FDLI
Food and Drug Law Institute

Introduction to U.S. Drug Law and Regulation

Violations and Enforcement

Pete Leininger
Partner
FDA & Life Sciences Practice
King & Spalding

KING & SPALDING

Agenda

- FDA Enforcement Authority
- FDA Inspections
- FDA Enforcement Tools (Administrative)
  - Warning and Untitled Letters
  - Voluntary Recalls
  - Civil Money Penalties
  - Debarment
- FDA Enforcement Tools (Judicial)
  - Seizures
  - Injunctions
  - Criminal Prosecutions
- FDA Enforcement Activity

FDA Enforcement Authority

FDA Enforcement

- FDA's enforcement authority is derived from the Food Drug & Cosmetic Act ("FDCA").
- FDA can exercise its enforcement authority when an individual/entity engages in a "Prohibited Act."

FDCA Prohibited Acts

- Dozens of different prohibited acts. Examples include:
  - Introducing an adulterated or misbranded drug into interstate commerce.
  - Causing the adulteration or misbranding of a drug after shipment in interstate commerce.
  - Receiving an adulterated or misbranded drug in interstate commerce and delivering it to someone else.
  - Introducing an unapproved new drug into interstate commerce.
  - Refusal to permit FDA inspection.

Prohibited Acts – Interstate Commerce

Interstate commerce is often a key element of the prohibited acts established under the FDCA.

The following acts and the causing thereof are prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, tobacco product, or cosmetic in interstate commerce.

(c) The receipt in interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The introduction or delivery for introduction into interstate commerce of any article in violation of section 344, 350d, 355, or 360bbb-3 of this title.

Adulterated and Misbranded Drugs

- Adulterated drugs (Section 501)
  - Contains a filthy, putrid, or decomposed substance.
  - Insanitary conditions render it contaminated or injurious to health.
  - Failed to conform with current good manufacturing practices.
- Misbranded drugs (Section 502)
  - If its labeling is false or misleading in any particular.
  - If its labeling does not bear adequate directions for use.
  - If its labeling fails to contain adequate warnings.
  - If its labeling does not include required information.

Unapproved New Drugs (Section 505)

- "New drugs" may not be legally introduced or delivered for introduction into interstate commerce without prior approval from FDA.

- FDA approves a new drug on the basis of scientific data submitted by a drug sponsor to demonstrate that the drug is safe and effective.

FDA Inspections

Polling Question – FDA Inspections

- Have you participated in an FDA inspection?
  - Yes
  - No

FDA Inspections

- Inspections are used by FDA to determine a facility's compliance with FDA laws and regulations.

- Inspections may be used by FDA to obtain evidence to support legal actions when violations are found.

(Source: FDA Investigations Operations Manual)

Types of FDA Inspections

- Pre-approval inspection.
- Routine inspection of a regulated facility.
  - Periodic unannounced inspection.
  - cGMP focused.
- "For-cause" inspections.
  - Investigate a specific problem.

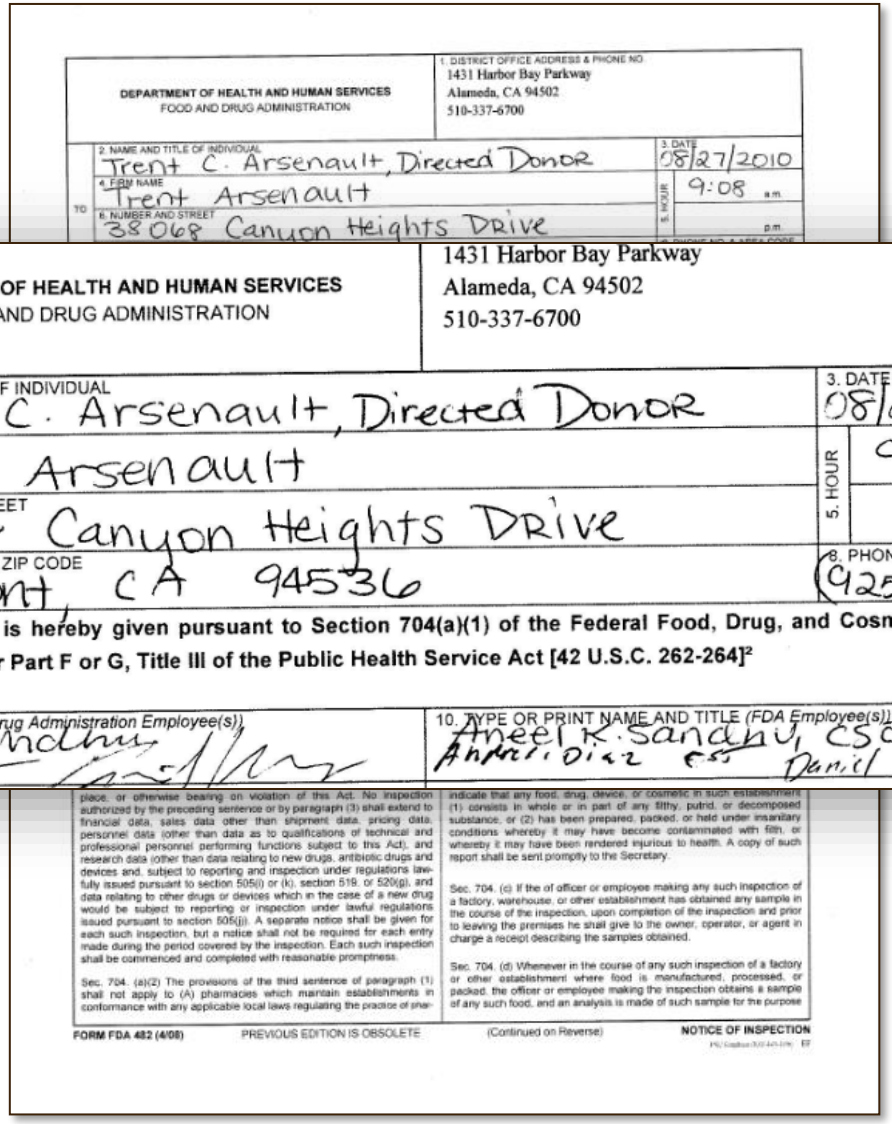
FDA Inspection Authority

- FDA has the authority to inspect "all things" in a factory, warehouse, establishment, or consulting laboratory that engages in the manufacturing, processing, packing, or holding of drugs, "including records, files, papers, processes, controls, and facilities." FDCA § 704(a)(1).
- FDA has the broad authority to request, review, and take copies of a number of categories of records and documents.

Investigations Operations Manual (IOM)

https://www.fda.gov/iceci/inspections/iom/

FDA Form 482



DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION

1. DISTRICT OFFICE ADDRESS & PHONE NO.
1431 Harbor Bay Parkway
Alameda, CA 94502
510-337-6700

TO
2. NAME AND TITLE OF INDIVIDUAL: Trent C. Arsenault, Directed Donor
3. DATE: 08/27/2010
4. FIRM NAME: Trent Arsenault
5. HOUR: 9:08 a.m. / p.m.
6. NUMBER AND STREET: 38068 Canyon Heights DRIVE
7. CITY AND STATE & ZIP CODE: Fremont, CA 94536
8. PHONE NO. & AREA CODE: (925) 484-4378

Notice of Inspection is hereby given pursuant to Section 704(a)(1) of the Federal Food, Drug, and Cosmetics Act [21 U.S.C. 374(a)]' and/or Part F or G, Title III of the Public Health Service Act [42 U.S.C. 262-264]²

9. SIGNATURE (Food and Drug Administration Employee(s)): Aneel K. Sandhu
10. TYPE OR PRINT NAME AND TITLE (FDA Employee(s)): Aneel K. Sandhu, CSO; Andrew Diaz ES; Daniel Velasquez CSO

place, or otherwise bearing on violation of this Act. No inspection authorized by the preceding sentence or by paragraph (3) shall extend to financial data, sales data other than shipment data, pricing data, personnel data (other than data as to qualifications of technical and professional personnel performing functions subject to this Act), and research data (other than data relating to new drugs, antibiotic drugs and devices and, subject to reporting and inspection under regulations lawfully issued pursuant to section 505(i) or (k), section 519, or 520(g), and data relating to other drugs or devices which in the case of a new drug would be subject to reporting or inspection under lawful regulations issued pursuant to section 505(j)). A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.

