Inspections, Compliance, Enforcement, and Criminal Investigations

Wedgewood Village Pharmacy, Inc. 2/21/14

Department of Health and Human Services

Public Health Service
Food and Drug Administration
Waterview Corporate Center
10 Waterview Blvd., 3rd Floor
Parsippany, NJ 07054

WARNING LETTER

February 21, 2014

VIA UNITED PARCEL SERVICE

File No.: 14-NWJ-05

Ms. Ludmilla Malmberg
Owner
Wedgewood Village Pharmacy
405 Heron Drive
Swedesboro, New Jersey 08085

Dear Ms. Malmberg:

Between November 9, 2012 and February 11, 2013, U.S. Food and Drug Administration (FDA) investigators conducted an inspection of your facility, Wedgewood Village Pharmacy, Inc., located at 405 Heron Drive, Suite 200, in Swedesboro, NJ 08085. During the inspection, the investigators noted that you were not receiving valid prescriptions for individually-identified patients for a portion of the human drug products you were producing. In addition, the investigators observed serious deficiencies in your practices for producing sterile drug products, which put patients at risk. For example, during the inspection, we found personnel engaged in aseptic operations with exposed skin and hair, jewelry, holes in gowns, and in-ear headphones hanging outside of the gown. We also observed that supplies and equipment were not routinely disinfected prior to their placement within the ISO-5 areas, and staff did not routinely disinfect gloved hands after handling non-sterile items and prior to resuming sterile production. In addition, our inspection found multiple complaints of adverse events, including lack of efficacy and injection site reactions, that were inadequately investigated. These observations and others were noted on an FDA Form 483 issued on February 11, 2013. We acknowledge receipt of your firm's response to. the FDA Form 483 dated March 7, 2013, and the updates to that response dated May 3, 2013 and August 2, 2013.

Based on this inspection, it appears that you are producing human drugs that violate the Federal Food, Drug, and Cosmetic Act (FDCA).***1***

A. Compounded Human Drugs Under the FDCA

As you know, at the time of FDA's inspection, there were conflicting judicial decisions regarding the applicability of section 503A of the FDCA [21 U.S.C. § 353a], which exempts compounded drugs for human use from several key statutory requirements if certain conditions are met.***2*** Because your firm was a party to *Western States Med Ctr. v. Shalala,* 238 F.3d 1090 (9th Cir. 2001), at the time of our inspection, FDA applied the enforcement policy articulated in Compliance Policy Guide 460.200 ["Pharmacy Compounding"], issued by FDA on May 29, 2002, [see Notice of Availability, 67 Fed. Reg. 39,409 (June 7, 2002)] to your compounding of human drugs. The Pharmacy Compounding CPG identified a non-exhaustive list of factors for the Agency to consider in deciding whether to initiate an enforcement action with respect to the compounding of human drugs. Receipt of valid prescriptions for individually-identified patients prior to distribution of compounded drugs was relevant not only for the Pharmacy Compounding CPG, but also section 503A of the FDCA.***3***

Since FDA inspected your facility, Congress enacted and the President signed into law the Drug Quality and Security Act (DQSA),***4*** which amended FDCA section 503A by eliminating the advertising restrictions that had been the basis for the conflicting judicial decisions. The DQSA otherwise left section 503A intact, and so clarified that the remainder of section 503A, including the requirement of valid prescriptions for individually-identified patients, is applicable in every federal judicial circuit.***5***

During the FDA inspection, investigators observed that your firm does not receive valid prescriptions for individually-identified patients for a portion of the drug products you produce for human use. Based on this factor alone, those drugs did not qualify for the agency's exercise of enforcement discretion set forth in the Pharmacy Compounding CPG and likewise they were not entitled to the statutory exemptions for compounded drugs described in section 503A of the FDCA. Accordingly, the drugs you compound without valid prescriptions for individually-identified patients are not entitled to the exemptions in section 503A.

