



# Louisiana Board of Pharmacy

3388 Brentwood Drive  
Baton Rouge, Louisiana 70809-1700  
Telephone 225.925.6496 ~ Facsimile 225.925.6499  
[www.pharmacy.la.gov](http://www.pharmacy.la.gov) ~ E-mail: [info@pharmacy.la.gov](mailto:info@pharmacy.la.gov)



May 10, 2016

Senator John A. Alario Jr., President  
Louisiana Senate  
PO Box 94183  
Baton Rouge, LA 70804

Via Email: [APA.SenatePresident@legis.la.gov](mailto:APA.SenatePresident@legis.la.gov)

## Electronic Mail – Delivery Receipt Requested

Re: Report No. 2 of 3 for Regulatory Project 2015-4 ~ Compounding for Office Use for Veterinarians

Dear Senator Alario:

As we indicated in our first report to you on July 9, 2015, the Board is currently amending its rules to allow pharmacists to compound medications for office use for veterinarians. Subsequent to our Notice of Intent published in the July 20, 2015 edition of the Louisiana Register, and in accordance with the Administrative Procedures Act, we conducted a public hearing at the Board office on August 26, 2015.

We received written comments and verbal testimony during the hearing. During the Board's evaluation of those comments and testimony, the members determined it would be appropriate to revise the original proposal to add some cautionary language. As required, we published the Potpourri Notice in the March 2016 edition of the Louisiana Register, and in accordance with the Administrative Procedures Act, we conducted a public hearing at the Board office on April 19, 2016. During the Board's subsequent meeting on May 4, they evaluated the written comments submitted at that hearing and determined that no further revisions were necessary and to move forward with the revised proposed rule.

You should find the following documents appended to this letter:

- Notice of Intent, as published in the July 2015 Louisiana Register
- Summary of Comments at August 26, 2015 Public Hearing
- Board Response to Commentator from August 26, 2015 Public Hearing
- Potpourri Notice, as published in the March 2016 Louisiana Register
- Summary of Comments at April 19, 2016 Public Hearing
- Board Response to Commentators from April 19, 2016 Public Hearing
- Full text of proposed rule as revised

Subject to review by the Joint Legislative Oversight Committee on Health and Welfare, the Board proposes to publish the proposed rule, as revised, as a Final Rule in the

June 20, 2016 edition of the *Louisiana Register*. If you have any questions about the enclosed information or our procedures, please contact me directly at [mbroussard@pharmacy.la.gov](mailto:mbroussard@pharmacy.la.gov) or 225.925.6481.

For the Board:



Malcolm J. Broussard  
Executive Director

cc: Chair, Senate Committee on Health and Welfare – [APA.S-H&W@legis.la.gov](mailto:APA.S-H&W@legis.la.gov)  
Speaker, House of Representatives – [APA.HouseSpeaker@legis.la.gov](mailto:APA.HouseSpeaker@legis.la.gov)  
Chair, House Committee on Health and Welfare – [APA.H-H&W@legis.la.gov](mailto:APA.H-H&W@legis.la.gov)  
Editor, *Louisiana Register* – [Req.Submission@la.gov](mailto:Req.Submission@la.gov)  
Reference File

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Pharmacy**

**Compounding for Office Use for Veterinarians  
(LAC 46:LIII.2535)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to amend §2535 of Chapter 25, Prescriptions, Drugs, and Devices, of its rules, to allow pharmacies to compound medications for office use, but only for veterinarians.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIII. Pharmacists**

**Chapter 25. Prescriptions, Drugs, and Devices**

**Subchapter C. Compounding of Drugs**

**§2535. General Standards**

A. - D. ...

E. Veterinarian Administered Compounds, also referred to as Pharmacy-Generated Drugs

1. Upon receipt of a valid non-patient-specific medical order from a licensed veterinarian, the pharmacy may compound a preparation intended for administration to an animal patient by the veterinarian.

2. These preparations may not be distributed to any other third party by the pharmacy, nor may these preparations be further re-sold or distributed by the veterinarian ordering the preparation from the pharmacy.

3. This authorization is primarily intended to facilitate the preparation of medications needed for emergency use in a veterinary office practice. Given the limited application of this authorization, which allows these products to be prepared using less rigorous standards applicable to compounding as opposed to the more rigorous standards applicable to manufacturing processes, the compounding

pharmacy preparing these products shall be limited in the amount of such products they can prepare.

a. No Louisiana-licensed pharmacy may distribute any amount of practitioner administered compounds in excess of 5 percent of the total amount of drug products dispensed and/or distributed from their pharmacy.

b. The 5 percent limitation shall be calculated on a monthly basis and shall reference the number of dosage units.

c. For those Louisiana-licensed pharmacies located outside Louisiana, the total amount distributed and/or dispensed shall reference the pharmacy's total business within the state of Louisiana.

F. Compounding Commercial Products not Available. A pharmacy may prepare a copy of a commercial product when that product is not available as evidenced by either of the following:

1. products appearing on a website maintained by the federal Food and Drug Administration (FDA) and/or the American Society of Health-System Pharmacists (ASHP);

2. products temporarily unavailable from manufacturers, as documented by invoice or other communication from the distributor or manufacturer.

#### G. Labeling of Compounded Preparations

1. For patient-specific compounded preparations, the labeling requirements of R.S. 37:1225, or its successor, as well as §2527 of this Chapter, or its successor shall apply.

2. For veterinarian administered compounds, the label shall contain, at a minimum, the following data elements:

a. pharmacy's name, address, and telephone number;

b. veterinarian's name;

c. name of preparation;

d. strength and concentration;

e. lot number;

f. beyond use date;

g. special storage requirements, if applicable;

h. identification number assigned by the pharmacy;

and

i. name or initials of pharmacist responsible for final check of the preparation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 23:1316 (October 1997), amended LR 29:2105 (October 2003), effective January 1, 2004, LR 41:97 (January 2015), LR 41:

#### Family Impact Statement

In accordance with section 953 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal, or amendment. The following statements will be published in the *Louisiana Register* with the proposed agency Rule.

1. The effect on the stability of the family. We anticipate no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. We anticipate no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. We anticipate no effect on the functioning of the family.

4. The effect on family earnings and family budget. We anticipate no effect on family earnings and the family budget.

5. The effect on the behavior and personal responsibility of children. We anticipate no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. We anticipate no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

#### Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, repeal, or amendment.

1. The effect on household income, assets, and financial security. We anticipate no impact on household income, assets, and financial security.

2. The effect on early childhood development and preschool through postsecondary education development. We anticipate no impact early childhood development or preschool through postsecondary education development.

3. The effect on employment and workforce development. We anticipate no positive impact on employment and workforce development.

4. The effect on taxes and tax credits. We anticipate no impact on taxes or tax credits.

5. The effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance. We anticipate no effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### Small Business Statement

In accordance with section 965 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses.

1. The establishment of less stringent compliance or reporting requirements for small businesses. The minimum standards for quality and safety for compounded medications are federal in origin and replicated in the board's rules. There are no provisions for less stringent requirements for small businesses.

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses. There are no reporting deadlines in the proposed Rule.

3. The consolidation or simplification of compliance or reporting requirements for small businesses. There are no reporting requirements in the proposed Rule.

4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed Rule. The proposed Rule allows, but does not require, pharmacies to compound medications for office use for veterinarians. The existing Rule stipulates the minimum standards for quality and safety, which mirror the federal standards.

5. The exemption of small businesses from all or any part of the requirements contained in the proposed Rule. There are no exemptions for small businesses.

#### Provider Impact Statement

In accordance with House Concurrent Resolution No. 170 of the Regular Session of the 2014 Legislature, there is

hereby submitted a Provider Impact Statement on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, the following effects on the providers of services to individuals with developmental disabilities.

1. The effect on the staffing level requirements or qualifications required to provide the same level of service. We anticipate no effect on the staffing level requirements or the qualifications for that staff to provide the same level of service.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. We anticipate minimal costs to the provider to implement the requirements of the proposed Rule.

3. The overall effect on the ability of the provider to provide the same level of service. We anticipate no effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments to Malcolm J. Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Tuesday, August 26, 2015 at 9 a.m. in the board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 noon that same day.

