

EXHIBIT B

TO THE DECLARATION OF MITCHELL S. BERNARD



NOV 7 2011

Food and Drug Administration
Rockville MD 20857

Andrew Maguire
Vice President, Environmental Health
Environmental Defense
1875 Connecticut Avenue, NW
Suite 600
Washington, DC 20009

Re: Original Docket No. 05P-0139/CP
New Docket No. FDA-2005-P-0007

Dear Mr. Maguire:

This is the final response from the Food and Drug Administration ("FDA" or the "Agency") to Citizen Petition (Original Docket No. 05P-0139/CP; New Docket No. FDA-2005-P-0007) submitted on April 7, 2005, on behalf of Environmental Defense, the American Academy of Pediatrics, the American Public Health Association, Food Animal Concerns Trust, and the Union of Concerned Scientists.

The petition requests that FDA withdraw approvals for herdwide/flockwide uses of the following antimicrobial drugs in chickens, swine, and beef cattle for purposes of growth promotion (including weight gain and feed efficiency) and disease prevention and control (except for non-routine use where a bacterial infection has been diagnosed within a herd or flock): penicillins, tetracyclines, aminoglycosides, streptogramins, macrolides, lincomycin, and sulfonamides. Your petition seeks withdrawal of these drugs based, in part, on the criteria listed in FDA's Guidance for Industry #152, "Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern" (GFI #152).

On October 4, 2005, FDA's Center for Veterinary Medicine ("CVM" or "Center") issued a tentative response to this Citizen Petition explaining that a final response granting or denying the petition would not be issued until FDA makes a decision about whether to withdraw the drug approvals listed in the petition. In that letter, the Agency also acknowledged "the need to address concerns related to the role that antimicrobial drug use in food-producing animals plays in the emergence and selection of antimicrobial drug resistant bacteria."

We have reviewed the issues raised in your petition. Although we share your concern about the use of medically important antimicrobial drugs in food-producing animals for growth promotion and feed efficiency indications (i.e., production uses), in accordance with 21 CFR 10.30(e)(1)(ii), FDA is denying your petition. The reasons for this decision are discussed below.

BACKGROUND

In order to withdraw a new animal drug's approval, FDA must follow a number of statutory requirements, such as providing the sponsor of the new animal drug with notice that the Agency proposes to withdraw approval of the drug and an opportunity for a formal evidentiary hearing on the matter. FDA cannot withdraw approval of a new animal drug until the legally-mandated process is complete.

Prior to initiating formal proceedings to withdraw approval of a new animal drug, CVM makes a determination about whether such action is warranted after analyzing the relevant data and information. The Center's determination about whether to initiate action to withdraw approval of a new animal drug is primarily an internal process, although participation by drug sponsors and the public may be requested. This process may include, among other things, an in-depth review and evaluation of available data and information related to the particular drug, collection of additional data if needed, and in some instances a risk assessment. This process will be used to determine whether statutory grounds may exist to support a withdrawal action. If the Center concludes that grounds exist to withdraw a new animal drug approval, before moving forward to withdraw under section 512(e) of the FD&C Act, FDA must provide the drug's sponsor with notice and an opportunity for a formal administrative hearing ("NOOH").

Issuance of NOOHs and requests for a hearing are governed by the federal regulations dealing with formal evidentiary hearings. A sponsor who requests a formal hearing is required to submit detailed data to justify the request. The sponsor's request and supporting documentation will be reviewed and, if the Commissioner determines that a hearing is justified, the Commissioner will issue a notice of hearing. If the Commissioner grants a hearing, a formal evidentiary hearing is held. Generally, the Commissioner will appoint a presiding officer to conduct the hearing and render an initial decision, which can be appealed to the Commissioner. An order withdrawing the approval of a new animal drug will issue only after this process is completed and the Commissioner has found that the cited grounds for withdrawing the drug have been demonstrated. To date, no hearings have been held with respect to the animal drugs at issue in the Citizen Petition, and the Commissioner has not made any final determination about whether grounds for withdrawal under section 512(e) of the FD&C Act have been satisfied.¹

DISCUSSION

As discussed below, for various reasons the Agency has decided not to institute formal withdrawal proceedings at this time and instead is currently pursuing other alternatives to address the issue of antimicrobial resistance related to the production use of antimicrobials in animal agriculture.