In addition, we remind you that there are a number of other conditions that must be satisfied to qualify for the exemptions in section 503A of the FDCA.***6***

B. Violations of the FDCA - Human Drug Products

Because the drug products that you manufacture and distribute without valid prescriptions for individually-identified patients are not the subject of approved applications, they are unapproved new drugs and misbranded drugs in violation of sections 505(a) and 502(f)(1) of the FDCA [21 U.S.C. §§ 355(a) and 352(f)(1)]. In addition, your sterile drug products were prepared, packed, or held under insanitary conditions whereby they may have been contaminated with filth, or whereby they may have been rendered injurious to health. As such, all sterile products you manufactured were adulterated within the meaning of section 501(a)(2)(A) of the FDCA [21 U.S.C. § 351(a)(2)(A)]. Furthermore, because you manufacture and distribute drugs without valid prescriptions for individually-identified patients, the manufacture of those drugs is also subject to FDA's Current Good Manufacturing Practice (CGMP) regulations for Finished Pharmaceuticals, Title 21, Code of Federal Regulations (CFR), Parts 210 and 211. FDA investigators observed significant CGMP violations at your facility, causing such drug product(s) to be adulterated within the meaning of section 501(a)(2)(B) of the FDCA [21 U.S.C. § 351(a)(2)(B)].

1. Unapproved New Drug Products

You do not have any FDA-approved applications on file for the drug products for which you have not obtained valid prescriptions for individually-identified patients.***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 into or delivered for introduction into interstate commerce unless an application approved by FDA under section 505 of the FDCA [21 U.S.C. § 355] is in
effect for the drug. Your marketing of these products,or other applicable products, without an approved application violates these provisions of the FDCA.

2. Misbranded Drug Products

Additionally, because the drug products for which you have not obtained valid prescriptions for individually-identified patients are intended for conditions that are not amenable to self-diagnosis and treatment by individuals who are not medical practitioners, adequate directions cannot he written for them 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 [21 U.S.C. § 352(f)(1)], and they are not exempt from the requirements of section 502(f)(1) of the FDCA *[see, e.g.,* 21 C.F.R. 201.115]. The introduction or delivery for introduction into interstate commerce of these drug products therefore violates sections 301(a) of the FDCA [21 U.S.C § 331(a)]. It is also 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 of the components used to make the drug and results in the drug being misbranded.

3. Adulteration Charges

Additionally, FDA investigators noted that your sterile 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 [21 U.S.C. § 351(a)(2)(A)]. These conditions included personnel engaged in aseptic operations with exposed skin and hair, jewelry, holes in gowns, and in-ear headphones hanging outside of the gown. Additional insanitary conditions included failure to routinely disinfect supplies and equipment prior to their placement within the "ISO-5" areas and the gloved hands of personnel engaged in aseptic manipulations.

FDA investigators also noted CGMP violations at your facility, causing those drug products for which you have not obtained valid prescriptions for individually-identified patients to be adulterated under section 501(a)(2)(B) of the FDCA [21 U.S.C. § 351(a)(2)(B)). The violations include, for example:

1. Your firm failed to establish an adequate system for cleaning and disinfecting the room and equipment to produce aseptic conditions [21 C.F.R. 211.42(c)(10)(v)].
2. Your firm does not have, for each batch of drug product purporting to be sterile and/or pyrogen-free, an appropriate laboratory determination of satisfactory conformance to final specifications for the drug product [21 C.F.R. 211.167(a)].
3. Your firm failed to clean and, where indicated by the nature of the drug, sterilize and process container closures to remove pyrogenic properties to assure they are suitable for their intended use [21 C.F.R. 211.94(c)].
4. Your firm failed to establish and follow appropriate written procedures that are designed to prevent microbiological contamination of drug products purporting to be sterile, and that include validation of all aseptic and sterilization processes [21 C.F.R. 211.113(b)].
5. Your firm failed to ensure that manufacturing personnel wear clothing appropriate to protect drug product from contamination [21 C.F.R. 211.28(a)].
6. Your firm failed to establish an adequate system for monitoring environmental conditions in aseptic processing areas [21 C.F.R. 211.42(c)(10)(iv)].
7. Your firm has not established adequate written procedures describing the handling of all written and oral complaints regarding a drug product [21 C.F.R. 211.198(a), 21 C.F.R. 192].
8. Your firm has failed to perform operations related to the manufacture, processing, and packing of penicillin in facilities separate from those used for other drug products for human use [21 C.F.R. 211.42(d)].