Malcolm J. Broussard  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: *Compounding for Office Use for Veterinarians***

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule will result in a cost of approximately \$2,000 for printing costs of the proposed and final rules in FY 16. The proposed rule authorizes pharmacies to compound medications for office use for veterinarians according to standards and limitations identified in the proposed rule.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no impact on revenue collections of state or local governmental units from the proposed rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule directly affects those pharmacies which elect to compound medications for office use for veterinarians. While the existing rule identifies the minimum standards for

quality and safety, the proposed rule authorizes compounding drugs for office use for veterinarians but limits the amount of these medications that a pharmacy may compound to not exceed 5% of the total amount of drug products dispensed or distributed. The costs and benefits associated with compounding for office use for veterinarians are similar to those for compounding medications for patient-specific prescriptions.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

To the extent a pharmacy may elect to engage in the activity authorized by the proposed rule and develops a market for that activity, there could be a positive effect on employment.

Malcolm Broussard  
Executive Director  
1507#064

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office



# Louisiana Board of Pharmacy

3388 Brentwood Drive  
Baton Rouge, Louisiana 70809-1700  
Telephone 225.925.6496 ~ Facsimile 225.925.6499  
[www.pharmacy.la.gov](http://www.pharmacy.la.gov) ~ E-mail: [info@pharmacy.la.gov](mailto:info@pharmacy.la.gov)



## Summary of Testimony & Public Comments re

### Regulatory Project 2015-4 ~ Compounding for Office Use for Veterinarians

at

August 26, 2015 Public Hearing

#### 1. E-mail from Mark Johnston, recently retired Executive Director of the Idaho Board of Pharmacy, now with CVS Caremark

Indicated his opinion that all veterinary compounding was illegal, and referenced the recently issued FDA draft guidance document [*FDA Guidance for Industry – Compounding Animal Drugs from Bulk Drug Substances*, GFI#230 published 05-25-2015]. He expressed concern for the Board's apparent belief that compounding for office use for veterinarians was now legal.

#### 2. Letter from Kirk Ryan, DVM, President, Louisiana Veterinary Medical Association

Dr. Ryan appeared at the hearing and reinforced the association's support for the proposed rule as published.

#### 3. Michael Weber, Roadrunner Pharmacy

Presented verbal comments in support of the proposed rule as published.

The deadline for all comments and testimony on the regulatory proposal was August 26, 2015. The Board is scheduled to review those comments during their November 18, 2015 meeting. In the interim, Roadrunner Pharmacy submitted a copy of the American Veterinary Medicine Association (AVMA)'s August 14, 2015 letter to the FDA with their comments on the proposed draft guidance for industry referenced above. Although the comments reference a draft federal guidance document as opposed to the Board's proposed rule, the draft federal guidance document proposes to prohibit all veterinary compounding for office use, which is in contrast to the Board's proposed rule. Given the relevancy of the matter, the late submission was included in the packet of comments to be considered by the Board.

#### 4. Letter from Robert Eaton, CEO of Roadrunner Pharmacy

Raised several concerns with the draft federal guidance relative to veterinary compounding and a direct conflict with the Board's proposed rule relative to compounding for office use for veterinarians. Included letter from AVMA to the FDA offering comments on the draft federal guidance document.

**From:** [info](#)  
**To:** [Malcolm J. Broussard](#)  
**Subject:** FW: E-mail for Malcolm  
**Date:** Friday, July 31, 2015 8:05:36 AM

---

**Felicia Smith**  
**Administrative Coordinator 3**  
**Louisiana Board of Pharmacy**  
**3388 Brentwood Drive**  
**Baton Rouge, LA 70809**  
**Email:** [info@pharmacy.la.gov](mailto:info@pharmacy.la.gov)  
**Website:** [www.pharmacy.la.gov](http://www.pharmacy.la.gov)

---

**From:** Johnston, Mark D. [mailto:Mark.Johnston@CVSCaremark.com]  
**Sent:** Thursday, July 30, 2015 5:56 PM  
**To:** info  
**Cc:** 'ccatizone@nabp.net'  
**Subject:** E-mail for Malcolm

Malcolm,

Mark Johnston here. As I left the ID BOP, some of my contacts did not transfer well, thus this e-mail to your Board's general e-mail box. I sure did enjoy this year's annual meeting in New Orleans, including getting to know your various Board members better.

I write today, because I read your news letter article concerning the compounding of veterinarian drugs for office use (pasted below). This is contrary to my understanding of federal law. The fact that the DQSA does not pertain to vet drugs is a bad thing, as the DQSA outlines the only legal way to compound. Thus, all vet compounding is illegal. I asked this question at this year's FDA 50 state meeting on compounding, and my reasoning was confirmed. Shortly thereafter, the FDA printed the proposed Guidance For Industry, Compounding Animal Drugs From Bulk Drug Substances. In this Guidance, the FDA explains that they will use enforcement discretion to allow certain vet compounding that adheres to certain conditions. Condition #2 is that the pharmacist compounds pursuant to the receipt of a valid prescription. Thus, office use compounding of vet drugs is clearly illegal and outside of the FDA's proposed enforcement discretion.

Idaho promulgated a similar 5% rule for all non-sterile drugs, even though this is illegal federally. Thus, I understand why LA would do the same, but the way the article reads, the LA Board believes that vet office use compounding is federally legal. Idaho chose to explain to our pharmacists that our Board will not take issue with the allowances within our 5% rule, but that they will have to weigh their options when it comes to the feds.

I hope this is received with the helpful intentions that it was sent with.

See you at the District 6, 7, 8 meeting.

Sincerely,

Mark Johnston

With the recent clarification that the federal prohibition on compounding for office use for practitioners by

pharmacies was applicable only to drugs for human use, the veterinarian community approached the Board for a restoration of the authority for pharmacies to compound medications for office use for veterinarians.... The Board has responded with a proposed change in its compounding rules to allow pharmacies to compound medications for office use for veterinarians...

the Board authorized the adoption of the emergency rule

*Contains Nonbinding Recommendations*

*Draft — Not for Implementation*

#230

# Guidance for Industry Compounding Animal Drugs from Bulk Drug Substances

## ***DRAFT GUIDANCE***

**This guidance document is being distributed for comment purposes only.**

Comments and suggestions regarding this draft document should be submitted within 90 days of publication in the *Federal Register* of the notice announcing the availability of the draft guidance. Submit electronic comments to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number listed in the notice of availability that publishes in the *Federal Register*.

For questions regarding this draft document, contact Eric Nelson (CVM) at 240-402-5642, or by e-mail at [eric.nelson@fda.hhs.gov](mailto:eric.nelson@fda.hhs.gov).

**U.S. Department of Health and Human Services  
Food and Drug Administration  
Center for Veterinary Medicine (CVM)**

**May 2015**

*Contains Nonbinding Recommendations*

*Draft — Not for Implementation*

**TABLE OF CONTENTS**

**I. INTRODUCTION AND SCOPE ..... 1**

**II. BACKGROUND ..... 2**

**A. Regulatory Framework ..... 2**

**B. Compounding Animal Drugs ..... 3**

**III. POLICY ..... 3**

**APPENDIX A ..... 9**

## *Contains Nonbinding Recommendations*

*Draft — Not for Implementation*

# **Guidance for Industry<sup>1</sup>**

## **Compounding Animal Drugs from Bulk Drug Substances**

*This draft guidance, when finalized, represents the Food and Drug Administration's (FDA or Agency) current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, contact the FDA staff responsible for implementing this draft guidance using the contact information on the title page of this guidance.*

### **I. INTRODUCTION AND SCOPE**

This draft guidance sets forth the Food and Drug Administration's ("FDA") policy regarding compounding animal drugs from bulk drug substances<sup>2</sup> by state-licensed pharmacies, licensed veterinarians, and facilities that register with FDA as outsourcing facilities under section 503B of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353b). This guidance reflects FDA's current thinking regarding compounding animal drugs from bulk drug substances and describes the conditions under which FDA generally does not intend to take action for violations of the following sections of the FD&C Act: section 512 (21 U.S.C. 360b), section 501(a)(5) (21 U.S.C. 351(a)(5)), section 502(f)(1) (21 U.S.C. 352 (f)(1)), and, where specified, section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)), when a state-licensed pharmacy, licensed veterinarian, or an outsourcing facility<sup>3</sup> compounds animal drugs from bulk drug substances.