The Agency's experience with contested, formal withdrawal proceedings is that the

¹ Although the Agency did publish two Notices for Opportunity for a Hearing in 1977 on proposals to withdraw approvals of the new animal drug applications for all uses of penicillin and some uses of tetracyclines in animal feed, no hearings were held on these proposals and no final findings were made by the Commissioner.

process can consume extensive periods of time and Agency resources. For example, the first NOOHs for withdrawal of nitrofurans approvals were issued in 1971, but the final rule withdrawing the approvals was not issued until 1991. Withdrawal of diethylstilbestrol (DES) approvals became final in 1979, seven years after issuance of an NOOH. More recently, the withdrawal of approved uses of enrofloxacin in poultry took almost five years and cost FDA approximately \$3.3 million.

Recognizing that the process of reviewing safety information for antimicrobial drugs approved before 2003, and pursuing withdrawal proceedings in some cases, would take many years and would impose significant resource demands on the Agency, in June 2010, FDA proposed a different strategy to promote the judicious use of medically important antimicrobials in food-producing animals in a draft guidance entitled, "The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals" draft Guidance for Industry #209 ("draft GFI #209"). Generally speaking, judicious uses would be those uses that are appropriate and necessary to maintaining the health of humans and animals.

Draft GFI #209 proposes two principles aimed at ensuring the judicious use of medically important antimicrobials in food-producing animals. The first principle set out in the draft guidance is that the use of medically important antimicrobial drugs in food-producing animals should be limited to those uses that are considered necessary for assuring animal health. As set out in the draft guidance, FDA does not consider production uses of such drugs to be necessary for assuring animal health because, unlike other uses, production uses are not directed at any specifically identified disease but rather are expressly indicated and used for the purpose of enhancing the production of animal-derived products (e.g., promoting faster weight gain or improving feed efficiency). The second principle set out in the draft guidance is that the use of medically important antimicrobial drugs in food-producing animals should be limited to those uses that include veterinary oversight or consultation. This principle speaks to the need for the scientific and clinical training of licensed veterinarians in assuring that medically important antimicrobials are used in a judicious manner.

Based on feedback this Agency has received following the issuance of draft GFI #209, FDA believes that the animal pharmaceutical industry is generally responsive to the prospect of working cooperatively with the Agency to implement the principles recommended in draft GFI #209. FDA intends to work with sponsors who approach FDA and are interested in working cooperatively with the Agency to phase out production uses of medically important antimicrobials and to transition medically important antimicrobials currently approved for over the counter use in food-producing animals to a marketing status that involves veterinary oversight (i.e., veterinary feed directive ("VFD") status for feed use drugs and prescription status for drugs approved for use through other routes of administration).

As part of the proposed strategy, FDA issued an advance notice of proposed rulemaking ("ANPRM") in March 2010 to seek public comment on whether and to what extent efficiency improvements should be made to the current VFD process as set forth in FDA's regulation at 21 CFR 558.6. FDA received numerous public comments in

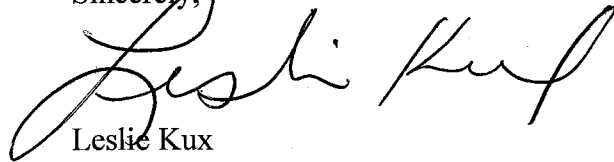
response to the ANPRM and is taking those comments into consideration in drafting a revised rule.

FDA believes that the strategy set out in draft guidance #209 is a pathway to achieving the same goals as those advocated by your organization, i.e., judicious use of medically-important antimicrobials. Additionally, given the considerable amount of Agency resources that are required to pursue withdrawal proceedings, we believe the current proposed approach will accomplish these goals in a more timely and resource-efficient manner than would otherwise be the case. Moreover, this strategy does not foreclose initiating withdrawal proceedings in the future.

CONCLUSION

For the foregoing reasons, FDA denies your petition. FDA is committed to working with animal drug sponsors, the veterinary and public health communities, the animal agriculture community, and all other interested stakeholders in developing a strategy to address antimicrobial resistance concerns in a manner that is protective of both human and animal health.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Kux". The signature is written in a cursive, flowing style.

Leslie Kux
Acting Assistant Commissioner for Policy