Sec. 704. (a)(2) The provisions of the third sentence of paragraph (1) shall not apply to (A) pharmacies which maintain establishments in conformance with any applicable local laws regulating the practice of phar-

indicate that any food, drug, device, or cosmetic in such establishment (1) consists in whole or in part of any filthy, putrid, or decomposed substance, or (2) has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. A copy of such report shall be sent promptly to the Secretary.

Sec. 704. (c) If the officer or employee making any such inspection of a factory, warehouse, or other establishment has obtained any sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

Sec. 704. (d) Whenever in the course of any such inspection of a factory or other establishment where food is manufactured, processed, or packed, the officer or employee making the inspection obtains a sample of any such food, and an analysis is made of such sample for the purpose

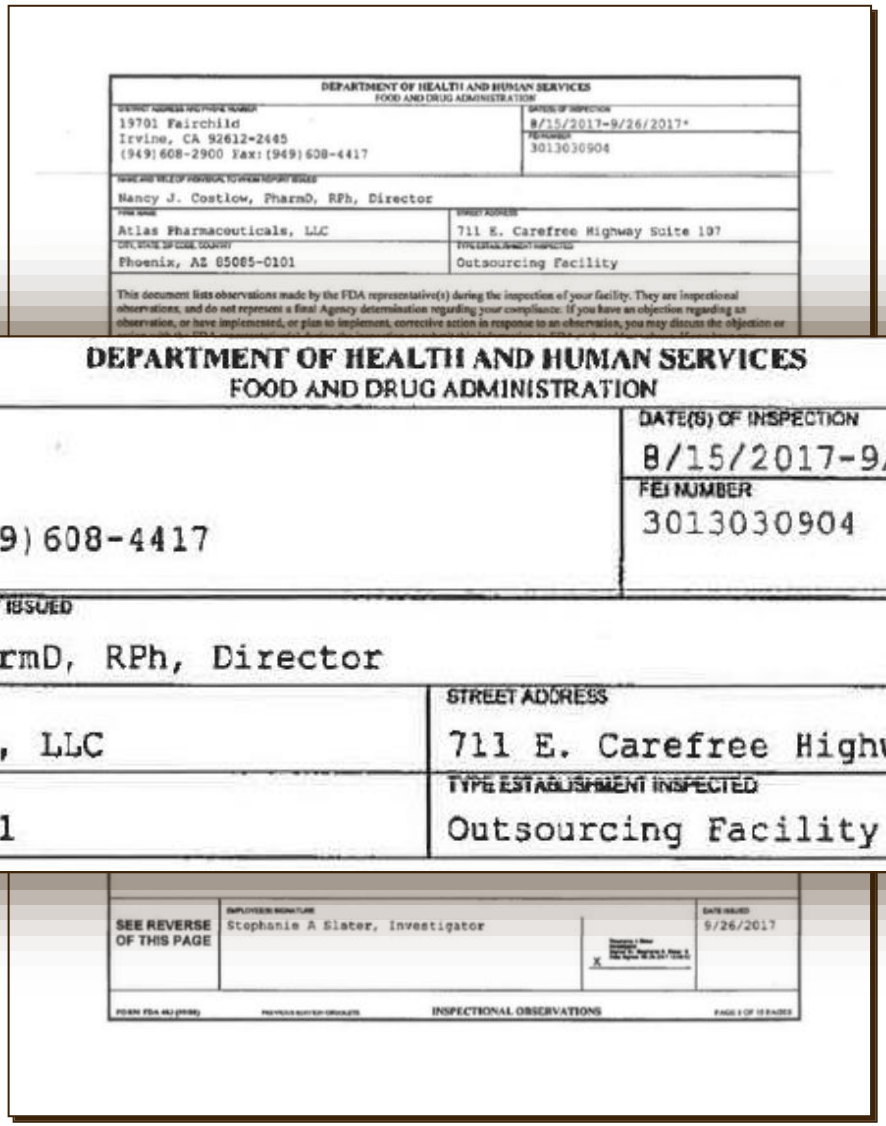
FORM FDA 482 (4/08) PREVIOUS EDITION IS OBSOLETE (Continued on Reverse) NOTICE OF INSPECTION

FDA Form 483

- The FDCA Section 704(b) provides that:

  "Upon completion of any such inspection of a factory, warehouse, consulting laboratory, or other establishment, and prior to leaving the premises, the officer or employee making the inspection ***shall give to the owner, operator, or agent in charge a report in writing*** setting forth any conditions or practices observed by him which, in his judgment, indicate that any food, drug, device, cosmetic in such establishment (1) consists in whole or in part of any filthy, putrid, or decomposed substance or (2) has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. A copy of such report shall be sent promptly to the Secretary." (emphasis added).

FDA Form 483



DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION

DISTRICT ADDRESS AND PHONE NUMBER
19701 Fairchild
Irvine, CA 92612-2445
(949)608-2900 Fax:(949)608-4417

DATE(S) OF INSPECTION
8/15/2017-9/26/2017*

FEI NUMBER
3013030904

NAME AND TITLE OF INDIVIDUAL TO WHOM REPORT ISSUED
Nancy J. Costlow, PharmD, RPh, Director

FIRM NAME
Atlas Pharmaceuticals, LLC

STREET ADDRESS
711 E. Carefree Highway Suite 107

CITY, STATE, ZIP CODE, COUNTRY
Phoenix, AZ 85085-0101

TYPE ESTABLISHMENT INSPECTED
Outsourcing Facility

This document lists observations made by the FDA representative(s) during the inspection of your facility. They are inspectional observations, and do not represent a final Agency determination regarding your compliance. If you have an objection regarding an observation, or have implemented, or plan to implement, corrective action in response to an observation, you may discuss the objection or