This draft guidance only addresses the compounding of animal drugs from bulk drug substances. It does not apply to the compounding of animal drugs from approved new animal or new human drugs. Such compounding can be conducted in accordance with the provisions of section 512(a)(4) and (5) of the FD&C Act (21 U.S.C. 360b(a)(4) and (5)) and 21 CFR part 530. In addition, this draft guidance does not address the compounding of drugs intended for use in

---

<sup>1</sup> This draft guidance has been prepared by the Center for Veterinary Medicine (CVM) in consultation with the Center for Drug Evaluation and Research (CDER) and the Office of Regulatory Affairs (ORA) at the Food and Drug Administration.

<sup>2</sup> FDA regulations define "bulk drug substance" as "any substance that is represented for use in a drug and that, when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug, but the term does not include intermediates used in the synthesis of such substances." 21 CFR 207.3(a)(4). "Active ingredient" is defined as "any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect." 21 CFR 210.3(b)(7). Any component other than an active ingredient is an "inactive ingredient." See 21 CFR 210.3(b)(8). Inactive ingredients used in compounded drug products commonly include flavorings, dyes, diluents, or other excipients.

<sup>3</sup> "Outsourcing facility" refers to a facility that meets the definition of an outsourcing facility under section 503B(d)(4) of the FD&C Act. See draft guidance for industry *For Entities Considering Whether to Register As Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act*.

<http://www.fda.gov/ucm/groups/fdagov-public/@fdagov-drugs-gen/documents/document/ucm434171.pdf>.

## ***Contains Nonbinding Recommendations***

*Draft — Not for Implementation*

humans, which is addressed in other guidances.<sup>4</sup> Further, the draft guidance does not address new animal drugs for investigational use. See 21 CFR part 511.

FDA's guidance documents, including this draft guidance, do not establish legally enforceable responsibilities. Instead, guidances describe FDA's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited. The use of the word *should* in FDA guidances means that something is suggested or recommended, but not required.

## **II. BACKGROUND**

### **A. Regulatory Framework**

To be legally marketed, new animal drugs must be approved under section 512 of the FD&C Act, conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc), or included on the Index of Legally Marketed Unapproved New Animal Drugs for Minor Species under section 572 of the FD&C Act (21 U.S.C. 360ccc-1). The FD&C Act does not generally distinguish between compounding and other methods of animal drug manufacturing. Animal drugs that are not approved or indexed are considered "unsafe" under section 512(a)(1) of the FD&C and adulterated under section 501(a)(5) of the FD&C Act.

Although sections 503A (21 U.S.C. 353a) and 503B of the FD&C Act provide certain statutory exemptions for compounded human drugs, these sections do not provide exemptions for drugs compounded for animal use. The compounding of an animal drug from bulk drug substances results in a new animal drug that must comply with the FD&C Act's approval/indexing requirements.<sup>5</sup> Further, all animal drugs are required to, among other things, be made in accordance with current good manufacturing practice (cGMP) requirements (section 501(a)(2)(B)) of the FD&C Act and 21 CFR parts 210 and 211) and have adequate directions for use (section 502(f)(1) of the FD&C Act).

Sections 512(a)(4) and (5) of the FD&C Act provide a limited exemption from certain requirements for compounded animal drugs made from already approved animal or human drugs. Such use is considered an extralabel use and the FD&C Act provides an exemption from the approval requirements and requirements of section 502(f) of the FD&C Act for extralabel uses that meet the conditions set out in the statute and FDA regulations at 21 CFR part 530. Among other things, these regulations specify that nothing in the regulations should be construed as permitting compounding animal drugs from bulk drug substances.

In 1996, FDA announced the availability of a CPG (section 608.400) entitled, "Compounding of Drugs for Use in Animals" (61 FR 34849, July 3, 1996), to provide guidance to FDA's field and headquarters staff with regard to the compounding of animal drugs by veterinarians and pharmacists. An updated CPG was made available on July 14, 2003 (68 FR 41591). This draft guidance supersedes that CPG, which has now been withdrawn.

---

<sup>4</sup> <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm166743.htm>.

<sup>5</sup> See *Medical Center Pharmacy v. Mukasey*, 536 F.3d 383, 394 (5<sup>th</sup> Cir. 2008).

## ***Contains Nonbinding Recommendations***

*Draft — Not for Implementation*

### **B. Compounding Animal Drugs**

Numerous drugs are approved or indexed for use in animals. However, there are many different species of animals with different diseases and conditions for which there are no approved or indexed animal drugs. In some cases, approved human drugs can be used to treat an animal under the extralabel use provisions of the FD&C Act and FDA regulations (sections 512(a)(4) and (a)(5) of FD&C Act and 21 CFR part 530). For example, various chemotherapeutic drugs approved for humans are used to treat cancer in dogs and cats. FDA recognizes that there are circumstances where there is no drug available to treat a particular animal with a particular condition, because either no drug is approved for a specific animal species or no drug is available under the extralabel drug use provisions. In those limited circumstances, an animal drug compounded from bulk drug substances may be an appropriate treatment option.

However, FDA is concerned about the use of animal drugs compounded from bulk drug substances, especially when approved alternatives exist that can be used as labeled or in an extralabel manner consistent with the requirements of FDA's extralabel provisions. Compounded drugs have not undergone premarket FDA review of safety, effectiveness, or manufacturing quality. The unrestricted compounding of animal drugs from bulk drug substances has the potential to compromise food safety, place animals or humans at undue risk from unsafe or ineffective treatment, and undermine the incentives to develop and submit new animal drug applications to FDA containing data and information to demonstrate that the product is safe, effective, properly manufactured, and accurately labeled.

### **III. POLICY**

As discussed above, animal drugs are generally subject to the adulteration, misbranding, and approval provisions of the FD&C Act. Generally, FDA does not intend to take action under sections 512(a), 501(a)(5), 502(f)(1) and 501(a)(2)(B) of the FD&C Act if a state-licensed pharmacy or a licensed veterinarian compounds animal drugs from bulk drug substances in accordance with the conditions described below, and the drug is not otherwise adulterated or misbranded. In addition, FDA generally does not intend to take action under sections 512(a), 501(a)(5), and 502(f)(1) of the FD&C Act if an outsourcing facility compounds animal drugs in accordance with all of the applicable conditions described below, and the drug is not otherwise adulterated or misbranded.

FDA's decision not to take enforcement action depends on its ability to evaluate whether the compounding of animal drugs is in accordance with the conditions below. Therefore, entities compounding animal drugs should keep adequate records to demonstrate that they are compounding such drugs in accordance with all of the applicable conditions described below.

## ***Contains Nonbinding Recommendations***

*Draft — Not for Implementation*

The conditions referred to above are as follows:

- A. If the animal drug is compounded in a state-licensed pharmacy:
1. The drug is compounded by or under the direct supervision of a licensed pharmacist.
  2. The drug is dispensed after the receipt of a valid prescription from a veterinarian for an individually identified animal patient that comes directly from the prescribing veterinarian or from the patient's owner or caretaker to the compounding pharmacy. A drug may be compounded in advance of receipt of a prescription in a quantity that does not exceed the amount of drug product that the state-licensed pharmacy compounded pursuant to patient-specific prescriptions based on a history of receipt of such patient-specific prescriptions for that drug product over any consecutive 14-day period within the previous 6 months.
  3. The drug is not intended for use in food-producing animals, and the prescription or documentation accompanying the prescription for the drug contains the statement "This patient is not a food-producing animal." For purposes of this draft guidance, all cattle, swine, chicken, turkey, sheep, goats, and non-ornamental fish are always considered to be food-producing animals regardless of whether the specific animal or food from the specific animal is intended to be introduced into the human or animal food chain (e.g., pet pot-bellied pigs and pet chicks are always considered to be food-producing animals). In addition, for purposes of this draft guidance, any other animal designated on the prescription or in documentation accompanying the prescription by the veterinarian as a food-producing animal, regardless of species, is considered to be a food-producing animal (e.g., rabbits, captive elk, captive deer).
  4. If the drug contains a bulk drug substance that is a component of any marketed FDA-approved animal or human drug:
    - a. there is a change between the compounded drug and the comparable FDA-approved animal or human drug made for an individually identified animal patient that produces a clinical difference for that individually identified animal patient, as determined by the veterinarian prescribing the compounded drug for his/her patient under his/her care, and
    - b. the prescription or documentation accompanying the prescription contains a statement that the change between the compounded drug and the FDA-approved drug would produce a clinical difference for the individually identified animal patient. For example, the veterinarian could state that, "Compounded drug X would produce a clinical difference for the individually identified animal patient because the approved drug is too large a dose for the animal and cannot be divided or diluted into the small dose required."
  5. If there is an FDA-approved animal or human drug with the same active ingredient(s), the pharmacy determines that the compounded drug cannot be made from the FDA-approved drug(s), and documents that determination.

