U.S. FOOD & DRUG ADMINISTRATION
OFFICE OF REGULATORY AFFAIRS
OFFICE OF PHARMACEUTICAL QUALITY OPERATIONS

July 22, 2019

Case # 572225

VIA UPS OVERNIGHT

Arta Shaun Noorian
Chief Executive Officer
Empower Pharmacy
5980 West Sam Houston Parkway North, Suite 300
Houston, Texas 77041

Mr. Noorian:

You 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 July 16, 2016, October 13, 2016, October 26, 2017 and October 11, 2018. From January 10, 2018 to January 24, 2018, FDA investigators inspected your facility, Empower Pharmacy, located at 5980 West Sam Houston Parkway North, Suite 300, Houston, Texas 77041.

During the inspection, the investigators noted that a portion of the drug products you produced failed to meet the conditions of section 503B of the FDCA necessary for drugs produced by an outsourcing facility to qualify for exemptions from certain provisions of the FDCA. FDA issued a Form FDA 483 to your facility on January 24, 2018. FDA acknowledges receipt of your facility's responses, dated February 13, 2018 and June 15, 2018.

Based on this inspection, it appears you produced drugs that violate the FDCA.

A. Compounded Drug Products under the FDCA

Under section 503B(b) of the FDCA, 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 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. § 352(f)(1)] that labeling bear adequate directions for use and the Drug Supply Chain

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

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. [2]

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 applicable provisions of the FDCA, including section 501(a)(2)(B) [21 U.S.C. § 351(a)(2)(B)], regarding current good manufacturing practices (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 addition, for a drug product compounded using bulk drug substances to qualify for the exemptions under section 503B, the bulk drug substances that are used must appear on a list established by the Secretary identifying bulk drug substances for which there is a clinical need ("503B bulks list"), or the compounded drug must appear on the drug shortage list in effect under section 506E of the FDCA at the time of compounding, distribution, and dispensing (section 503B(a)(2)(A) of the FDCA [21 U.S.C. § 353b(a)(2)(A)]).

B. Failure to Meet the Conditions of Section 503B

During the inspection, FDA investigators noted that drug products produced by your facility failed to meet the conditions of section 503B. For example, the investigators noted that your facility compounded drug products using 7-keto DHEA (7-ketodehydroepiandrosterone), aminophylline, arginine, coenzyme Q-10 (ubiquinone), ergoloid mesylates, GABA (gamma-aminobutyric acid), GHRP-2 (Growth Hormone Releasing Peptide-2), GHRP-6 (Growth Hormone Releasing Peptide-6), HCG (Human Chorionic Gonadotropin), kojic acid, latanoprost, L-carnitine, melatonin, phentermine, pregnenolone, pyridoxine, sermorelin, and sildenafil. Drug products compounded using the bulk drug substances listed above are not eligible for the exemptions provided by section 503B, because the bulk substances do not appear on the 503B bulks list and are not used to compound a drug that appears on the drug shortage list. [3]

[2] We remind you that there are conditions, other than those discussed in this letter, that must be satisfied to qualify for the exemptions in section 503B of the FDCA.

[3] In January 2017, FDA issued a final guidance titled, *Interim Policy on Compounding Using Bulk Drug Substances Under Section 503B of the Federal Food, Drug, and Cosmetic Act (Revision 1)*. This guidance describes FDA's interim regulatory policy for outsourcing facilities registered under section 503B of the FDCA while the 503B bulks list is being developed. Specifically, the guidance sets out conditions under which FDA generally does not intend to take action against an outsourcing facility for compounding a drug product using a bulk drug substance that is not included on the 503B list where the drug product also does not appear on the drug shortage list in effect under section 506E at the time of compounding, distribution, and dispensing. These conditions include that the bulk drug substance appears on "503B Category 1 – Bulk Drug Substances Under Evaluation", which includes substances that may be eligible for inclusion on

Because your compounded drug products have not met all of the conditions of section 503B, they are not eligible for the exemptions in that section from the FDA approval requirements of 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.

Specific violations are described below.

C. Violations of the FDCA

Unapproved New Drug Products

You do not have any FDA-approved applications on file for drug products that you compound.[4] Under sections 505(a) and 301(d) and of the FDCA [21 U.S.C. §§ 331(d)], a new drug may not be introduced into 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. Marketing of these products, or other applicable products, without an approved application violates these provisions of the FDCA.

