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DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Via Federal Express

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WARNING LETTER

Food and Drug Administration
Center for Devices and
Radiological Health
2098 Gaither Road
Rockville, MD 20850

Jeffrey Moses, DDS
Pacific Center for Jaw and Facial Surgery
355 Santa Fe Drive, Suite 100
Encintas, California 92024

Dear Dr. Moses:

The purpose of this Warning Letter is to inform you of objectionable conditions found during a Food and Drug Administration (FDA) inspection conducted at your clinical site and to request a prompt reply. Dr. Sandra L. Shire, an investigator from the FDA's Los Angeles District Office, conducted the inspection at your site during the period of July 16 through July 17, 2002.

The purpose of the inspection was to determine if your activities and procedures as a clinical investigator for the [redacted] study sponsored by [redacted], complied with applicable regulations. The [redacted] is a device as that term is defined under Section 201(h) of the Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C.321(h)].

This inspection was conducted under a program designed to ensure that data and information contained in applications for Investigational Device Exemptions (IDE), Premarket Approval (PMA), and Premarket Notification [510(k)] submissions 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 the scientific investigation. [redacted]

Our review of the inspection report prepared by the Los Angeles District Office reveals violations of requirements of Title 21, Code of Federal Regulations (21 CFR), Part 50 - Protection of Human Subjects; and 21 CFR Part 812 - Investigational Device Exemptions. At the conclusion of the inspection, Dr. Shire listed her findings on a Form FDA 483, "Inspectional Observations," and discussed these findings with Christine R. Guerrero, Financial Assistant, on July 17, 2002, and with you via telephone on July 18, 2002.

We acknowledge receipt of your September 17, 2002, response to Dr. Shire's findings. Your response does not adequately address all of the Form FDA 483 items, nor does it contain supporting documentation of any corrections.

This letter informs you of the violations found during this inspection and our subsequent review of the inspection report. The following violations were observed:

Failure to adhere to the General and Specific Responsibilities of an investigator. (21 CFR 812.100 and 812.110)

You failed to follow the protocol as described below:

- The [] subjects enrolled in the study received treatments not specified in the protocol. For example, all [] study subjects received [] in addition to the device, and one subject received []. These deviations from the protocol were not reported to the sponsor. You stated that [] the results as a reason for not reporting the deviations. For your information, prior Sponsor approval is required for changes in or deviations from an investigational plan unless it is an emergency use in which case notice shall be given to the Sponsor and reviewing IRB as soon as possible but in no event later than 5 working days after the emergency.
- The protocol specifies []
[]

Failure to include all the basic elements in the informed consent document used. (21 CFR 50.25)

- The informed consent failed to identify that this study involves research nor does it describe the purpose of the research. The expected duration of participation in this study is not identified. There is no description of the procedures to be followed identifying the portions that are experimental. The description that is provided is not given in language free of technical jargon that is clear to the subjects. The terms [] which are used with no modifiers or descriptions, may not be understandable to the subjects.
- There are no alternatives identified in the informed consent document. There is one section that states that alternatives have been discussed; however, alternatives are specifically required to be identified in the informed consent document under 21 CFR 50.25(a)(4).

Failure to document informed consent by the use of a written consent form approved by the IRB. (21 CFR 50.27)

You did not have any documentation that the informed consent form used was approved by the IRB.

Failure to maintain accurate, complete, and current records relating to the investigator's participation in the investigation. (21 CFR 812.140(a))

You failed to have any records of the study protocol, IRB approval, or the investigator's agreement. You did not have complete records of your correspondence between the IRB. In your response to the inspectional observations you have stated that you now have these documents.

You failed to have a complete and accurate listing of the subjects enrolled in the study, for example:

- one subject was reported as having a device failure. Upon further review it was determined that this subject [redacted] was incorrectly identified as having participated in the study; and
- one subject, whose [redacted] device had to be [redacted] could not be recalled and identified.
- You did not have an accurate record of the [redacted] subjects enrolled in the study. For example, patient [redacted] was included in your records as having [redacted] however this patient was not an enrolled subject in this study. In attempting to resolve this issue you reported that maybe there were [redacted] subjects included in the study. Ultimately patient [redacted] was determined to have been a patient who had a [redacted] device [redacted] this device was not one of the study devices.
- Subject [redacted] received an [redacted] device; there is no mention in the case report forms of the failure of this [redacted] which required explanation.
- You failed to maintain records of persons who received, used, or disposed of the investigational devices or recorded the disposition of any device.

You have stated in your written reply that you now have confirmed your records concerning device accountability.

Failure to maintain accurate records of each subject's case history and exposure to the device including supporting data and medical records. (21 CFR 812.140(a)(3) and (iii))

- Many [redacted] records were missing. Subjects were required by the protocol to [redacted] Follow-up visits were not made and therefore no [redacted]
- Records of the investigation were not maintained in any easily obtainable form. Records and case report forms were mixed in subject's medical records, and some records of participation in the study were found in other patient's charts.

As a clinical investigator, it is your responsibility to ensure that investigations that you participate in are conducted in accordance with applicable FDA regulations.

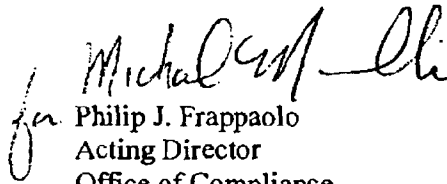
Please advise this office, in writing, **within fifteen (15) working days of receipt of this letter** of the additional specific steps you have taken to correct these violations and other violations known to you, and to prevent the recurrence of similar violations in current or future studies. Failure to respond can result in the initiation of regulatory action, including disqualification, without further notice.

You should direct your response to the:

Food and Drug Administration
Center for Devices and Radiological Health
Office of Compliance
Division of Bioresearch Monitoring
Program Enforcement Branch II, (HFZ-312)
2098 Gaither Road
Rockville, Maryland 20850
Attention: Mr. G. Levering Keely, BSN, MPA,
Consumer Safety Officer.

A copy of this letter has been sent to our Los Angeles District Office, 19900 MacArthur Blvd., Suite 300, Irvine, CA 92612. We request that a copy of your response be sent to that office as well.

Sincerely yours,


for Philip J. Frappaolo
Acting Director
Office of Compliance
Center for Devices and
Radiological Health

IRB/Purged Copy to:

Sponsor/Purged Copy to:

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