C. Corrective Actions

In your response to the FDA-483 dated March 7, 2013, and your updates to this response dated May 3, 2013 and August 2, 2013, you indicated that your firm has instituted changes or is planning to institute changes to address our inspectional findings with certain corrective actions. In a number of your planned corrections, you referenced your purported compliance with United States Pharmacopeia (USP)-National Formulary (NF) General Chapter <797> Pharmaceutical Compounding -- Sterile Preparations. As noted above, your firm has manufactured and distributed a significant number of human drugs without valid prescriptions for individually-identified patients. As stated above, your manufacture of such drugs is subject to FDA's drug CGMP regulations, 21 C.F.R. Parts 210 and 211.

Your firm's planned corrections do not meet the minimum requirements of 21 C.F.R. Part 211, and there is no assurance that the human drug product(s) produced by your firm without valid prescriptions for individually-identified patients conform to the basic quality standards that ensure safety, identity, strength, quality, and purity. To address this issue, and also to ensure compliance with section 501(a)(2)(A), FDA strongly recommends that your management undertake a comprehensive assessment of your manufacturing operations, including facility design, procedures, personnel, processes, materials, and systems. In particular, this review should assess your aseptic processing operations. A third party consultant with relevant sterile drug manufacturing expertise could be useful in conducting this comprehensive evaluation.

In addition, you should also correct the violations of FDCA sections 502, and 505 noted above.

D. Conclusion

Please note that the violations cited in this letter are not intended to be an all-inclusive statement of violations that exist 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 and FDA regulations.

You should take prompt action to correct the violations cited in this letter. Failure to promptly correct these violations may result in legal action without further notice, including, without limitation, seizure and injunction.

Within fifteen 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 15 working days, state the reason for the delay and the time within which you will complete the correction. Your notification should be addressed to:

Stephanie Durso, Compliance Officer
FDA New Jersey District Office
U.S. Food and Drug Administration
10 Waterview Blvd., 3rd Floor
Parsippany, NJ 07054

If you have questions regarding any issues in this letter, please contact our office at 973-331-4911.

Sincerely,
/S/
Diana Amador-Toro
District Director
New Jersey District

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1 This letter addresses only your firm's human drug products; FDA may communicate with you separately about your drugs for animal use
2 *Compare Western States Med. Ctr. v. Shalala* with *Medical Ctr. Pharm. v. Mukasey,* 536 F.3d 383 (5th Cir. 2008).
3 *See* 21 U.S.C. §353a(a) (granting compounded drugs statutory exemptions if,among other things, ''the drug product is compounded for an identified individual patient based on the ... receipt of a valid prescription order or a notation, approved by the prescribing practitioner, on the prescription order that a compounded product is necessary for the identified patient ...."); CPG at 2 ("FDA recognizes that pharmacists traditionally have extemporaneously compounded and manipulated reasonable quantities of human drugs upon receipt of a valid prescription for an individually-identified patient from a licensed practitioner. This traditional activity is not the subject of this guidance."). The Pharmacy Compounding CPG has been withdrawn in light of new legislation. See below.
4 H.R. 3204 / Public Law 113-54, Drug Quality and Security Act (Nov. 27, 2013; 127 Stat. 587; 54 pages).
5 The DQSA contains a number of other provisions, including new exemptions and requirements for compounders seeking to operate as outsourcing facilities. A discussion of the DQSA and the agency's plans to implement the new law may be found at http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/default.htm.[1]
6 For example, section 503A also addresses anticipatory compounding, which includes compounding (not distribution) before receipt of a valid prescription order for an individual patient; it also addresses compounding "any drug products that are essentially copies of a commercially available drug product." 21 U.S.C. 353a(b)(1)(D). We are not addressing these conditions or any of the other conditions in section 503A here.
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. 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.

Links on this page:

1. http://www.fda.gov/Drugs/GuidanceComplianceRegulatm%3AyInformation!PharmacyCompounding/default.htm