## ***Contains Nonbinding Recommendations***

*Draft — Not for Implementation*

6. The pharmacy receives from the veterinarian (either directly or through the patient's owner or caretaker), in addition to any other information required by state law, the following information, which can be documented on the prescription or documentation accompanying the prescription:
    - a. Identification of the species of animal for which the drug is prescribed; and,
    - b. The statement "There are no FDA-approved animal or human drugs that can be used as labeled or in an extralabel manner under section 512(a)(4) or (5) and 21 CFR part 530 to appropriately treat the disease, symptom, or condition for which this drug is being prescribed."
  7. Any bulk drug substance used to compound the drug is manufactured by an establishment that is registered under section 510 of the FD&C Act (21 U.S.C. 360) (including a foreign establishment that is registered under section 510) and is accompanied by a valid certificate of analysis.
  8. The drug is compounded in accordance with Chapters <795> and <797> of the United States Pharmacopeia and National Formulary (USP—NF)<sup>6</sup> (e.g., a sterile drug is compounded in an area with air quality that meets or exceeds ISO Class 5 standards (see USP—NF Chapter <797>, Table 1)).
  9. The drug is not sold or transferred by an entity other than the entity that compounded such drug. For purposes of this condition, a sale or transfer does not include administration of a compounded drug by a veterinarian to a patient under his or her care.
  10. Within 15 days of becoming aware of any product defect or serious adverse event associated with animal drugs it compounded from bulk drug substances, the pharmacy reports it to FDA on Form FDA 1932a. Form FDA 1932a can be downloaded at <http://www.fda.gov/downloads/aboutfda/reportsmanualsforms/forms/animaldrugforms/ucm048817.pdf>.
  11. The label of any compounded drug indicates the species of the intended animal patient, the name of the animal patient and the name of the owner or caretaker of the animal patient.
- B. If the animal drug is compounded by a licensed veterinarian:
1. The drug is compounded and dispensed by the veterinarian to treat an individually identified animal patient under his or her care.

---

<sup>6</sup> Chapters <795> *Pharmaceutical Compounding—Nonsterile Preparations* and <797> *Pharmaceutical Compounding—Sterile Preparations* can be found in the combined *United States Pharmacopeia and National Formulary (USP-NF)*, available at <http://www.usp.org>.

## ***Contains Nonbinding Recommendations***

*Draft — Not for Implementation*

2. The drug is not intended for use in food-producing animals as defined in section III.A.3 of this guidance.
  3. If the drug contains a bulk drug substance that is a component of any marketed FDA-approved animal or human drug, there is a change between the compounded drug and the comparable FDA-approved animal or human drug made for an individually identified animal patient that produces a clinical difference for that individually identified animal patient, as determined by the veterinarian prescribing the compounded drug for his/her patient under his/her care.
  4. There are no FDA-approved animal or human drugs that can be used as labeled or in an extralabel manner under sections 512(a)(4) and (5) of the FD&C Act and 21 CFR part 530 to appropriately treat the disease, symptom, or condition for which the drug is being prescribed.
  5. The drug is compounded in accordance with USP—NF Chapters <795> and <797> (e.g., a sterile drug is compounded in an area with air quality that meets or exceeds ISO Class 5 standards (see USP—NF Chapter <797>, Table 1)).
  6. Any bulk drug substance used is manufactured by an establishment that is registered under section 510 of the FD&C Act (21 U.S.C. 360) (including a foreign establishment that is registered under section 360(i)) and is accompanied by a valid certificate of analysis.
  7. The drug is not sold or transferred by the veterinarian compounding the drug. For purposes of this condition, a sale or transfer does not include administration of a compounded drug by the veterinarian to a patient under his or her care, or the dispensing of an animal drug compounded by the veterinarian to the owner or caretaker of an animal under his or her care.
  8. Within 15 days of becoming aware of any product defect or serious adverse event associated with animal drugs the veterinarian compounded from bulk drug substances, he or she reports it to FDA on Form FDA 1932a. Form FDA 1932a can be downloaded at <http://www.fda.gov/downloads/aboutfda/reportsmanualsforms/forms/animaldrugforms/ucm048817.pdf>.
  9. The label of any compounded drug indicates the species of the intended animal patient, the name of the animal patient and the name of the owner or caretaker of the animal patient.
- C. If the animal drug is compounded by an outsourcing facility:
1. The drugs are compounded only from bulk drug substances appearing on Appendix A of this draft guidance.
  2. The drug is compounded by or under the direct supervision of a licensed pharmacist.

## ***Contains Nonbinding Recommendations***

*Draft — Not for Implementation*

3. The drug is not intended for use in food-producing animals, as defined in Section III.A.3 of this guidance, and the prescription or order, or documentation accompanying the prescription or order, for the drug contains the statement, “This drug will not be dispensed for or administered to food-producing animals.”
4. The drug is compounded in accordance with cGMP requirements.<sup>7</sup>
5. Any bulk drug substance used is manufactured by an establishment that is registered under section 510 of the FD&C Act (21 U.S.C. 360) (including a foreign establishment that is registered under section 360(i)) and is accompanied by a valid certificate of analysis.
6. The drug is not sold or transferred by an entity other than the outsourcing facility that compounded such drug. For purposes of this condition, a sale or transfer does not include administration of a compounded drug by a veterinarian to a patient under his or her care.
7. Within 15 days of becoming aware of any product defect or serious adverse event associated with animal drugs it compounded from bulk drug substances, the outsourcing facility reports it to FDA, on Form FDA1932a. Form FDA 1932a can be downloaded at <http://www.fda.gov/downloads/aboutfda/reportsmanualsforms/forms/animaldrugforms/ucm048817.pdf>.
8. All drugs compounded for animals by an outsourcing facility are included on the report required by section 503B of the FD&C Act to be submitted to the Food and Drug Administration each June and December identifying the drugs made by the outsourcing facility during the previous 6-month period, and providing the active ingredient(s); source of the active ingredient(s); NDC number of the source ingredient(s), if available; strength of the active ingredient(s) per unit; the dosage form and route of administration; the package description; the number of individual units produced; and the NDC number of the final product, if assigned.<sup>8</sup> The outsourcing facility should identify which reported drugs were intended for animal use.
9. The veterinarian’s prescription or order states that the drug is intended to treat the species and condition(s) for which the substance is listed in Appendix A.

---

<sup>7</sup> FDA intends to determine whether this condition is met by evaluating whether the facility complies with FDA regulations applicable to cGMPs for compounding of human drugs by outsourcing facilities. *See, e.g.*, draft guidance for industry, *Current Good Manufacturing Practice—Interim Guidance for Human Drug Compounding Outsourcing Facilities Under Section 503B of the FD&C Act* (July 2014), at

<http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM403496.pdf>

<sup>8</sup> FDA has issued a draft guidance for industry, *Electronic Drug Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act* (November 2014), which prescribes how human drug compounding facilities are to submit drug product reports to FDA. Available at <http://www.fda.gov/downloads/Drugs/NewsEvents/UCM424303.pdf>. Although this guidance addresses reporting of compounded human drug products, outsourcing facilities should follow the same procedure to electronically report the animal drug products they compounded.

