September 25, 2020

George M. Stone, Jr.
Patients for Access to Advanced Therapy for Hemophilia
114 Cloak Ln
Lake Frederick, VA 22630

Re: Citizen Petition [Docket No. FDA-2019-P-6099]

Dear Mr. Stone,

This letter responds to your citizen petition received December 30, 2019 (Petition). In the Petition you request that the Food and Drug Administration (FDA or Agency) "seek enforcement actions, such as one or more administrative orders or consent agreements, against Bayer U.S., Bayer AG that will prevent the recurrence of" the following: "[m]islabeling nearly 1,000 vials of hemophilia A treatment Kogenate FS"; "[i]mproper storage of hemophilia treatment products"; and "[r]elease of expired hemophilia treatment products to the US consumer market." In addition, you recommend that "FDA assess whether other factor producers have sufficient safeguards to ensure they will not experience similar events."

FDA has considered your Petition. For the reasons stated below, your Petition is denied.

**BACKGROUND:**

Kogenate® FS, a drug approved under a biologics license application (BLA) by FDA's Center for Biologics Evaluation and Research, is a recombinant antihemophilic factor indicated for the prevention and control of bleeding in adults and children with hemophilia A.

On July 19, 2019 Bayer HealthCare LLC (Bayer) voluntarily recalled two lots of Kogenate® FS antihemophilic factor (recombinant) 2000 IU vials in the United States to the patient level. Bayer reported that some vials from the two recalled lots that were labeled as Kogenate® FS actually contained the FVIII hemophilia A treatment, Jivi® antihemophilic factor (recombinant) PEGylated-aucl 3000 IU. The affected lots were distributed from February 5, 2019 to July 15, 2019 from Bayer's distribution sites in Berkeley, California and Shawnee, Kansas. Customers were asked to immediately quarantine inventory of the affected product and follow further instructions provided in Bayer's Important Drug Recall Notification.[1,2] FDA classified the recall as Class II and monitored the recall to completion. The Agency terminated the recall after

[1] https://www.fda.gov/vaccines-blood-biologics/recalls-biologics/drug-recall-kogenate-fs-antihemophilic-factor-recombinant-2000-iu
[2] https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/bayer-statement-voluntary-recall-two-lots-kogenater-fs-antihemophilic-factor-recombinant-united

determining that all reasonable efforts had been made by the manufacturer to remove the product and that it was reasonable to assume the product had been removed and proper disposition had been made (see 21 CFR 7.55(a)).

**RESPONSE TO PETITION**:

A citizen petition provides a mechanism for interested persons to request that FDA issue, amend, or revoke a regulation or order, or take or refrain from taking any other form of administrative action (21 CFR 10.25 (a)). However, the definition of administrative action does not include enforcement actions,[3] and requests for FDA to initiate enforcement action are outside the scope of our citizen petition regulations (see 21 CFR 10.30(k)). Decisions regarding whether to pursue enforcement action are within the Agency's discretion. Therefore, your request for FDA to initiate or take enforcement actions is not a proper subject of a citizen petition, and we are denying your request under 21 CFR 10.30(e).

You also "recommend that the FDA assess whether other factor producers have sufficient safeguards to ensure they will not experience similar events." Federal laws and regulations dictate the requirements for the manufacture of drugs, including those that are biological products. Under the Federal Food, Drug, and Cosmetic Act, a drug and the methods used in, or the facilities or controls used for its manufacture, processing, packing or holding must conform with current good manufacturing practice (CGMP) to assure that such drug meets the requirements of the Act as to safety and has the identity and strength, and meets the quality and purity characteristics, that it purports or is represented to possess.[4] In addition, a drug that is also a biological product regulated under section 351 of the Public Health Service Act (42 U.S.C. 262) must comply with applicable CGMP requirements in 21 CFR parts 600 through 680.

FDA takes many actions to help ensure the quality of drugs throughout the product lifecycle. For drugs like Kogenate® FS that are approved under a BLA, FDA thoroughly reviews the application to ensure the products are safe, pure, and potent before they reach the market, and oversees drug quality post-approval. The Agency inspects drug manufacturing facilities located in the U.S. and around the world with comparable depth and rigor based on an assessment of risk to public health. FDA's drug inspection program, both foreign and domestic, is risk-based. FDA prioritizes for surveillance inspection facilities deemed higher-risk using an approach that weighs multiple factors such as compliance history, recall trends, time since last inspection, inherent risk of the drug being manufactured, and processing complexity.[5] In addition to on-site inspections, FDA monitors reports from industry, patients, and healthcare providers to identify and address potential quality problems. When FDA identifies significant manufacturing or safety issues, it quickly acts to protect Americans.

[3] As defined in FDA regulations, "administrative actions" include every act, including the refusal or failure to act, involved in the administration of any law by the Commissioner, except that it does not include the referral of apparent violations to U.S. attorneys for the institution of civil or criminal proceedings or an act in preparation of a referral (21 CFR 10.3(a)).

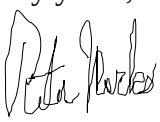
[4] Section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)); 21 CFR Parts 210 & 211.

[5] See section 510(h)(3)-(4) of the FD&C Act (21 U.S.C. 360(h)(3)-(4)).

**AGENCY CONCLUSIONS**:

We appreciate your concern for patient safety. However, for the reasons described above, your Petition is denied.

Sincerely yours,



Peter Marks, MD, PhD
Director
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cc: Dockets Management Staff