Inspections, Compliance, Enforcement, and Criminal Investigations

American Association of Acupuncture and Bio-Energetic Medicine 3/24/11

Department of Health and Human Services

Public Health Service
Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, MD 20993-0002

Mar 24 2011

WARNING LETTER

VIA UPS EXPRESS

Fred Lam, M.D.
President
American Association of Acupuncture and Bio-Energetic Medicine (AAABEM)
C/O Institutional Bio-Energetic Medicine
100 N. Beretania Street, Suite #208
Honolulu, Hawaii 96817

Dear Dr. Lam:

This Warning Letter is to inform you of objectionable conditions observed during the Food and Drug Administration (FDA) inspection of your Institutional Review Board (IRB) from October 25, 2010, to November 5, 2010, by an investigator from the FDA San Francisco District Office. The purpose of this inspection was to determine whether your IRB is in compliance with applicable federal regulations. IRBs that review investigations of devices must comply with applicable provisions of Title 21, Code of Federal Regulations (21 CFR) Part 56-Institutional Review Boards, Part 50-Protection of Human Subjects, and Part 812-Investigational Device Exemptions, This letter also requests prompt corrective action to address the violations cited and discusses your written response dated November 16, 2010, to the noted violations.

The inspection was conducted under a program designed to ensure that data and information contained in requests for Investigational Device Exemptions (IDE), Premarket Approval (PMA) applications, and Premarket Notification submissions (510(k)) are scientifically valid and accurate. Another objective of the program is to ensure that human subjects are protected from undue hazard or risk during the course of scientific investigations.

Our review of the inspection report prepared by the district office revealed several violations of 21 CFR Part 50-Protection of Human Subjects, Part 56-Institutional Review Boards, and Section 520(g) (21 U.S.C. 360j(g)) of the Federal Food, Drug, and Cosmetic Act. At the close of the inspection, the FDA investigator presented an inspectional observation Form FDA 483 to Dee Alex Duarte, O.D., for his review and discussed the observations listed on the form with him. The deviations noted on the Form FDA 483, your written response, and our subsequent review of the inspection report are discussed below:

1. Failure to ensure that informed consent will be sought from each prospective subject, in accordance with 21 CFR Part 50 [21 CFR 56.111(a)(4)].

In order to approve research covered by 21 CFR Part 56, an IRB must determine that informed consent will be sought from each prospective subject, in accordance with and to the extent required by 21 CFR Part 50. 21 CFR 56.111(a)(4). An example of this failure includes, but is not limited to, the following:

- On January 8, 2008, your IRB approved, and then on June 6, 2009, your IRB revised, **(b)(4)** protocol "**(b)(4)**." The study protocol states that the sequence of the study procedures was:
  A. **(b)(4)**.
  B. **(b)(4)**.
  C. **(b)(4)**.

Your response to the Form FDA 483 states that after discussion with the FDA field investigator, you corrected the sequence of the study procedures so that informed consent was obtained before the **(b)(4)** device was used. Your response is inadequate in that it only specified the action you took to correct the study protocol, but it did not describe how you will avoid recurrence of the violation. In your response to this letter, please describe in detail how you will prevent the recurrence of this type of violation.

2. Failure to follow written procedures for conducting initial and continuing review of research and for reporting your findings and actions to the investigator and the institution [21 CFR 56.108(a)].

Examples of this failure include, but are not limited to, the following:

a. The IRB failed to follow the AAABEM IRB Protocol, Section III.L.2.a.6.b., which requires that "[a] blank research report will be e-mailed and mailed to the investigator notifying him/her that the semi-annual report is now due. If this report is not received within **(b)(4)** then [a] second and final reminder letter is sent out by e-mail, mail, and fax." The IRB sent the first written request for a progress report to **(b)(4)** on December 22, 2009, but the second written request was not sent until February 8, 2010.

b. The AAABEM IRB Protocol, Section III.L.2.6.a., lists specific elements that must be included in the investigators' semi-annual research progress report forms**.** However,the following semi-annual progress reports do not contain all of the elements that are required by your Protocol:

i. The progress reports submitted by Dr. Landerman (June 22, 2009, February 8, 2010, April 8, 2010, and October 10, 2010) and Dr. Fong (May 14, 2010) omitted the following required elements:

- a brief summary of the study progress in relation to the investigational plan;
- a brief summary of results;
- report of any unexpected or unanticipated results that may change the non-significant risk status of the research study; and
- the number of investigators and investigational sites.
- if you have illiterate but English speaking subjects, who reads the consent form to the subjects and did they sign a statement to this affect? Was the reading videotaped or recorded?
- if you treat non-English speaking subjects, was the consent form read to the subject and who read it? Did the reader sign a statement to this affect? Was the reading videotaped?

ii. The progress report submitted by **(b)(4)** (June 5, 2009) omitted the following required elements:

- report of any unexpected or unanticipated results that may change the non-significant risk status of the research study; and
- the number of investigators and investigational sites.
- if you have illiterate but English speaking subjects, who reads the consent form to the subjects and did they sign a statement to this affect? Was the reading videotaped or recorded?