## ***Contains Nonbinding Recommendations***

*Draft — Not for Implementation*

10. The label of the drug includes the following:
- a. Active ingredient(s).
  - b. Dosage form, strength, and flavoring, if any.
  - c. Directions for use, as provided by the veterinarian prescribing or ordering the drug.
  - d. Quantity or volume, whichever is appropriate.
  - e. The statement “Not for resale.”
  - f. The statement “For use only in [fill in species and any associated condition or limitation listed in Appendix A].”
  - g. The statement “Compounded by [name of outsourcing facility].”
  - h. Lot or batch number of drug.
  - i. Special storage and handling instructions.
  - j. Date the drug was compounded.
  - k. Beyond use date (BUD) of the drug.
  - l. Name of veterinarian prescribing or ordering the drug.
  - m. The address and phone number of the outsourcing facility that compounded the drug.
  - n. Inactive ingredients.
  - o. The statement “Adverse events associated with this compounded drug should be reported to FDA on a Form FDA 1932a.”
  - p. If the drug is compounded pursuant to a patient specific prescription, the species of the animal patient, name of the animal patient, and name of the owner or caretaker of the animal patient.

## *Contains Nonbinding Recommendations*

*Draft — Not for Implementation*

### **APPENDIX A<sup>9</sup>**

#### **LIST OF BULK DRUG SUBSTANCES THAT MAY BE USED BY AN OUTSOURCING FACILITY TO COMPOUND DRUGS FOR USE IN ANIMALS**

This Appendix, when finalized, will contain a list of bulk drug substances that may be used by facilities registered under section 503B as outsourcing facilities to compound animal drugs pursuant to a prescription from a veterinarian for an individually identified animal patient or pursuant to an order from a licensed veterinarian for veterinarian office use, and in accordance with any specified limitations or conditions.

This list will be developed with public input; the process for nominating bulk drug substances for this list is described in the Federal Register notice soliciting nominations for such bulk drug substances. FDA intends to limit the bulk drug substances in this Appendix to address situations where all of the following criteria are met:

- there is no marketed approved, conditionally approved, or index listed animal drug that can be used as labeled to treat the condition;
- there is no marketed approved animal or human drug that could be used under section 512(a)(4) or (a)(5) and 21 CFR Part 530 (addressing extralabel use of approved animal and human drugs) to treat the condition;
- the drug cannot be compounded from an approved animal or human drug;
- immediate treatment with the compounded drug is necessary to avoid animal suffering or death; and
- FDA has not identified a significant safety concern specific to the use of the bulk drug substance to compound animal drugs (under the listed conditions and limitations).

FDA intends to review the nominated bulk drug substances on a rolling basis and to periodically update this Appendix.

LIST:

---

<sup>9</sup> To submit nominations for this list, refer to the Federal Register notice entitled, “List of Bulk Drug Substances That May be Used by an Outsourcing Facility to Compound Drugs for Use in Animals,” published May 19, 2015. After the period for nominations closes, you may petition FDA under 21 CFR 10.30 to add or remove specific listings.



8550 United Plaza Boulevard, Suite 1001, Baton Rouge, Louisiana 70809

1 (800) 524-2996 (225) 928-LVMA (225) 922-4611 Fax

**OFFICERS**

**PRESIDENT**

**DISTRICT 9**

Dr Kirk Ryan  
LSU School of Veterinary  
Medicine  
Veterinary Teaching Hospital  
Skip Bertman Drive  
Baton Rouge, LA 70803  
(225) 578-9600  
(225) 578-9916 Fax

**PRESIDENT-ELECT**

**DISTRICT 5**

Dr Trisha Marullo  
Broussard Veterinary Clinic  
1723 Roper Road  
Maurice, LA 70555  
(337) 988-5022  
(337) 988-5029 Fax

**VICE PRESIDENT**

**MEMBER-AT-LARGE**

Dr Marion Sewell  
Ruston Animal Clinic  
5605 Highway 167N  
Ruston, LA 71270  
(318) 255-6927  
(318) 255-1501 Fax

**IMMEDIATE PAST PRESIDENT**

**DISTRICT 8**

Dr Sue Olivier  
Acadiana West Animal Clinic  
2600 Baratana Blvd Suite E  
Marrero, LA 70072  
(504) 341-9510  
(504) 328-0820 Fax

**TREASURER**

Dr Dale Peyroux  
46225 North Morrison Blvd  
Hammond, LA 70401  
(985) 345-5157  
(985) 429-8555 Fax

**BOARD MEMBERS**

**DISTRICT 1**

Dr Glen Ritter  
Bossier City

**DISTRICT 2**

Dr James W Rundell  
Mandeville

**DISTRICT 3**

Dr Frank A. Fitzgerald  
Cheneyville

**DISTRICT 4**

Dr Matt Traylor  
Lake Charles

**DISTRICT 6**

Dr John Maulerer  
Baton Rouge

**DISTRICT 7**

Dr Paul Ritch  
Mandeville

**MEMBER-AT-LARGE**

Dr Christie McHughes  
Mandeville

July 26, 2015

Re: Notice of Intent: Compounding for Office Use for Veterinarians (LAC 46:LIII.2535)

Dear Board Members:

On behalf of Louisiana pet owners and veterinarians, we endorse the rule change published in the above referenced notice of intent in the Louisiana Register.

Compounding is a needed tool and it provides much-needed therapeutic flexibility for veterinarians, especially considering the wide range of species and breeds veterinarians treat.

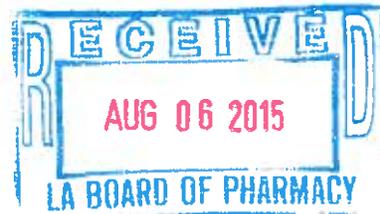
A typical companion animal veterinary clinic cares for pocket pets (guinea pigs, hamsters, rabbits, small reptiles, etc.), birds, cats, and dogs. Compounded medications are integral to treating many of these animals as no approved products are available or because approved product formulations are impossible or impractical to administer to animals.

Many animals do not show clinical signs of illness until they are life-threateningly ill. Biologically speaking, to display signs of illness/weakness is to become prey for predators. Consequently, many animal diseases are diagnosed in advanced stages after the animal can no longer 'hide' its illness. These animals require urgently available medications and often such medications must be compounded to permit administration or because approved products are not available. Without access to compounded medications, animals may die or be euthanized because emergency medications are not available or their treatment is inconvenient.

Permitting compounded medications available for veterinary use, as published in the notice of intent, will avoid a daily impact on the health and safety of companion animals. We appreciate the Board's consideration in meeting the needs of animals, pet owners, and veterinarians.

Sincerely,

Kirk Ryan, DVM  
President, Louisiana Veterinary Medical Association





Dear Pharmacy Board Member,

As you may know, the FDA is proposing "Guidance for Industry-Compounding Animal Drugs from Bulks Drug Substances." This guidance is remarkable in its restrictions and impact to the veterinary community such as:

- documenting clinical need on each prescription for compounded drugs
- no office stock of compounded medicinals, sterile or otherwise
- scripts to be pet-specific--no flocks, fish or groups of shelter animals
- no allowance for dispensing of acute amounts from office stock

Not only do we find these guidelines contrary to the practice of contemporary veterinary medicine, they are also detrimental to pharmacies, many of whom are no longer making sterile products.

Enclosed is the AVMA response to this proposal which addresses serious deficiencies, intensified record keeping and discusses the need and urgency for compounded sterile items for office use as well as the need to dispense compounds for acute conditions. Additionally, I am enclosing a copy of a letter to the FDA from several congressmen who oppose the FDA's process. They feel the FDA has exceeded its authority and ask that the FDA proposal be withdrawn.

Veterinary medicine is vastly different than human medicine. Vets must deal with numerous species and even more numerous body weights and unusual diseases; human pharmaceuticals rarely meet their needs. Further, industry has abandoned many veterinary products that were unprofitable, notably injectables. Lastly, dispensing small amounts of specialized medication is often essential to a pet's health in the absence of readily available customized strengths and dosage forms.

