COMMITTEES

NATURAL RESOURCES
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ENERGY AND COMMERCE

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–2107
(202) 225–2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396–2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875–2900

http://markey.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515–2107

October 8, 2012

The Honorable Margaret Hamburg
Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Dear Commissioner Hamburg:

The recent deadly outbreak of fungal meningitis linked to spinal injections of a pain-reliving steroid has exposed gaps in the oversight of compounding pharmacies. While such pharmaceutical operations capable of making specialized drug formulations play an important role for many patients who cannot take traditional medication such as pediatric patients, hospice patients, and patients with allergies to common dyes and fillers, they also carry inherent risks that are not always fully communicated to patients. The growing trend of larger compounding pharmacies entering the market for the preparation and creation of high-risk drugs that require utmost sterility, such as spinal injections, raises questions about how the safeguards and high standards met by large drug manufacturing companies are being met by compounding pharmacies.

Compounding pharmacies fall into a regulatory black hole. State regulators have primary oversight responsibility over these pharmacies, however, limited state resources and varying standards and regulatory requirements affect the adequacy of state regulation. In several states, self-inspection of the pharmacy is allowed, meaning that the pharmacist in question submits a self-evaluation by questionnaire of the pharmacy's compliance with laws and regulations. FDA has limited authority over these compounding pharmacies. For example, statutory law limits the types of records that FDA may review during an inspection of a pharmacy. While there are other provisions over which FDA could exert authority that would significantly limit compounding drugs, such as FDA's pre-approval authority, FDA has historically exercised enforcement discretion and deferred to the states as primary regulators.

Some estimate that compounding represents one percent of all of the prescriptions filled each year. Today, that would amount to approximately 37 million prescriptions for compounded products. Pharmacy compounding, by definition, involves making a new drug whose safety and efficacy have not been demonstrated with the kind of data that FDA ordinarily would require in reviewing a new drug application. Sometimes the preparation of the drug is as simple as creating a suspension for a tablet that is more easily digested by a child. In other cases, the compounding pharmacy may be intending to produce a replicate of a more expensive drug or creating an entirely new formulation using previously-approved FDA ingredients. In a traditional

sense, compounding pharmacies produce customized medication for an individual patient in response to a licensed practitioner's prescription and typically operate on a local basis within a community or state. However, there has been an increase in the web presence of these pharmacies intending to create large amounts of a drug to be sold online. Furthermore, as is the case with the compounding company responsible for the meningitis outbreak, there has also been an increase in much larger compounding facilities creating drugs to be shipped over state lines. If compounding is done on a large scale and is not done properly, compounders can expose large numbers of patients to health risks associated with unsafe or ineffective medications. In addition, compounding large quantities of drugs and copying commercially available approved products in compounding pharmacies circumvents important public health requirements and undermines the drug approval process – the evidence-based system of drug review that consumers and health professionals rely on for safe and effective drugs.

To better understand FDA's role in oversight and enforcement of compounding pharmacies, I ask for your prompt response to the following questions:

1. How is information regarding the safety and efficacy of compounded drugs communicated to patients? Does FDA require that such drugs be labeled or come with information that makes clear that the compounded pharmaceutical is not approved by the FDA? If so, please explain. If not, why not?

2. Is FDA aware of how many compounding pharmacies are in the United States? Are these facilities solely dedicated to compounding, or is compounding just a portion of their business? Does FDA keep records on whether these compounding pharmacies have an online presence or are selling across state lines?

3. How many enforcement actions has the FDA taken on compounding pharmacies? For the last ten years, please provide a list of the location of the pharmacy, date of the infraction, reason from enforcement action and any other relevant information pertaining to these enforcement actions.

4. When is the last time FDA provided guidance to the states relating to compounding pharmacies? Please provide a copy of such guidance. How frequently does FDA update this guidance? Does FDA maintain an updated list of products that are inappropriate for compounding? What about guidance that specifies precautions and standards that should be taken or met in the preparation of specific pharmaceuticals?

5. What is FDA's view on compounding pharmacies maintaining an online presence for the purpose of advertising and selling specific compounded pharmaceuticals? Has FDA issued guidance on this specific issue? If so, please provide a copy of such guidance?

6. Has FDA ever conducted a random inspection of a compounding pharmacy? Does FDA provide guidance to states on how inspections should occur or items that states should investigate when inspecting a compounding pharmacy?

7. Many of the drug ingredients used by compounding pharmacies are imported from abroad. What actions does FDA take to ensure that the bulk ingredients (active and inactive) used for compounding comply with FDA requirements?

8. Does FDA have the statutory authority it needs to ensure the safety of consumers with respect to drugs made by compounding pharmacies? Does FDA believe that new legislation is needed to strengthen federal oversight over compounding pharmacies?

Thank you for your assistance and cooperation in this mater. I request that you provide a full and complete response within 15 working days or no later than close of business on October 29, 2012. Should you have any question about this request, please have your staff contact Dr. Avenel Joseph of my staff at (202) 225-2836.

Sincerely,

Edward J. Markey

Edward J. Markey