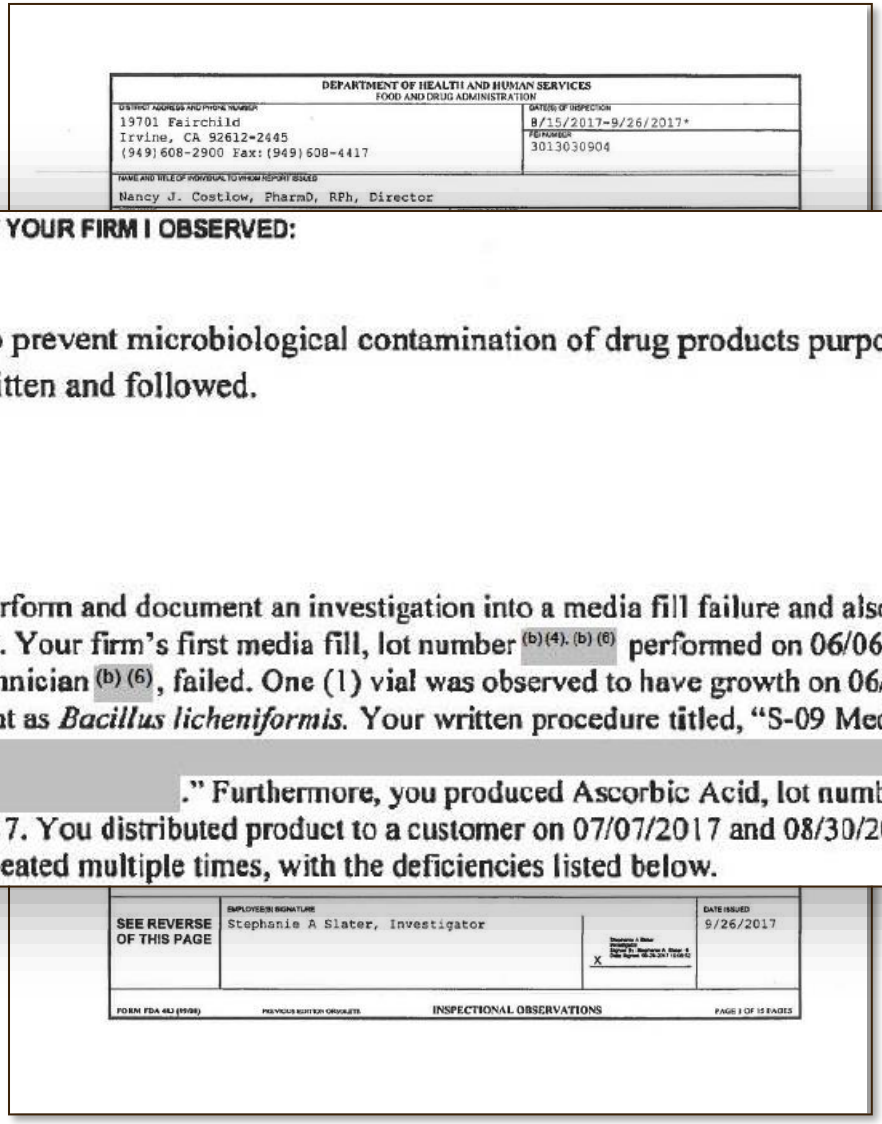
SEE REVERSE OF THIS PAGE

Stephanie A Slater, Investigator

9/26/2017

INSPECTIONAL OBSERVATIONS

FDA Form 483



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FEI NUMBER
3013030904

NAME AND TITLE OF INDIVIDUAL TO WHOM REPORT ISSUED
Nancy J. Costlow, PharmD, RPh, Director

DURING AN INSPECTION OF YOUR FIRM I OBSERVED:

OBSERVATION 1

Procedures designed to prevent microbiological contamination of drug products purporting to be sterile are not established, written and followed.

Specifically,

A. Your firm failed to perform and document an investigation into a media fill failure and also determine the root cause of the contaminant. Your firm's first media fill, lot number (b)(4), (b)(6) performed on 06/06/2017 by your Operator, Pharmacy Technician (b)(6), failed. One (1) vial was observed to have growth on 06/12/2017. Your firm identified the contaminant as *Bacillus licheniformis*. Your written procedure titled, "S-09 Media Fill Trial" states that (b)(4) ." Furthermore, you produced Ascorbic Acid, lot number S-60008 (50 ml Amber Vial) on 6/22/2017. You distributed product to a customer on 07/07/2017 and 08/30/2017. This initial media fill failure was repeated multiple times, with the deficiencies listed below.

SEE REVERSE OF THIS PAGE

EMPLOYEE(S) SIGNATURE
Stephanie A Slater, Investigator

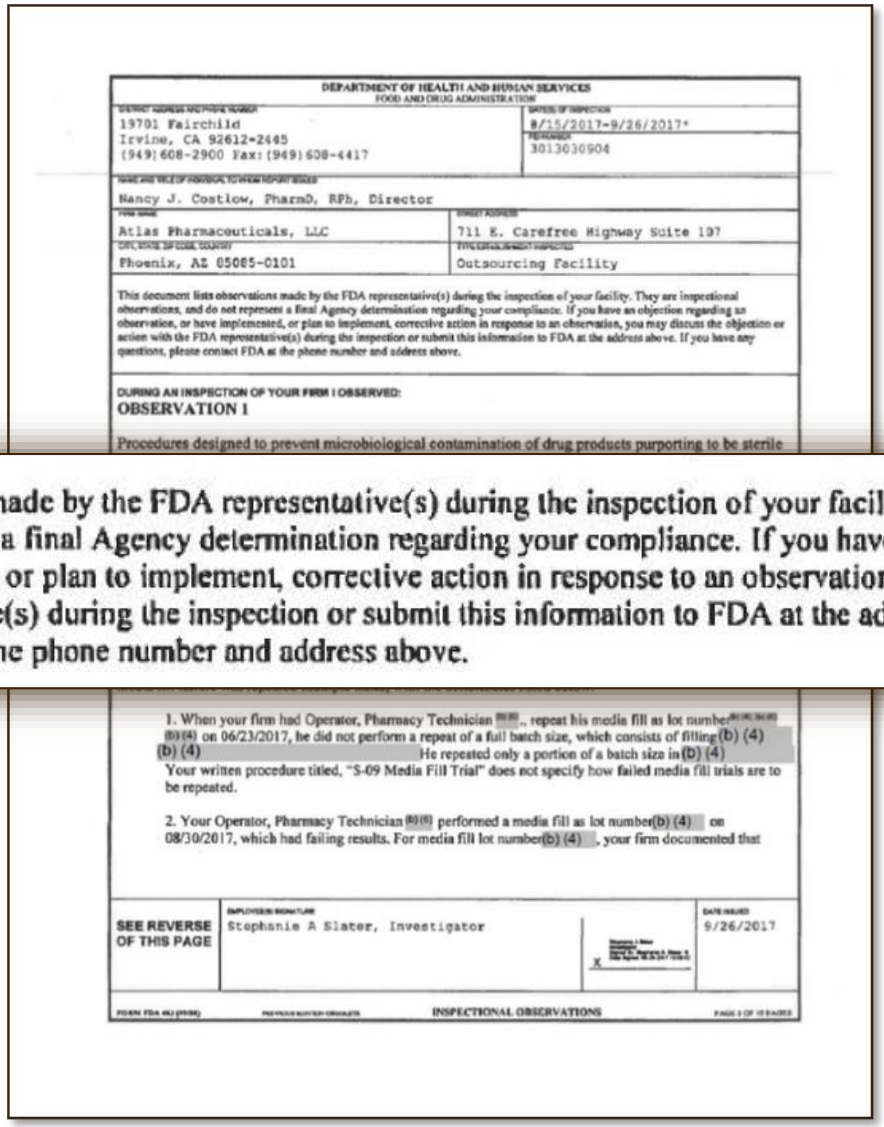
DATE ISSUED
9/26/2017

FORM FDA 483 (09/08) PREVIOUS EDITION OBSOLETE INSPECTIONAL OBSERVATIONS PAGE 1 OF 15 PAGES

Are 483 Observations Violations of the FDCA?

- 483 observations are made when, in the investigator's judgment, the observed conditions/practices indicate that a drug *may* have been adulterated or is being processed, packed, or held under conditions that *may* cause a drug to become adulterated.
  - 483 observations are <u>not</u> violations.
- Standard, mandatory language for FDA Form 483s:
  - "...lists observations made by the FDA representative(s) during the inspection of your facility. They are inspectional observations, and do not represent a final Agency determination regarding your compliance."

Observations



DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION

19701 Fairchild
Irvine, CA 92612-2445
(949)608-2900 Fax:(949)608-4417

8/15/2017-9/26/2017*

3013030904

Nancy J. Costlow, PharmD, RPh, Director

Atlas Pharmaceuticals, LLC

711 E. Carefree Highway Suite 197

Phoenix, AZ 85085-0101

Outsourcing Facility

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DURING AN INSPECTION OF YOUR FIRM I OBSERVED:

OBSERVATION 1

Procedures designed to prevent microbiological contamination of drug products purporting to be sterile

This document lists observations made by the FDA representative(s) during the inspection of your facility. They are inspectional observations, and do not represent a final Agency determination regarding your compliance. If you have an objection regarding an observation, or have implemented, or plan to implement, corrective action in response to an observation, you may discuss the objection or action with the FDA representative(s) during the inspection or submit this information to FDA at the address above. If you have any questions, please contact FDA at the phone number and address above.

1. When your firm had Operator, Pharmacy Technician [redacted], repeat his media fill as lot number [redacted] (b) (4) on 06/23/2017, he did not perform a repeat of a full batch size, which consists of filling (b) (4) (b) (4) He repeated only a portion of a batch size in (b) (4) Your written procedure titled, "S-09 Media Fill Trial" does not specify how failed media fill trials are to be repeated.