In spite of recognized shortcomings, some state boards of pharmacy are seriously considering this FDA proposal for incorporation into their own regulations through a Memorandum of Understanding. Roadrunner Pharmacy has been a partner in the veterinary community for more than 16 years; we know how important these issues are to animal health practitioners. As your board addresses veterinary compounding issues, I urge you and your board to oppose these contested FDA guidelines in the presence of an 18 page letter from an organization that represents more than 85,000 veterinarians AND given the serious misgivings from members of Congress. A number of states have granted exclusions, affording unique and often life-saving compounds to veterinarians, both sterile and non-sterile.

Thank you for your time and consideration.

  
ROBERT L. EATON, JR.  
President/CEO  
Roadrunner Pharmacy, Inc





August 14, 2015

Mr. Eric Nelson  
Center for Veterinary Medicine  
Division of Compliance  
FDA Center for Veterinary Medicine  
7519 Standish Pl  
Rockville, MD 20852

**RE: [Docket Nos. FDA-2015-D-1176 and FDA-2003-D-0202] Compounding Animal Drugs From Bulk Drug Substances; Draft Guidance for Industry; Availability; Withdrawal of Compliance Policy Guide; Section 608.400 Compounding of Drugs for Use in Animals**

Dear Mr. Nelson:

I am writing on behalf of the American Veterinary Medical Association (AVMA), established in 1863 and the largest veterinary medical organization in the world with over 86,500 members. The AVMA's mission is to lead the profession by advocating for its members and advancing the science and practice of veterinary medicine to improve animal and human health.

The AVMA recognizes that the FDA Draft Guidance for Industry #230 sets forth the Food and Drug Administration's (FDA) policy regarding compounding animal drugs from bulk drug substances by state-licensed pharmacies, licensed veterinarians, and facilities that register with FDA as outsourcing facilities under section 503B of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353b). We understand this guidance describes the conditions under which FDA generally does not intend to take action for violations of the following sections of the FD&C Act: section 512 (21 U.S.C. 360b), section 501(a)(5) (21 U.S.C. 351(a)(5)), section 502(f)(1) (21 U.S.C. 352 (f)(1)), and, where specified, section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)), when a state-licensed pharmacy, licensed veterinarian, or an outsourcing facility compounds animal drugs from bulk drug substances.

Additionally, we recognize that this draft guidance only addresses the compounding of animal drugs from bulk drug substances, and that it does not apply to the compounding of animal drugs from approved new animal or new human drugs. The AVMA was a leader in the development of, and advocacy for, the enactment of the Animal Medicinal Drug Use Clarification Act on behalf of our members and the patients they serve. Extralabel drug use, including the compounding of preparations from FDA-approved drugs, continues to provide access to critical medications and our members continue to rely on this FDA-regulated activity in the practice of veterinary medicine within the confines of the 21 CFR 530.

The AVMA appreciates the FDA's recognition that there is a need for preparations compounded from bulk drug substances. We also share the agency's concern about the use of these preparations when approved alternatives exist that can be used as labeled or in an extralabel manner consistent

with the requirements of FDA's extralabel provisions. The AVMA continues to believe that three circumstances exist wherein compounds prepared from bulk drug substances might be necessary:

- the approved product is not commercially available, or
- the needed compounded preparation cannot be made from the approved product, or
- there is no approved product from which to compound the needed preparation.

While we are formally submitting these comments today, we will continue to assess whether the draft guidance can realistically address the needs of veterinary patients and ask that the FDA continue its dialog with us.

## ***Overarching comments***

### **Drug Availability**

Veterinary medicine is unique in that we treat a multitude of species with an even greater number of unique diseases and conditions. Approval of new animal drugs is critical to veterinary medicine and engaging with the Agency in facilitating that process remains a high priority for our Association. However, compounding from bulk drug substances is still a necessary practice for veterinarians because there are, and always will be, a limited number of FDA-approved drug products for the many species and conditions that we treat. Intermittent drug shortages and commercial unavailability of FDA-approved drug products drive the need for compounded preparations within veterinary practice. While FDA has not identified cost as appropriate reason for compounding from bulk drug substances, the AVMA acknowledges that cost can be a reason veterinarians utilize compounded preparations because that is the only way a client can afford to treat their pet.

Our members have clearly conveyed that they need access to safe and efficacious drug products that can be practicably used in their patients. While recognizing FDA's jurisdiction is limited to issues related to safety and efficacy, not cost or commercial availability of drug products, we underscore the increasingly critical need for effective pathways for drug products to achieve legal marketing status. A robust, competitive animal health industry can benefit animal patients by way of increased numbers of legally marketed products that can be prescribed, dispensed or used in the preparation of compounds.

### **Existing pathways to legal marketing**

- We continue to support the concept of user fees, so long as those fees go toward expedited reviews. Increased numbers of both pioneer and nonproprietary approved drug products can help to minimize the impacts of drug shortages.
- FDA's indexing process can be a valuable way to increase the number of legally marketed drug products for use in minor species or in major species with rare conditions. We recognize that indexing provides a process to obtain legal marketing status for eligible products. The indexing process should be utilized to a fuller extent, or revised accordingly, so that well-vetted drugs that have undergone expert panel scrutiny can be used legally for wildlife, aquaria, zoo, aquacultural, and laboratory animal species, and for major species with rare conditions.

### **Innovative pathways to legal marketing**

- In 2010, the FDA published a Federal Register notice FDA-2010-N-0528 seeking comments related to identification of emerging paths toward legal status of drugs that are medically necessary and manufactured using good manufacturing processes. At the time, FDA conveyed that it is open to using both the agency's existing authority and new approaches to

make more drugs legally available to veterinarians, producers, and pet owners. We commended the FDA on its pursuit at the time and urge the FDA to implement innovative strategies to legal marketing. The AVMA stands ready to discuss possible approaches further with FDA.

### **Non-food minor species**

In species including but not limited to zoo animals, laboratory animals, exotic pets, wildlife, aquaria animals, and non-food aquacultural animals, the use of compounded preparations is unquestionably necessary. We urge FDA to carefully consider the critical need for access to compounded preparations within these species, as FDA further refines its guidance. There are few choices of FDA-approved or indexed products available for use in these species; therefore, availability of properly compounded preparations to be maintained for office use in appropriate strengths and formulations, and the ability to mix and dilute medications are necessary to provide adequate veterinary care. Several provisions within this draft guidance should not apply to non-food minor species in their respective environments, such as limiting preparations to be maintained in office for urgent or emergent needs, patient-specific prescriptions, and detailed labeling requirements for compounded preparations maintained for office use.

### **Federal vs. State Jurisdiction**

The licensure of veterinarians is regulated by state governmental authorities. Given this is a federal guidance, not a regulation, coupled with the existence of a wide range of state compounding rules, we would appreciate clarification on how GFI #230 will be enforced by the FDA. State rules regulating compounding in veterinary practice vary greatly. Some even provide substantial permissiveness for veterinarians to obtain preparations compounded for office use, and administer and dispense from the compounded preparations maintained in their office.

- How will the FDA evaluate whether the compounding of animal drugs is done in accordance with the conditions outlined in the guidance?
- Will the FDA rely on state boards of pharmacy and boards of veterinary medicine to enforce provisions within GFI #230, and how will the FDA reconcile discrepancies between state rules and GFI #230?

### **Enforcement**

For many years the AVMA has advocated for, and applauded, the FDA's enforcement of illegal manufacturing activities. The AVMA asserts that large-scale manufacturing of animal drugs under the guise of compounding does not serve to benefit animal health; rather, circumvention of the drug approval process yields substances with unknown safety, efficacy, and potency, potentially allowing disease to progress. Animal drug manufacturers also contend that these compounded preparations result in a supply/demand disincentive for new FDA-approved drug products.

