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

CMS #608311

EMAIL DELIVERY
RETURN RECEIPT REQUESTED

July 28, 2020

David S. Elefterion
Owner
Apex Pharmacy, LLC
165 Ragland Rd.
Beckley, WV 25801-9763

Dear Dr. Elefterion:

From November 4, 2019, to November 7, 2019, U.S. Food and Drug Administration (FDA) investigators inspected your facility, Apex Pharmacy, LLC located at 165 Ragland Rd., Beckley, WV 25801. During the inspection, the investigators noted that the drug products you produced, failed to meet the conditions of section 503A of the Federal Food, Drug, and Cosmetic Act (FDCA) [21 U.S.C. § 353a] for exemption from certain provisions of the FDCA. In addition, the investigator noted deficiencies in your practices for producing drug products, which put patients at risk.

FDA issued a Form FDA 483 to your firm on November 7, 2019. FDA acknowledges receipt of your facility's response, dated December 11, 2019. Based on this inspection, it appears that you produced drug products that violate the FDCA.

A. Compounded Drug Products Under the FDCA

Section 503A of the FDCA describes the conditions under which human drug products compounded by a licensed pharmacist in a State licensed pharmacy or a Federal facility, or a licensed physician, qualify for exemptions from three sections of the FDCA: compliance with current good manufacturing practice (CGMP) (section 501(a)(2)(B)); labeling with adequate directions for use (section 502(f)(1)); and FDA approval prior to marketing (section 505) [21 U.S.C. §§ 351(a)(2)(B), 352(f)(1) and 355(a)].[1] Receipt of valid prescriptions for individually-identified patients is one of the conditions for the exemptions under section 503A.

[1] 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 503A of the FDCA.

B. Failure to Meet the Conditions of Section 503A

During the inspection, the FDA investigators noted that drug products produced by your firm failed to meet the conditions of section 503A. For example, the investigators noted that your firm did not receive valid prescriptions for individually-identified patients for a portion of the drug products you produced, including indomethacin suppository and promethazine gel.

Therefore, you compounded drug products that do not meet the conditions of section 503A and are not eligible for the exemptions in that section, including the FDA approval requirement of section 505 of the FDCA, the requirement under section 502(f)(1) of the FDCA that labeling bear adequate directions for use, and the requirement of compliance with CGMP under section 501(a)(2)(B) of the FDCA. In the remainder of this letter, we refer to your drug products that do not qualify for exemptions under section 503A as the "ineligible drug products."

Specific violations are described below.

C. Violations of the FDCA

Adulterated Drug Products

The FDA investigators noted that drug products were prepared, packed, or held under insanitary conditions, whereby they may have become contaminated with filth or rendered injurious to health, causing your drug products to be adulterated under section 501(a)(2)(A) of the FDCA. For example, the investigators observed that non-pharmaceutical grade water was used in the formulation of drug products and there was the potential for non-microbial contamination observed in your production area, as demonstrated by chipped paint on the (b) (4) balance.

It is a prohibited act under section 301(k) of the FDCA [21 U.S.C. § 331(k)] 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 adulterated.

Misbranded Drug Products

The ineligible drug products you compounded 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.[2] Accordingly, these ineligible drug products are misbranded under section 502(f)(1) of the FDCA. 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.

D. Corrective Actions

We have reviewed your firm's response to the Form FDA 483.

Regarding your response related to the insanitary conditions, we cannot fully evaluate the adequacy of the following corrective action described in your response because you did not include sufficient information or supporting documentation. Specifically, the (b) (4) balance was replaced with a new balance during the inspection, but you did not indicate the make and model of the new balance and if it is suitable for pharmaceutical purposes. You did not explain how you will look for signs of deterioration

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

or how it will be cleaned. Nor did you include any updated procedure or retraining of staff which would ensure that staff would make appropriate notifications if the balance experiences deterioration.

You state that you "will use (b) (4), if not (b) (4) water, moving forward," but did not provide any specifics as to whether you will produce this water yourself or if you will obtain it through purchasing it in finished form. Additionally, you state that "staff will comply with proper gowning and gloving procedures." However, you did not provide documentation of a procedure and/or retraining of staff with your proper procedure. Furthermore, you did not provide an assessment of how products released to the market remain free from contamination when they were produced under the above-mentioned insanitary conditions.

As explained above, receipt of valid prescriptions for individually-identified patients is a condition of section 503A, which your firm failed to meet for a portion of the drug products you produced.

Should you continue to compound and distribute drug products that do not meet the conditions of section 503A, the compounding and distribution of such drugs would be subject to the new drug approval requirement, the requirement to label drug products with adequate directions for use, and the drug CGMP regulations. Before doing so, you must comply with the requirements of section 505 and 502(f)(1) and fully implement corrections that meet the minimum requirements of the CGMP regulations.[3]

In addition to the issues discussed above, you should note that CGMP requires the implementation of quality oversight and controls over the manufacture of drugs, including the safety of raw materials, materials used in drug manufacturing, and finished drug products. *See* section 501 of the FDCA. If you choose to contract with a laboratory to perform some functions required by CGMP, it is essential that you select a qualified contractor and that you maintain sufficient oversight of the contractor's operations to ensure that it is fully CGMP compliant. Regardless of whether you rely on a contract facility, you are responsible for assuring that drugs you produce are neither adulterated nor misbranded. [*See* 21 CFR 210.1(b), 21 CFR 200.10(b)].

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.

Send your electronic response to ORAPHARM1_Responses@fda.hhs.gov and copy Nancy Scheraga, Compliance Officer, at the Nancy.Scheraga@fda.hhs.gov. Please identify your response with FEI #3012958560 and CMS Case #608311.

If you have questions regarding the contents of this letter, please contact Nancy Scheraga at 973-331-4910 or by email at Nancy.Scheraga@fda.hhs.gov.

[3] In this letter we do not address whether your proposed corrective actions would resolve the CGMP violations noted above.

Sincerely,

Diana Amador-toro -S

Digitally signed by Diana Amador-toro -S
DN: c=US, o=U.S. Government, ou=HHS, ou=FDA, ou=People, 0.9.2342.19200300.100.1.1=1300011579, cn=Diana Amador-toro -S
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Diana Amador-Toro
Program Division Director/District Director
Office of Pharmaceutical Quality Operations
Division I