2. Your Operator, Pharmacy Technician [redacted] performed a media fill as lot number (b) (4) on 08/30/2017, which had failing results. For media fill lot number (b) (4), your firm documented that

SEE REVERSE OF THIS PAGE

Stephanie A Slater, Investigator

9/26/2017

INSPECTIONAL OBSERVATIONS

What is the Purpose of FDA Form 483s?

- Provides a list of FDA inspectional observations – objectionable conditions and practices – that indicate what the investigators believe are violations of the FDCA.
- Provides **prior notice** of FDA's inspectional findings that could result in regulatory action.
- Educates the inspected firm as to issues that should be corrected.
- Educates the firm about developing FDA interpretations of statutory requirements (*e.g.*, views as to a particular aspect of current good manufacturing practices or good clinical practices).

Inspection Outcomes

- Following FDA's review of the investigator's inspection report, the Agency classifies the inspection:
  - **No Action Indicated (NAI) – no 483 issued**
    - No objectionable conditions or practices or the significance of the objectionable conditions does not justify further action.
  - **Voluntary Action Indicated (VAI) – 483 issued.**
    - Objectionable conditions or practices that do not meet the threshold for regulatory action.
    - District may use an Untitled Letter, Regulatory Meeting, or other communication to inform the establishment of findings that should be corrected.
    - Corrective actions are voluntary.

(Source: FM Establishment Inspection Report Conclusions and Decisions)

Inspection Outcomes

- Following FDA's review of the investigator's inspection report, the Agency classifies the inspection:
  - **Official Action Indicated (OAI) – 483 issued.**
    - Significant objectionable conditions or practices and regulatory action is warranted/recommended to address the establishment's lack of compliance.
    - Regulatory actions include: Warning Letter, seizure, civil penalty, recall, injunction, NDA denial/revocation.

(Source: FM Establishment Inspection Report Conclusions and Decisions)

FDA Enforcement Tools: Administrative

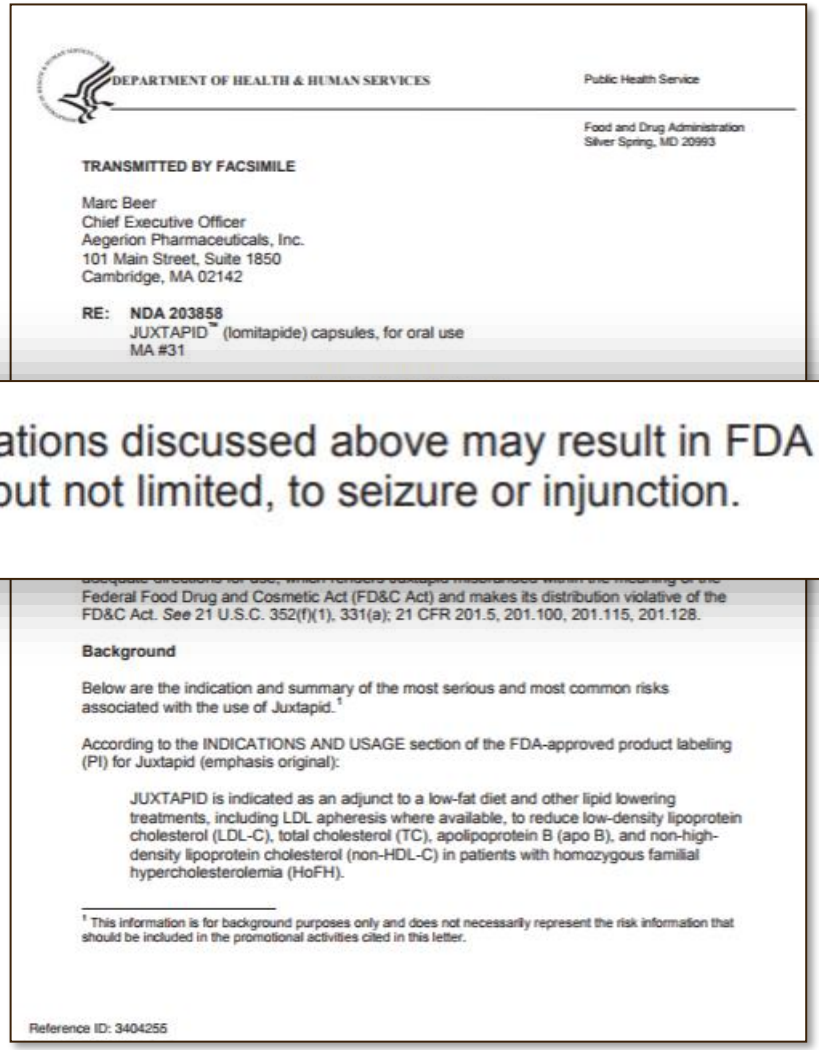
Warning and Untitled Letters

Warning Letters

- According to FDA, "Warning Letters are issued to ***achieve voluntary compliance and to establish prior notice***."
  - It is FDA policy to give firms the opportunity to voluntarily correct violations before the Agency takes enforcement action.
- Warning Letters are used to ensure that a firm's top management understands the seriousness and scope of the violations.
- Warning Letters are also used to ensure that resources are appropriately allocated to correct the violations and prevent recurrence.

(Source: FDA Regulatory Procedures Manual 4-1)

Prior Notice



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Silver Spring, MD 20993

TRANSMITTED BY FACSIMILE

Marc Beer
Chief Executive Officer
Aegerion Pharmaceuticals, Inc.
101 Main Street, Suite 1850
Cambridge, MA 02142

RE: NDA 203858
JUXTAPID™ (lomitapide) capsules, for oral use
MA #31

Failure to correct the violations discussed above may result in FDA regulatory action without further notice, including, but not limited, to seizure or injunction.

Federal Food Drug and Cosmetic Act (FD&C Act) and makes its distribution violative of the FD&C Act. *See* 21 U.S.C. 352(f)(1), 331(a); 21 CFR 201.5, 201.100, 201.115, 201.128.

Background

Below are the indication and summary of the most serious and most common risks associated with the use of Juxtapid.[1]

According to the INDICATIONS AND USAGE section of the FDA-approved product labeling (PI) for Juxtapid (emphasis original):

> JUXTAPID is indicated as an adjunct to a low-fat diet and other lipid lowering treatments, including LDL apheresis where available, to reduce low-density lipoprotein cholesterol (LDL-C), total cholesterol (TC), apolipoprotein B (apo B), and non-high-density lipoprotein cholesterol (non-HDL-C) in patients with homozygous familial hypercholesterolemia (HoFH).

[1] This information is for background purposes only and does not necessarily represent the risk information that should be included in the promotional activities cited in this letter.

Reference ID: 3404255

Warning Letters

- Warning Letters are issued only for violations of ***regulatory significance*** –

  – Violations that may lead to enforcement action if not promptly and adequately corrected.

- Warning Letters are informal and advisory and do not commit FDA to taking any additional action.