- As FDA is concerned about the use of animal drugs compounded from bulk drug substances, especially when approved alternatives exist that can be used as labeled or in an extralabel manner consistent with the requirements of FDA's extralabel provisions, how does this guidance change the FDA's ability to take action to address these concerns?
- Does the FDA currently have the needed resources and enforcement capabilities to fully enforce all egregious compounding activities, or are new authorities and appropriations necessary for the agency?
- Will the FDA develop and provide a user's guide on implementing the GFI #230 for state boards of pharmacy, state boards of veterinary medicine, individual veterinarians, and pharmacists to follow? We anticipate that time for a transition to the new paradigm will be

needed across stakeholder groups, especially given the wide array of state rules that exist related to veterinary compounding. Some veterinary state boards might not be prepared to inspect veterinary facilities for compliance with standards delineated within GFI #230.

- How will FDA's enforcement of compounded preparations be reconciled with the Drug Enforcement Administration's expectations that preparations containing controlled substances must only be prepared pursuant to patient-specific prescriptions?
- We also encourage FDA to coordinate with all relevant governmental agencies related to use of bulk drug substances in depopulation efforts, which might be needed during large-scale national emergencies. The AVMA stands ready to serve as a resource to FDA related to this topic.

### **Adverse Event Reporting System**

The AVMA contends that there is a need for the continued development and strengthening of adverse event reporting systems for all adverse events, including lack of efficacy. We believe that there must be a strong, science-based, transparent and systematic surveillance system, especially considering the wide scope of species and disease conditions that veterinarians treat. The AVMA supports development of a user-friendly, easy to access form for all adverse events related to compounding. A user-friendly electronic system would be anticipated to promote both reporting by those compounding, and ease of review by FDA. For example, FDA could maintain a database of recently reported adverse events for veterinarians and pharmacists to use as a resource. Sufficient and meaningful data inputs, or adverse event reports, are imperative for a strong reporting system foundation.

- Does the FDA's current 1932a form, as a means of capturing adverse events, provide the robustness FDA needs to detect and act on trends? The AVMA contends that all adverse events associated with compound preparations should be reported, not just serious adverse events. Adverse events related to lack of efficacy should also be collected and analyzed.

### ***Comments on Specific Provisions within Draft GFI #230***

#### **Scope of AVMA Comments**

The AVMA has chosen to comment on the sections and questions that impact veterinary medicine. We will defer to the pharmacy community for feedback related to the practice of pharmacy and functioning of outsourcing facilities: pharmacist supervision (Section III.A.1. and Section III.C.2); compounding in advance of receipt of a prescription (Section III.A.2); determining and documenting that the compounded drug cannot be made from the FDA-approved drug(s) (Section III.A.5); current Good Manufacturing Practices (cGMP) (Section III.C.4); certain labeling requirements (Section III.C.10); and reporting requirements from 503B of the FD&C Act (Section III.C.8).

#### **Definitions**

We request the FDA provide clarification on the following terms:

- "Outsourcing facility"—Draft GFI #230 defines an "outsourcing facility" as a facility that meets the definition of an outsourcing facility under section 503B(d)(4) of the FD&C Act. Section 503B(d)(4) defines an outsourcing facility as a facility at one geographic location or address that (i) is engaged in the compounding of sterile drugs; (ii) has elected to register as an outsourcing facility; and (iii) complies with all of the requirements of that section of the law.

As the use of outsourcing facilities in veterinary medicine is an entirely new concept, we are still assessing how the requirements for registration as an outsourcing facility would impact

the ability to meet veterinary needs. We wish to underscore that there is a substantial need for both non-sterile and sterile compounded preparations to be maintained for office use in veterinary medicine. We appreciate that the use of outsourcing facilities in the preparation of office stock is intended to increase safety of compounded preparations, yet we caution that use of outsourcing facilities might have the unintended consequence that some preparations of critical importance to animal health may no longer be available due to economic or other business considerations.

We ask the FDA to clarify how it will reconcile the clear discrepancies between statutory language and provisions in various agency documents:

- Specifically, it is our understanding that outsourcing facilities in compliance with Section 503B are only exempt from the *human drug approval requirements* in section 505 of the FD&C Act (21 U.S.C. 355), the requirement to be labeled with adequate directions for use in section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)), and the track and trace requirements in section 582 of the FD&C Act (21 U.S.C. 360eee-1). How does this guidance impact the facility's exemption from animal drug approval requirements?
- Per the FDA's draft guidance for industry *For Entities Considering Whether to Register As Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act*, referenced in draft GFI #230, outsourcing facilities are required to meet certain conditions to qualify. Of particular concern is the requirement that the outsourcing facilities must not compound drugs that appear on a list published by the FDA of drugs that have been withdrawn or removed from the market because the drugs or components of such drugs have been found to be unsafe or not effective for humans. We are aware of a number of such compounded preparations needed in veterinary medicine, including but not limited to cisapride, asparaginase, and chloramphenicol. In these cases, the FDA-approved product was withdrawn from the market due to human safety concerns, leaving us with no alternative to treat animal patients.
- An additional concern is that a facility, in order to meet the definition of an outsourcing facility, must be engaged in the compounding of sterile human drugs. The draft guidance clearly states that "you should not register a facility as an outsourcing facility if the only activities conducted at the facility are... animal drugs,...because none of the products produced at the facility would qualify for the exemptions provided in section 503B." A number of pharmacies currently exist that serve the needs of veterinarians and would need to register as an outsourcing facility per GFI #230, but they are explicitly prevented from registering per Section 503B because they do not meet certain requirements and were told not to register by the agency in another Guidance for Industry.
- "Compounding" as defined within 503A does not include mixing, reconstituting, or other such acts that are performed in accordance with directions contained in approved labeling provided by the product's manufacturer and other manufacturer directions consistent with that labeling. Defined within 503B, compounding is the combining, admixing, mixing, diluting, pooling, reconstituting, or otherwise altering a drug or bulk drug substance to create a drug. Is the administration of a bulk drug substance directly to an animal (for example, dissolution of metronidazole powder in aquaria for medical treatment of pet fish) considered compounding, or would administration be considered compounding only if the bulk drug

substance is mixed with another active or inactive ingredient? We ask the FDA to fully clarify its definition of animal drug compounding within this guidance.

- “Bulk drug substance” is defined within 21 CFR 207.3(a)(4) as “any substance that is represented for use in a drug and that, when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug, but the term does not include intermediates used in the synthesis of such substances.” We understand that compressed gases, household items, herbals and homeopathics, and manufactured unapproved drugs such as glucosamine, would be outside the scope of this guidance. We ask the FDA to fully clarify what it considers a bulk drug substance for purposes of this guidance.
  - In its Table 1—Estimated Annual Recordkeeping Burden, please clarify details surrounding FDA’s estimate that 75,000 pharmacies will receive approximately 6,350,000 prescriptions for compounded animal drugs annually. From where were these numbers obtained, and are these numbers specific to preparations compounded from bulk drug substances or prescriptions for all compounded preparations?
- “Patient” is defined by the AVMA (<https://www.avma.org/KB/Policies/Pages/Model-Veterinary-Practice-Act.aspx>) as an animal or group of animals examined or treated by a veterinarian, which would include herds, flocks, groups of shelter animals, laboratory animal colonies or groups, and zoo animal and aquaria collections. We respectfully request the use of this definition for the term “patient.”
- “Non-ornamental fish” needs further clarification. Which definition is the FDA using for this term? The FDA-CVM’s Program Policy and Procedures Manual *Enforcement Priorities For Drug Use In Non-Food Fish* includes a definition of “ornamental fish.” For purposes of GFI #230, are all fish not included in that definition to be considered “non-ornamental fish” and therefore food-producing animals?
- “Clinical difference” is not expressly defined within Section 503B or in the draft GFI #230. How will “clinical difference” be evaluated by the FDA, or does the FDA intend to seek state enforcement of this component?
- The terms “sale” and “transferred” need to be more clearly defined. For example, does this include the sharing of a compounded preparation between one clinic and a co-owned satellite clinic, between multiple zoological institutions or government agencies, or from one university laboratory to another within the same university system?

### Section III.A.

(2) We have serious concerns with the verbiage “The drug is dispensed...for an individually identified animal patient...” AVMA fully supports the requirement that a veterinarian-client-patient relationship must exist for the use of a compounded preparation in an animal patient. However, the requirement that a patient must be ‘individually identified’ would eliminate the ability for veterinarians to obtain a preparation for a collection of animals, such as in a zoo, laboratory animal research facility or aquarium. In some of these situations, the patient cannot be individually identified or the entire group needs to be treated; it would not be feasible or reasonable to write an individual prescription for each animal.