Misbranded Drug Products

You compound drug products that are intended for conditions 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.[5] The introduction or delivery for introduction into interstate commerce of these products therefore violates section 301(a) of the FDCA. Further, it is also 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.

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the 503B bulks list, was nominated with adequate support for FDA to evaluate it and has not been identified by FDA as a substance that appears to present significant safety risks pending further evaluation. 7-keto DHEA, arginine, coenzyme Q-10, GABA, GHRP-2, GHRP-6, kojic acid, L-carnitine, pregnenolone, and pyridoxine were nominated for inclusion on the 503B bulks list without adequate support for FDA to evaluate the substances. The other substances were not nominated. For additional information, see the guidance at http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM469122.pdf

[4] 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.

[5] Your compounded drug products are not exempted from the requirements of section 502(f)(1) of the FDCA by regulations issued by the FDA (see, e.g., 21 CFR 201.115).

D. Corrective Actions

We have reviewed your facility's responses dated February 13, 2018 and June 15, 2018.

Regarding observations related to the conditions of section 503B of the FDCA, your firm's response to FDA's request to cease production and distribution of drug products produced with ineligible bulk drug substances is inadequate. You stated in your June 15, 2018 response that "given the substantial state of flux surrounding FDA's proposed Section 503B bulks list, Empower respectfully declines to discontinue serving its patients and customers with these safe and appropriate drug products compounded using bulk substances." As noted above, drug products compounded using 7-keto DHEA (7-ketodehydroepiandrosterone), aminophylline, arginine, coenzyme Q-10 (ubiquinone), ergoloid mesylates, GABA (gamma-aminobutyric acid), GHRP-2 (Growth Hormone Releasing Peptide-2), GHRP-6 (Growth Hormone Releasing Peptide-6), HCG (Human Chorionic Gonadotropin), kojic acid, latanoprost, L-carnitine, melatonin, phentermine, pregnenolone, pyridoxine, sermorelin, and sildenafil are not eligible for the exemptions provided by section 503B of the FDCA.

In addition, for your awareness, we note that on July 23, 2018, and again on September 4, 2018, FDA updated the categories under its interim regulatory policy on compounding using bulk drug substances under section 503B of the FD&C Act. During this update, hydroquinone, pentoxifylline, and tretinoin, which originally appeared in 503B Category 3: Bulk Drug Substances Nominated Without Adequate Support, were recategorized to 503B Category 1: Bulk Drug Substances Under Evaluation. See http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/UCM467374.pdf. At this time, FDA generally does not intend to take action against an outsourcing facility for compounding a drug product using a bulk drug substance that does not appear on the 503B bulks list and where the drug product also does not appear on the drug shortage list in effect under section 506E of the Act under certain conditions, including that the bulk drug substance appears in 503B Category 1 (which now includes hydroquinone, pentoxifylline, and tretinoin) and that the drug product compounded from the bulk drug substance is compounded in compliance with the other conditions of section 503B. For more information, please see our guidance titled, "Interim Policy on Compounding Using Bulk Drug Substances Under Section 503B of the Federal Food, Drug, and Cosmetic Act," available at: http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM469122.pdf.

Should you continue to compound and distribute drug products that do not meet the conditions of section 503B, the compounding and distribution of your drugs would be subject to the new drug approval requirement, the requirement to label drug products with adequate directions for use, and the Drug Supply Chain Security Act requirements.

E. 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 (30) working days of receipt of this letter, please notify this office in writing of the specific steps that 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 you cannot complete corrective action within thirty (30) working days, state the reason for the delay and the time within which you will complete the correction.

Your written notification should refer to case # 572225.

Please electronically submit your reply, on company letterhead, to H.L. Jamillah Selby, Compliance Officer, at ORAPHARM2_RESPONSES@fda.hhs.gov. In addition, please submit a signed copy of your response to Jamillah.selby@fda.hhs.gov and john.diehl@fda.hhs.gov.

If you have questions regarding the contents of this letter, you may contact H. L. Jamillah Selby via phone at 215-490-8417 or email at jamillah.selby@fda.hhs.gov.

Sincerely,

Digitally signed by Monica R. Maxwell -S
DN: c=US, o=U.S. Government, ou=HHS, ou=FDA, ou=People, 0.9.2342.19200300.100.1.1=1300060034, cn=Monica R. Maxwell -S
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Monica R. Maxwell
Program Division Director
Office of Pharmaceutical Quality Operations, Division II