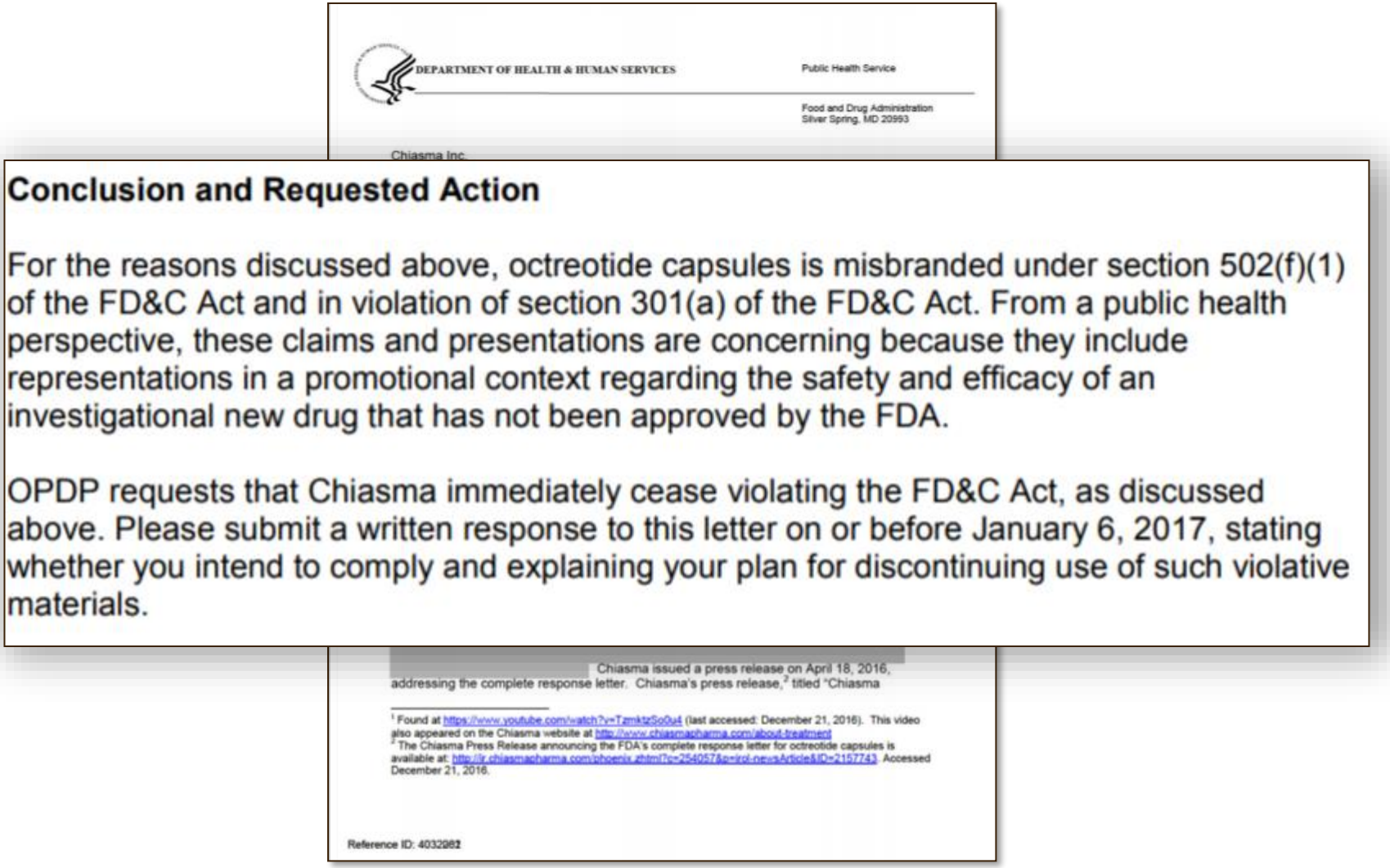
(Source: FDA Regulatory Procedures Manual 4-1)

Untitled Letter

- An Untitled Letter cites violations that do not meet the threshold of regulatory significance for a Warning Letter.
  - The letter is not titled.
  - The letter does not include a warning statement that failure to take prompt correction may result in enforcement action.
  - The letter does not evoke a mandated district follow-up.

(Source: FDA Regulatory Procedures Manual 4-2)

Untitled Letter



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Silver Spring, MD 20993

Chiasma Inc.

Conclusion and Requested Action

For the reasons discussed above, octreotide capsules is misbranded under section 502(f)(1) of the FD&C Act and in violation of section 301(a) of the FD&C Act. From a public health perspective, these claims and presentations are concerning because they include representations in a promotional context regarding the safety and efficacy of an investigational new drug that has not been approved by the FDA.

OPDP requests that Chiasma immediately cease violating the FD&C Act, as discussed above. Please submit a written response to this letter on or before January 6, 2017, stating whether you intend to comply and explaining your plan for discontinuing use of such violative materials.

Chiasma issued a press release on April 18, 2016, addressing the complete response letter. Chiasma's press release,[2] titled "Chiasma

[1] Found at https://www.youtube.com/watch?v=TzmktzSo0u4 (last accessed: December 21, 2016). This video also appeared on the Chiasma website at http://www.chiasmapharma.com/about-treatment

[2] The Chiasma Press Release announcing the FDA's complete response letter for octreotide capsules is available at: http://ir.chiasmapharma.com/phoenix.zhtml?c=254057&p=irol-newsArticle&ID=2157743. Accessed December 21, 2016.

Reference ID: 4032982

Voluntary Recalls

Recall

- FDA defines a "recall" as "a firm's removal or correction of a marketed product that [FDA] considers to be in violation of the laws it administers and against which the agency would initiate legal action, e.g., seizure." (21 C.F.R. § 7.3(g))

- "Recall" does not include a "market withdrawal" or "stock recovery." (21 C.F.R. § 7.3(g))

- A recall occurs at a firm's own initiative or after a request by FDA.

Three Recall Classes

- **"Class I Recall" -** A situation in which there is a reasonable probability that use of, or exposure to, a violative product will cause serious adverse health consequences or death. (21 C.F.R. § 7.3(m)(1))
- **"Class II Recall" -** A situation in which use of, or exposure to, a violative product may cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences is remote. (21 C.F.R. § 7.3(m)(2))
- **"Class III Recall" -** A situation in which use of, or exposure to, a violative product is not likely to cause adverse health consequences. (21 C.F.R. § 7.3(m)(3))

Exclusions from the Definition of "Recall"

- **"Market Withdrawal"** - A firm's removal or correction of a distributed product which involves a minor violation that would not be subject to legal action by FDA or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc. (21 C.F.R. § 7.3(j))
- **"Stock Recovery"** - A firm's removal or correction of a product that has not been marketed or that has not left the direct control of the firm, i.e., the product is located on premises owned by, or under the control of, the firm, and no portion of the lot has been released for sale or use. (21 C.F.R. § 7.3(k))

Recall

- FDA will request recall if it determines (a) product presents risk of illness or injury or gross consumer deception and (b) recall is necessary to protect public.

- FDA, in consultation with firm, issues public warning when product presents serious hazard to health.

- FDA promptly makes public information about all new recalls.

Recent Example of a Drug Recall

Cantrell Drug Company Issues Voluntary Nationwide Recall of All Sterile Drug Products Due to Lack of Sterility Assurance

SHARE | TWEET | LINKEDIN | PIN IT | EMAIL | PRINT

For Immediate Release July 25, 2017

Contact

Consumers

Cantrell Drug Company
877-666-5222

Media

Greg Turner
greg@ballcg.com
617-243-9950

Announcement

Cantrell Drug Company is voluntarily recalling all lots of unexpired sterile drug products to the hospital and user level due to lack of sterility assurance. The recalled products were distributed to health care facilities nationwide, except to the states of Connecticut, Hawaii, South Carolina and Vermont. To date, Cantrell has not received any reports of adverse events.

21 C.F.R. Part 7 – Recalls

- Because it is a voluntary recall, FDA cannot act against a refusal to recall (for drugs).

- But FDA can take other actions.

Civil Money Penalties

Civil Money Penalties

- Historically, FDA has sought civil money penalties for continuous or repeated violations of the same or similar statutory requirements when other remedies such as seizure or injunction are not appropriate.

- Penalties vary, depending on statutory authority.

- While most civil money penalties are assessed through an administrative process, some statutes authorize the DOJ to seek civil money penalties on FDA's behalf by filing a civil lawsuit in federal court.

Civil Money Penalties

- The amount of the penalty is influenced by several factors:
  - The nature, circumstances, extent, and gravity of the violation;
  - The person's ability to pay;
  - The effect on the person's ability to continue to do business;
  - History of prior, similar violations;
  - Degree of culpability; and
  - Other factors, as justice may require.

Civil Money Penalties

- 21 C.F.R. Part 17 sets forth the procedures for administrative civil money penalty action:
  - FDA initiates a civil money penalty actions by filing a complaint with FDA's Division of Dockets Management.
    - The "complainant" is the FDA Center with principal jurisdiction over the product at issue.
  - Once the complaint is filed, the "respondent" has 30 days to file an answer.
  - The parties also are permitted to seek limited discovery, file procedural and dispositive motions, participate in a hearing before an Administrative Law Judge.

