FDA U.S. FOOD & DRUG ADMINISTRATION
OFFICE OF REGULATORY AFFAIRS

UNITED PARCEL SERVICE
SIGNATURE REQUIRED

February 3, 2017

Dr. John D. Musil
CEO/Founder
Avella of Deer Valley, Inc. dba Avella Specialty Pharmacy
1606 W. Whispering Wind Drive, 2nd floor
Phoenix, AZ 85085

Dear Dr. Musil:

You originally registered with the U.S. Food and Drug Administration (FDA) as an outsourcing facility under section 503B of the Federal Food, Drug, and Cosmetic Act (FDCA) [21 U.S.C. § 353b][1] on February 24, 2014, and most recently on October 13, 2016. From July 20, 2015, to July 31, 2015, FDA investigators inspected your facility, Avella of Deer Valley, Inc., located at 23620 N. 20th Drive, Suites (b) (4) and (b) (4), Phoenix, AZ 85085. This letter addresses suite (b) (4), only.

During the inspection, the investigators observed that you failed to meet the conditions under section 503B of the FDCA necessary for drugs produced by an outsourcing facility to qualify for exemptions from certain requirements under the FDCA. FDA issued a Form FDA 483 to your facility on July 29, 2015, and subsequently issued an amended Form FDA 483 on July 31, 2015. FDA acknowledges receipt of your facility's response, dated August 20, 2015, and your updated response, dated April 29, 2016.

Based on this inspection, it appears your facility is producing drugs that violate the FDCA. While FDA has decided in its discretion that your violations of the FDCA do not meet the threshold of regulatory significance for a Warning Letter at this time, you should nevertheless promptly correct the violations discussed below and as identified in the Form FDA 483. FDA may reconsider the regulatory significance of these violations based on its review of any new information that may become available concerning your facility.

A. Compounded Drugs under the FDCA

The Drug Quality and Security Act (DQSA) was enacted on November 27, 2013. Title I of the DQSA, the Compounding Quality Act (CQA), added a new section 503B to the FDCA. Under section 503B(b), a compounder can register as an outsourcing facility with FDA. Drug products compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility can qualify for exemptions from the drug approval requirements in section 505 of the FDCA [21 U.S.C. § 355(a)], the requirement in section 502(f)(1) of the FDCA [21 U.S.C. §

[1] *See* Pub. L. No. 113-54, § 102(a), 127 Stat. 587, 587-588 (2013).

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352(f)(1)] that labeling bear adequate directions for use, and the Drug Supply Chain Security Act requirements in section 582 of the FDCA [21 U.S.C. § 360eee-1] if the conditions in section 503B of the FDCA are met.

An outsourcing facility, which is defined in section 503B(d)(4) of the FDCA [21 U.S.C. § 353b(d)(4)], is a facility at one geographic location or address that — (i) is engaged in the compounding of sterile drugs; (ii) has elected to register as an outsourcing facility; and (iii) complies with all of the requirements of this section. Outsourcing facilities must comply with other provisions of the FDCA, including section 501(a)(2)(B) [21 U.S.C. § 351(a)(2)(B)], regarding current good manufacturing practice (CGMP), and section 501(a)(2)(A) [21 U.S.C. § 351(a)(2)(A)], regarding insanitary conditions. Generally, CGMP requirements for the preparation of drug products are established in Title 21 of the Code of Federal Regulations (CFR) parts 210 and 211.

In your April 29, 2016, response, you indicate that, "Avella has made the decision (b) (4)

This letter addresses (b) (4) that you indicated during the inspection that you consider to be your outsourcing facility, Suite (b) (4). FDA has determined that your operations in Suite (b) (4) fail to meet the conditions of section 503B, resulting in violations of the FDCA that are discussed in section B, below.[2]

B. Violations of the FDCA

The FDA investigators observed that your facility (Suite (b) (4) only) failed to meet the conditions of section 503B. During the inspection, FDA investigators noted that:

1. Some of your facility's drug products do not include the following information on their labels: the statements, "This is a compounded drug"[3] and "Not for resale;"[4] storage and handling instructions; dosage form; and the correct address of your outsourcing facility.[5] [Section 503B(a)(10)(A) of the FDCA (21 U.S.C. §353b(a)(10)(A))].

2. Some of your facility's drug products do not include the following required information on either the drug product label or the container: a list of active and inactive ingredients, identified by established name and the quantity or proportion of each ingredient. [Section 503B(a)(10) of the FDCA].

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[2] We note that your firm itself has previously identified Suite (b)(4) as the "outsourcing facility." In particular, Avella's initial registration and subsequent re-registration with FDA as an outsourcing facility listed Suite (b) (4) as the facility location (revised to Suite (b) (4) on July 23, 2015, after the initiation of FDA's inspection). Furthermore, as discussed in Section B, during the inspection, FDA investigators noted that your 503B product labeling identified Suite (b)(4) as the outsourcing facility.

[3] Instead, they include one of the following statements: "This drug product was compounded by…" or "This medication was compounded." These statements do not meet the statutory requirement in section 503B(a)(10)(A)(i).

