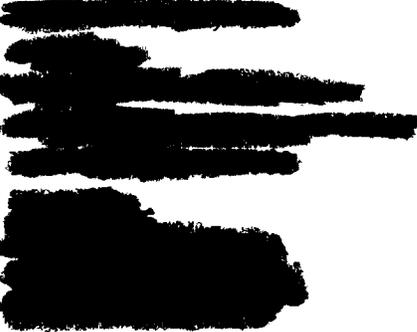
Victor W. Sidel, M.D.

Chair

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FDA

Carolyn Hommel

Food and Drug Administration

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Office of Human Subject Protection

Kristina Borrer, Ph.D.

Director, Division of Compliance Oversight

Office of Human Research Protections

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