Debarment

Debarment

- An administrative remedy to preclude from the drug industry individuals and companies convicted of certain felonies or misdemeanors related to drug products.

- Debarred individual may no longer work for anyone with an approved or pending drug product application.

- Debarred companies may no longer submit abbreviated drug applications.

Debarment

- Mandatory debarment (Section 306(a)):
  - Following felony conviction relating to ANDA approval (business entities).
  - Following felony conviction relating to drug development or approval, or to the regulation of any drug product (individuals).
- Permissive debarment (Section 306(b)):
  - Following misdemeanor convictions if the Secretary finds that conduct "undermines the process for the regulation of drugs."

Debarment

- Business entities may be mandatorily debarred 1-10 years.

- Individual mandatory debarments are permanent.

- Permissive debarments may not exceed 5 years.

(Source: http://www.fda.gov/iceci/enforcementactions/fdadebarmentlist/default.htm)

FDA's Public Debarment List

FDA Debarment List (Drug Product Applications)

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The following is a public list of firms or persons debarred pursuant to sections 306(a), (b)(1) and (b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335(a), (b)(1), and (b)(2)) as published in the FEDERAL REGISTER (FR):

Firms

NAME OF FIRM	EFFECTIVE DATE	END/TERM OF DEBARMENT	FR DATE.txt (MM/DD/YY)	VOLUME PAGE.pdf
None as of this date				

Persons

NAME OF PERSON	EFFECTIVE DATE	END/TERM OF DEBARMENT	FR DATE.txt (MM/DD/YY)	VOLUME PAGE.pdf
Aiache, Adrien E.	5/27/2011	5 years%	5/27/2011	76FR30946
Akhigbe, Ehigiator O.	12/17/2010	25 Year%	12/17/2010	75FR79005
Albanese, Anthony W.	11/23/2009	Permanent^	11/23/2009	74FR61151

FDA Enforcement Tools
Judicial

Product Seizures

Seizure Actions

- An action to gain quick control over the product.
- In rem proceeding, initiated by a U.S. Attorney on behalf of FDA by filing a complaint in Federal Court against the violative product.
  - The United States files a Complaint for Forfeiture and obtaining a warrant for arrest, directing the United States Marshal to seize (take possession or place in constructive custody of the court) the article.
  - The article seized is the defendant.
  - The government asks the court to condemn the article and declare forfeiture for violation of the law by the article itself.
  - Any interested party, owner, or agent may appear to claim the article by filing a verified claim stating the nature of his/her interest in the article.

In Rem proceedings

United States v. Undetermined quantities of bottles of articles of veterinary drug labeled in part, etc.

United States District Court for the District of Utah, Central Division

April 5, 1991, Decided ; April 8, 1991, Filed

Civil No. C89-594G

In Rem proceedings

United States v. 11 1/4 Dozen Packages of Article Labeled in Part Moffat's Shoo Fly Powders for Drunkenness

United States District Court for the Western District of New York

June 17, 1941

No. 567

Injunctions

Injunctions

- Differ from seizures because no physical property seized.
  - Instead, relief is sought against the firm and individual management personnel responsible for compliance and production operations.
  - An action is filed against the company and its most responsible individuals to halt illegal conduct going forward.
- Injunctive relief is likely after FDA repeatedly notifies firm to correct conditions/practices.
- FDA requests Department of Justice to seek an injunction in Federal Court asking for a shutdown of a company.

Injunctions

- Injunction requires a firm to cease operations until FDA is satisfied.
- Injunction also operates prospectively to prohibit future violations of the Act.
- When appropriate, FDA may seek penalties for post-injunction violations.

Example of an Injunction

FDA News Release

Federal judge enters consent decree against Cantrell Drug Company

Compounder prohibited from manufacturing and distributing sterile drug products in violation of law

SHARE | TWEET | LINKEDIN | PIN IT | EMAIL | PRINT

For Immediate Release April 19, 2018

Release U.S. District Judge Kristine G. Baker for the Eastern District of Arkansas entered a consent decree of permanent injunction today between the U.S. and Cantrell Drug Company of Little Rock, Arkansas, and the company's Chief Executive Officer and co-owner, James L. McCarley, Jr.

Cantrell Injunction, cont.

- FDA alerts health care professionals and patients not to use compounded drugs from Cantrell Drug Company; agency seeks action to stop production and distribution
- Cantrell Drug Company Issues Voluntary Nationwide Recall of All Sterile Drug Products Due to Lack of Sterility Assurance
- Cantrell Drug Company, Little Rock, AR, 483 Issued 03/22/2018
- Cantrell Drug Company, Little Rock, AR. 483 Issued 06/29/2017
- Warning letter: Cantrell Drug Company 1/21/15

Criminal Prosecutions

Polling Question – Criminal Enforcement

- True or False:
  - You can be prosecuted and convinced of crimes under the Food, Drug, and Cosmetic Act even if the government can't prove that you acted with criminal intent.

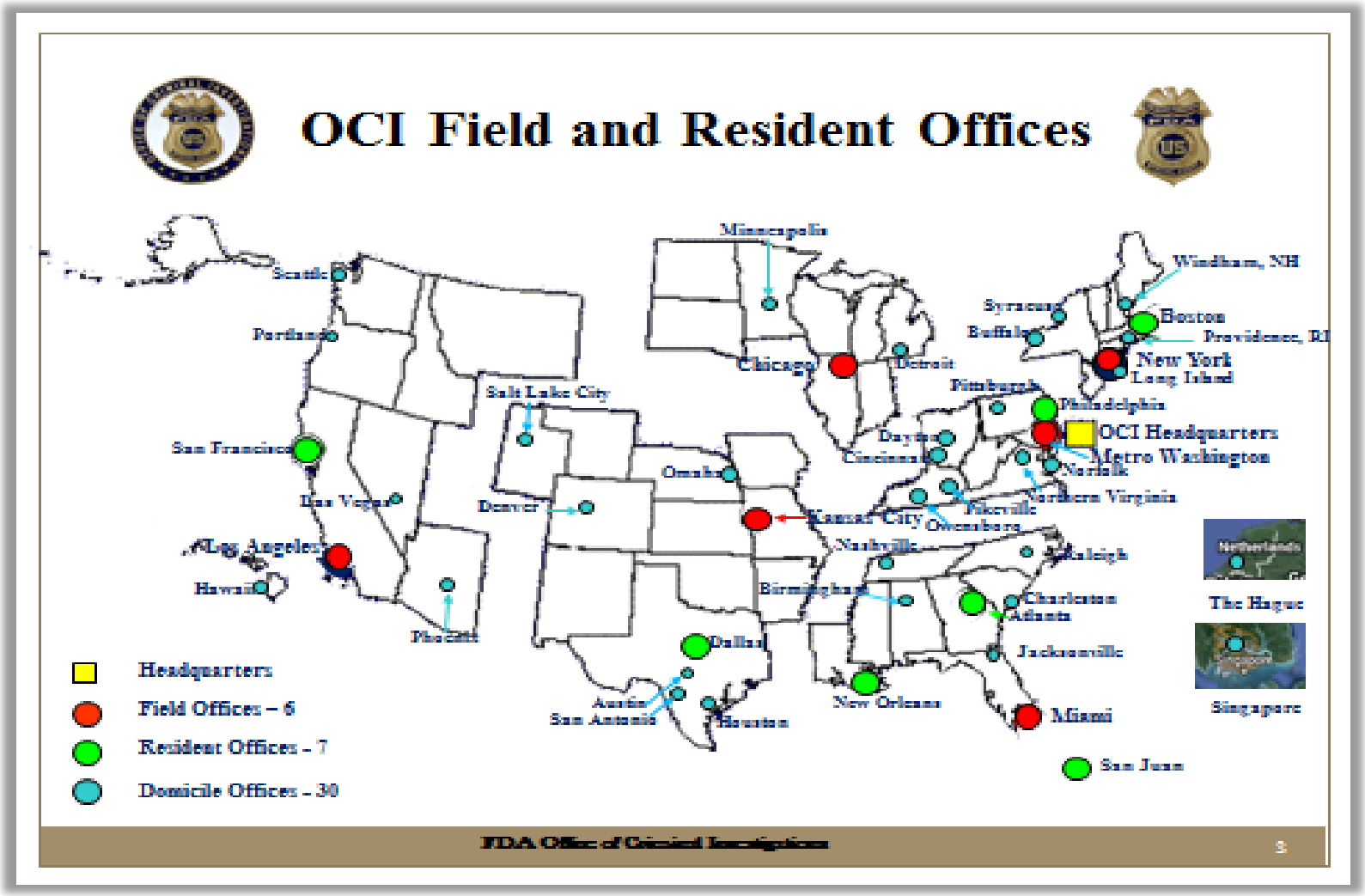
Criminal Prosecutions

- FDCA establishes criminal penalties
- Section 333(a)(1) – Any violation of 331 (prohibited acts section) is a misdemeanor.
- Section 333(a)(2) – Second violation of 331, or any violation of 331 committed with the intent to defraud or mislead, is a felony.
- FDA also investigates violations of Title 18 (U.S. Criminal Code).
  - For example, mail fraud, false statements, wire fraud, conspiracy.