[4] Instead, some include the statement, "Caution: Federal law prohibits transfer of this drug to any person other than the patient for whom it is prescribed." This statement does not meet the statutory requirement in section 503B(a)(10)(A)(iii)(IX).

[5] Specifically, some of your facility's drug product labels identify Suite (b)(4) rather than Suite (b)(4) as the address of the "applicable outsourcing facility." This is inconsistent with the information that you communicated to investigators during the inspection.

3. Your facility failed to submit a product report to FDA upon registration of your outsourcing facility, as well as once during the months of June 2014 and December 2014, identifying the drug products that you compounded during the previous 6-month period [Section 503B(b)(2) of the FDCA (21 U.S.C. §353b(b)(2))]. You also submitted your December 2014 drug product report over four months after the due date, and it did not identify all drug products that you compounded between June and November 2014.

4. The June 2015 product report submitted to FDA by your facility failed to identify all drug products that you compounded during the previous 6-month period [Section 503B(b)(2) of the FDCA.].

Because your compounded drug products have not met all of the conditions in section 503B, they are not eligible for the exemptions under section 503B from the FDA approval requirements in section 505, the requirement under section 502(f)(1) that labeling bear adequate directions for use, and the Drug Supply Chain Security Act requirements described in section 582 of the FDCA.[6]

Specific violations are described below.

Unapproved New Drug Products

You do not have any FDA-approved applications on file for your drug products.[7] Under sections 301(d) and 505(a) of the FDCA [21 U.S.C. §§ 331(d) and 355(a)], a new drug may not be introduced or delivered for introduction into interstate commerce unless an application approved by FDA under section 505 of the FDCA is in effect for the drug.

Misbranded Drug Products

You compound drug products that are intended for conditions that are not amenable to self-diagnosis and treatment by individuals who are not medical practitioners: therefore, adequate directions for use cannot be written so that a layman can use these products safely for their intended uses. Consequently, their labeling fails to bear adequate directions for their intended uses, causing them to be misbranded under section 502(f)(1) of the FDCA, and they are not exempt from the requirements of section 502(f)(1) of the FDCA (*see, e.g.*, 21 CFR 201.115). It is a prohibited act under section 301(k) of the FDCA to do any act with respect to a drug, if such act is done while the drug is held for sale after shipment in interstate commerce and results in the drug being misbranded.

Failure to Report Drugs

As noted above, your facility failed to submit a report to FDA upon initial registration as an outsourcing facility, as well as once during the month of June 2014 and December 2014, identifying the drug products that you compounded during the previous 6-month period. The

[6] See, e.g., section 503B(a)(11) of the FDCA [21 U.S.C. § 353b(a)(11)].

[7] The specific products made by your firm are drugs within the meaning of section 201(g) of the Act, [21 U.S.C. § 321(g)] because they are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases and/or because they are intended to affect the structure or any function of the body. Further, they 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 as safe and effective for their labeled uses.

failure to report drugs by an entity that is registered with FDA in accordance with section 503B(b) is a prohibited act under section 301(ccc)(3) of the FDCA [21 U.S.C. § 331(ccc)(3)].

C. Corrective Actions

In your August 20, 2015 response, you described certain corrective actions you took in response to the Form FDA 483 observations. While several of your proposed corrective actions appear adequate, the labeling deficiencies described above for the labels of drug products compounded in your outsourcing facility located in Suite (b) (4) must be corrected. We remind you that all drug products compounded in an outsourcing facility (including those drug products compounded pursuant to patient-specific prescriptions) must be labeled in accordance with section 503B to qualify for the exemptions under section 503B of the FDCA. We will evaluate the adequacy of your corrective actions at a future inspection.

Lastly, we remind you of the requirement under section 503B(b)(2)(A) of the FDCA that outsourcing facilities submit a report, once during the month of June of each year, and once during the month of December of each year, identifying all drug products (including patient specific and non-patient specific drug products) compounded during the previous 6-month period.

D. Conclusion

The violations cited in this letter are not intended to be an all-inclusive statement of violations at your facility. You are responsible for investigating and determining the causes of the violations identified above and for preventing their recurrence or the occurrence of other violations. It is your responsibility to ensure that your firm complies with all requirements of federal law, including FDA regulations.

Within thirty working days of receipt of this letter, please notify this office in writing of the specific steps you have taken to correct violations. Please include an explanation of each step being taken to prevent the recurrence of violations, as well as copies of related documentation. If you do not believe that the products discussed above are in violation of the FDCA, include your reasoning and any supporting information for our consideration. If the corrective actions cannot be completed within fifteen working days, state the reason for the delay and the time frame within which the corrections will be completed.

Please address your reply to Ms. Jessica Mu at the address above.

If you have questions regarding the contents of this letter, please contact Jessica Mu at (949) 608-4477, or to Jessica.Mu@fda.hhs.gov.

Sincerely,

CDR Steven E. Porter, Jr.
Los Angeles District Director

sp: JM