- if you treat non-English speaking subjects, was the consent form read to the subject and who read it? Did the reader sign a statement to this affect? Was the reading videotaped?

Your response states that you added the missing elements to the progress report form. However, your response is inadequate in that two elements are still missing in your revised progress report form. The two missing elements are a brief summary of the study progress in relation to the investigational plan and the brief summary of the results. Your response is inadequate also in that it did not describe how you will adhere to your AAABEM IRB Protocol to avoid the recurrence of the violations. Please provide a revised investigator's progress report form that contains all of the required elements listed in your IRB Protocol, and describe in detail the measures that you are taking to adhere to your IRB Protocol.

3a. Failure to follow written procedures for ensuring prompt reporting to the appropriate institutional officials and FDA of any instance of serious or continuing noncompliance with 21 CFR Part 56 or determinations of the IRB, and of any suspension or termination of IRB approval [21 CFR 56.108(b)].

An example of this failure includes, but is not limited to, the following:

- The AAABEM IRB Protocol does not contain any procedure for ensuring the prompt reporting to the FDA and appropriate institutional officials of any instance of serious or continuing noncompliance, or the suspension or termination of approved studies**.**

b. Failure to report promptly to the FDA any suspension or termination of approval [21 CFR 56.113].

An example of this failure includes, but is not limited to, the following:

- You failed to promptly report to the FDA the February 22, 2010, suspension of **(b)(4)**study titled "**(b)(4)**."

Your response states that Dr. Duarte added three paragraphs to the AAABEM IRB Protocol to correct the violation. Your response is incomplete in that it did not specify the time frame in which you will report terminations and suspensions of approvals to the FDA. Please provide the revised AAABEM IRB Protocol with this information. Please also describe in detail any additional actions you have taken or will take to correct violations mentioned above and prevent the recurrence of similar violations. Please include documentation of training that IRB staff members have received on the AAABEM IRB Protocol.

The violations described above are not intended to be an all inclusive list of problems that may exist at the IRB. The IRB is responsible for ensuring compliance with the Act and applicable regulations. You have previously submitted corrective action plans in response to the 2008 FDA Warning Letter. However, similar violations have been documented during this inspection. As a result of your continued noncompliance with the Act and applicable regulations, we are requesting a regulatory meeting to be held with your IRB. Please contact Anne Hawthorn, Chief, Special Investigations Branch, at the contact information listed below to arrange a meeting at our office, or via a teleconference, to further discuss your proposed corrective actions.

Within fifteen (15) working days of receiving this letter, please provide written documentation of the actions you have taken or will take to correct these violations and prevent the recurrence of similar violations. Failure to respond to this letter and take appropriate corrective action could result in the FDA taking regulatory action without further notice to you.

Your response should reference "CTS # EC100127/E001" and be sent to

Attention: Anne T. Hawthorn J.D.
Food and Drug Administration
Center for Devices and Radiological Health
Office of Compliance
Division of Bioresearch Monitoring
10903 New Hampshire Avenue
Building 66, Room 3504
Silver Spring, Maryland 20993-0002.

A copy of this letter has been sent to San Francisco District Office at 1431 Harbor Bay Parkway, Alameda, CA 94502-7070. Please send a copy of your response to that office.

The Division of Bioresearch Monitoring has developed introductory training modules in FDA regulated device clinical research practices, which are available on the FDA website. The modules are for persons involved in FDA regulated device clinical research activities. These modules are located at the following website address: http://www.fda.gov/Training/CDRHLearn/ucm162015.htm [1].

If you have any questions, please contact Anne T. Hawthorn at 301-796-6561 or via email at anne.hawthorn@fda.hhs.gov.

Sincerely yours,
/S/
Steven D. Silverman
Director
Office of Compliance
Center for Devices and
Radiological Health

Links on this page:

1. http://www.fda.gov/Training/CDRHLearn/ucm162015.htm