Park Doctrine

- Under *Park*, a corporate official may be convicted of a misdemeanor violation of the FDCA without personally engaging in wrongdoing, or even knowing about another person's violation of the statute, provided the official had the responsibility or authority to prevent or correct the FDCA violation but failed to do so.
  - "It was enough…that, by virtue of the relationship [the officer] bore to the corporation, [he] had the power to prevent the act complained of."
  - According to the Court, the FDCA "imposes not only a positive duty to seek out and remedy violations when they occur but also, and primarily, a duty to implement measures that will insure that violations will not occur."

FDA's Office of Criminal Investigations



OCI priorities

- Stated priorities:
  - Supply chain integrity
  - Regulatory process unable to remedy issue
  - Significant public health threat
  - Fraud on the Agency

OCI priorities, cont.

- Not always easy to focus on priorities

- Cases/investigations come from various sources
  - *Qui tams* filed under the False Claims Act
  - Consumer complaints
  - Competitor complaints
  - District Offices, Centers
  - DOJ (USAOs, Consumer Protection Branch)
  - State pharmacy, nursing, medical boards

Notable Cases

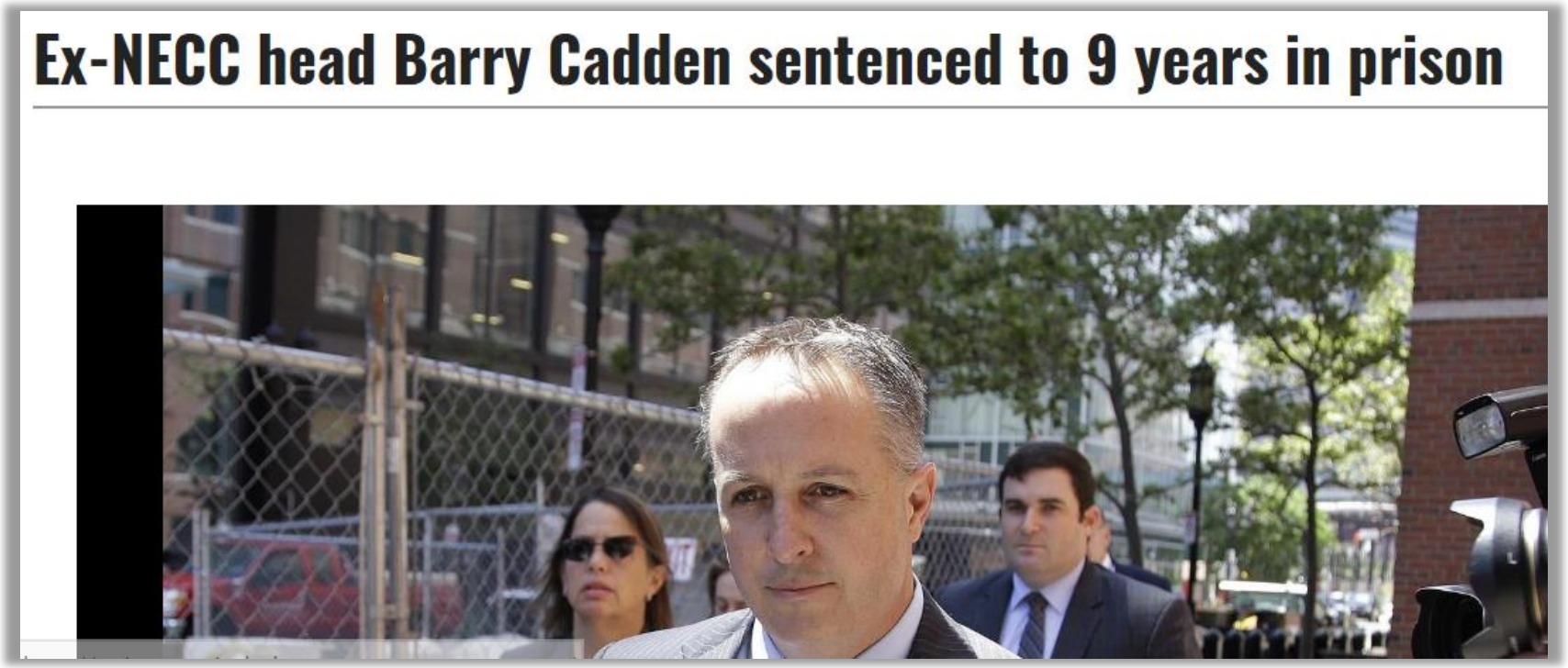
- *U.S. v. DeCoster*

U.S. v. DeCoster

- Background
  - In June 2014, following salmonella outbreak tied to their egg company, Jack and Peter DeCoster pled guilty to FDCA misdemeanors
  - Corporation pled to: felony FDCA charge (misbranding), misdemeanor FDCA charge (adulteration); 18 U.S.C §201(b)(1) for bribing a USDA inspector
  - District Court sentenced each DeCoster to 3 months imprisonment and a $100,000 fine

Notable Cases

- *U.S. v. Cadden* (NECC)



U.S. v. Cadden et al.

- Following meningitis outbreak tied to NECC, multiple employees of NECC were indicted on an array of charges, including felony FDCA violations, mail fraud, and racketeering

- March 2017, NECC owner Barry Cadden convicted on over 50 counts, including mail fraud, certain felony FDCA violations

- June 2017, Cadden sentenced to nine years

- January 2018, NECC Pharmacist Glenn Chin sentenced to eight years

Notable Cases

- *U.S. v. Cadden* (NECC)

Glenn Chin, Pharmacist In Deadly 2012 Meningitis Outbreak, Sentenced To 8 Years In Prison

January 31, 2018 *Updated Jan 31, 2018 3:03 PM*

By Alanna Durkin Richer, The Associated Press

Polling Question – Counterfeits

- What types of counterfeit medical products have been distributed in the United States?
  - Counterfeit pain medications (e.g., oxycontin)
  - Counterfeit lifestyle medications (e.g., Viagra)
  - Counterfeit personal protective equipment
  - Counterfeit dermatology products (e.g., Botox)
  - Counterfeit oncology drugs
  - All of the above

Notable Cases: Counterfeit Avastin Incident

Statement Issued: Feb. 14, 2012

FDA sends letters to 19 medical practices about counterfeit product and other unapproved cancer medicines

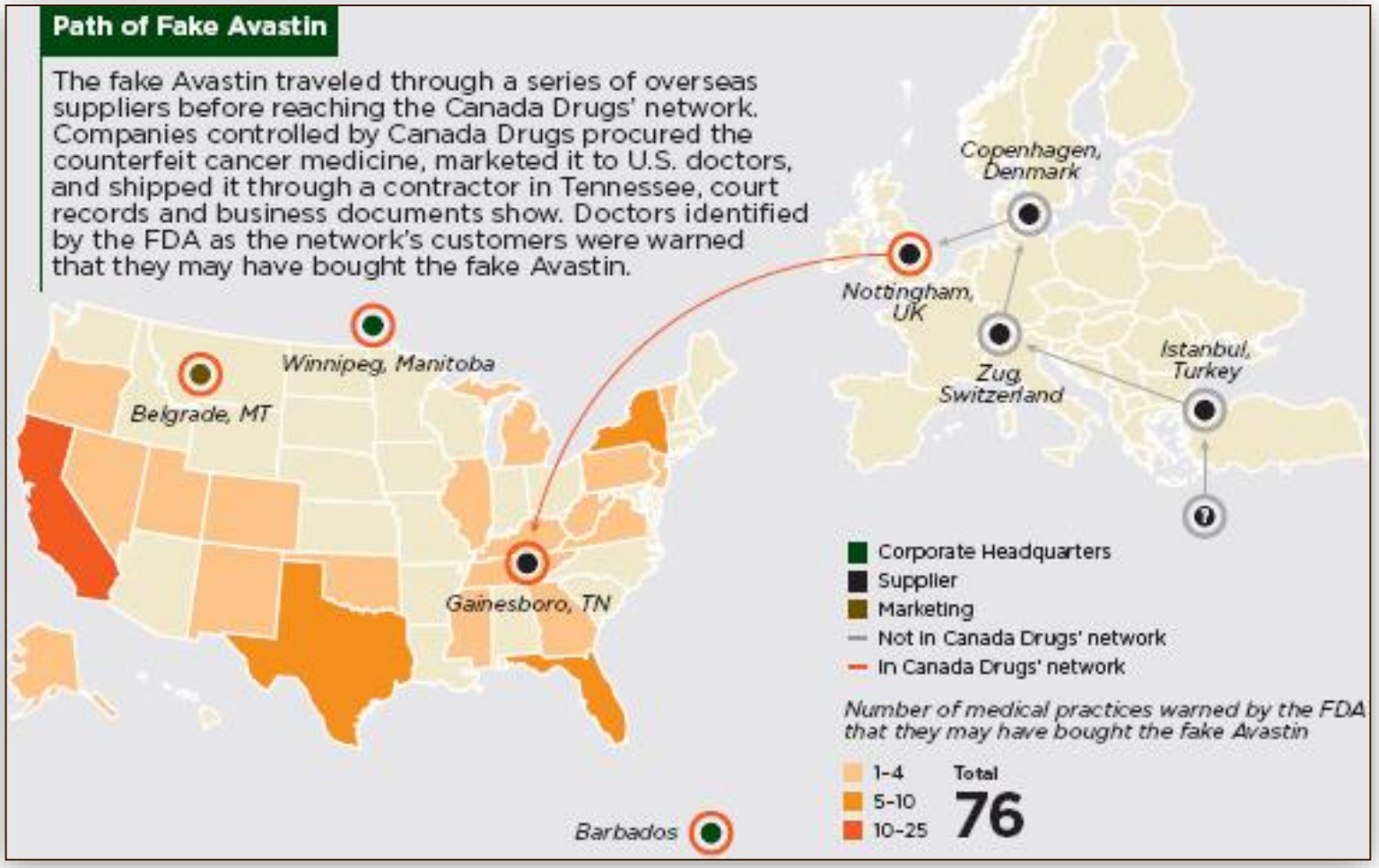
The U.S. Food and Drug Administration (FDA) is warning health care professionals and patients about a counterfeit version of Avastin 400mg/16mL, which may have been purchased and used by some medical practices in the United States. Avastin is an injectable medicine used to treat cancer and is administered to patients in clinics, hospitals, and doctors' offices. The counterfeit version of Avastin does not contain the medicine's active ingredient, bevacizumab, which may have resulted in patients not receiving needed therapy.

In a related action, FDA has issued letters to 19 medical practices in the United States that purchased unapproved cancer medicines that may include the counterfeit Avastin. The counterfeit version is labeled as Avastin, manufactured by Roche. Roche is the company that manufactures Avastin approved for marketing outside of the United States.

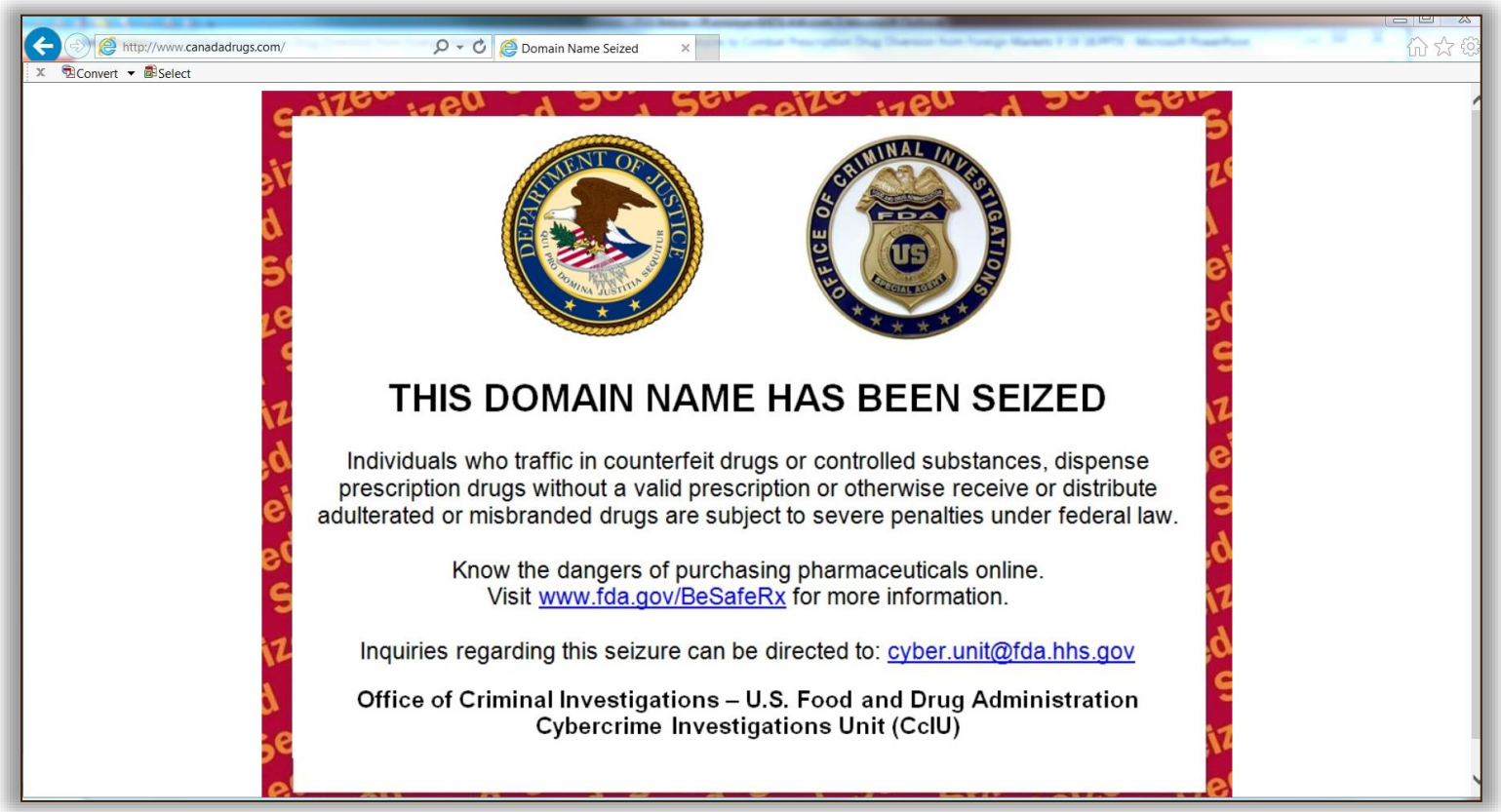
U.S. Sentences British Citizen for Distributing Fake Avastin

Richard J. Taylor to Get 18 Months in Prison, $800,000 Fine for Adulterated Drugs

Path of the Counterfeit Avastin



Seizure of www.canadadrugs.com



Thank you

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