- We request the FDA delete the words “individually identified” and use the AVMA’s definition of “patient”: <https://www.avma.org/KB/Policies/Pages/Model-Veterinary-Practice-Act.aspx>.

(3) “Food-producing animal” defined to include all cattle, swine, chickens, turkeys, sheep, and goats is consistent with our understanding and definition of a “food-producing animal.”

The AVMA contends that compounding from bulk drug substances in food-producing animals is medically necessary for certain poison antidotes, euthanasia, and depopulation medications. There must be some allowance for compounding from bulk ingredients for these explicit situations, when there is no FDA-approved product or the approved product cannot feasibly be used per label or in an extralabel fashion. Veterinarians must also be able to legally maintain sufficient quantities of these compounded preparations in their office for urgent administration needs or emergency situations in food animals. Without access, animals would die before the medication could be delivered; for example, methylene blue is needed to treat nitrate toxicosis in cattle in the southeastern part of the USA. We recognize veterinarians’ need to ensure food safety, maintain required records, and label drugs appropriately, as required under FDA’s extralabel drug use rules. We ask that FDA draft a separate guidance to address these needs.

We are not opposed to the requirement that the prescription or documentation accompanying the prescription for a non-food animal must contain the statement “This patient is not a food-producing animal.” The statement also helps to distinguish those patients that could be a food-producing animal in some situations, independent of species (e.g., rabbits, captive elk, captive deer).

We also would appreciate clarification on the wording in the latter half of this provision: “...any other animal designated on the prescription or in documentation accompanying the prescription by the veterinarian as a food-producing animal, regardless of species, is considered to be a food-producing animal.”

- Would this mean that a veterinarian would state “This patient is a food-producing animal” to identify for the pharmacist that a bulk drug substance is not to be used?

(4)(a) The AVMA disagrees with the requirement that a pharmacy may compound a preparation using a bulk drug substance that is a component of any marketed FDA-approved animal or human drug only if the change between the compounded drug and the FDA-approved drug would produce a clinical difference. We assert that compounding should be allowable if the approved product is not commercially available for other reasons (i.e., unavailable) and no therapeutic alternatives exist, or if the needed compounded preparation cannot be made from the approved product (such as preparation of metronidazole benzoate for use in a cat) as allowed per Section III.A.5. We ask the agency to amend the provision accordingly. Given the frequency of FDA-approved drug product shortages and backorders, including all marketed FDA-approved drugs is too restrictive for the needs of veterinary patients.

(4)(b) The AVMA has concerns with, and is opposed to, the requirement for a statement from the veterinarian that the compounded preparation “produces a clinical difference for the individually identified animal patient” with an explanation of that difference. We contend that a medical rationale is necessary for use of compounds, and is a more applicable term than “clinical difference.” However, we believe documentation of why the compounded preparation was chosen is more appropriate for the medical record.

- Should FDA still choose to require inclusion of a statement in documentation, will the statements be evaluated by the FDA, or does the FDA intend to seek state enforcement of this component?

Additionally, we believe that the term “clinical difference” does not capture other medical needs for compounded preparations, such as certain worker and client safety needs, client compliance, and animal stress situations (e.g., fractious cats). These safety/animal handling needs are not related to clinical differences but rather, the ability to adequately medicate patients.

(5) Related to pharmacists documenting that a compounded preparation cannot be made from an FDA-approved drug, what does the FDA consider to be “acceptable documentation,” and to whom will the documentation be provided?

(6)(b) In concept, the AVMA does not oppose the requirement that the statement “There are no FDA-approved animal or human drugs that can be used as labeled or in an extralabel manner under section 512(a)(4) or (5) and 21 CFR part 530 to appropriately treat the disease, symptom, or condition for which this drug is being prescribed” be documented on the prescription or documentation accompanying the prescription, because we believe veterinarians need to carefully consider their therapeutic options. However, the statement could inadvertently discourage use of FDA-approved drugs in preparing compounded medications. For example, we understand that sometimes the best starting ingredient for a pharmacist’s preparation of a compounded medication is the FDA-approved drug. If the veterinarian includes the above statement, that essentially would direct the pharmacist to utilize a bulk drug substance. Moreover, the veterinarian writing the prescription would not necessarily know whether the FDA-approved drug or the bulk drug substance is best for the preparation. We wholeheartedly agree with the need for veterinarians to utilize FDA-approved products whenever feasible. We ask that FDA discuss this topic further with the AVMA.

(9) We would like clarification on the statement that “a sale or transfer does not include administration of a compounded drug by a veterinarian to a patient under his or her care.” It is our understanding that under the guidance, the compounded preparation may only be dispensed by the pharmacy to the patient’s owner or caretaker, a concept with which the AVMA disagrees. Does this provision in some way allow for the veterinarian to receive the compounded preparation from the pharmacy, and then administer and dispense the preparation to the patient’s owner or caretaker? The AVMA asserts that the prescribing veterinarian should be able to dispense these preparations to help ensure that the medications are being used and administered appropriately by the client. Such dispensing also keeps the prescribing veterinarian more closely attuned to the current status of the patient should client questions or concerns (such as adverse events) arise.

We request that the FDA amend the provision to allow dispensing: “...a sale or transfer does not include administration of a compounded drug by a veterinarian to a patient under his or her care, or the dispensing of a compounded drug by the veterinarian to the owner or caretaker of an animal under his or her care.”

### Section III.B.

(1) Again, the AVMA contends that compounding should be done within the confines of a veterinarian-client-patient relationship. However, veterinarians must be able to legally maintain sufficient quantities of compounded preparations in their office for urgent administration needs or emergency situations, including compounds prepared by veterinarians and pharmacies. In fact, the

maintenance of preparations for office use is lawful for veterinarians under some states' rules. We request that the FDA include an allowance for the preparation of compounds by veterinarians in advance of a specific patient's need.

(2) For food animals, the AVMA, again, asserts that a publically available list of bulk drug substances for veterinarians to prepare poison antidotes, euthanasia, and depopulation preparations should be made available.

As previously stated in Section III (A) 3, veterinarians must also be able to legally maintain sufficient quantities of these compounded preparations in their office for urgent administration needs or emergency situations in food animals. Without access, animals would die before the medication could be delivered; for example, methylene blue is needed to treat nitrate toxicosis in cattle in the southeastern part of the USA. We recognize veterinarians' need to ensure food safety, maintain required records, and label drugs appropriately, as required under FDA's extralabel drug use rules. We ask that FDA draft a separate guidance to address these needs.

(3) If the veterinarian is prescribing a medication to be compounded in lieu of an FDA-approved drug, then there is a clinical need that has already been determined by the prescribing veterinarian. Thus the AVMA agrees with the purpose of the provision. We do not support any additional reporting or recordkeeping requirements related to this provision.

We request that the FDA amend the provision to allow for compounding from bulk ingredients if the approved product is not commercially available (either due to a backorder, shortage, or no longer marketed) or if the needed compounded preparation cannot be made from the approved product. As stated with respect to Sec. III.A.4.a., the frequency of FDA-approved drug product shortages and backorders makes inclusion of all marketed FDA-approved drugs too restrictive for the needs of veterinary patients.

(4) The AVMA supports the intentions of this provision as the AVMA believes that an FDA-approved drug product should always be used first and foremost.

(5) The AVMA supports the requirement that veterinarians compounding from bulk drug substances do so in accordance with USP—NF Chapters <795> and <797> (e.g., a sterile drug is compounded in an area with air quality that meets or exceeds ISO Class 5 standards (see USP—NF Chapter <797>, Table 1)).

(6) The AVMA agrees with the requirements for use of bulk drug substances that are accompanied by a valid certificate of analysis and that come from FDA-registered manufacturers.

(7) The AVMA agrees with the provision's allowance for veterinarians to administer the preparation to the patient or dispense to the owner or caretaker. The AVMA also agrees that this should all be done within the confines of a veterinarian-client-patient relationship.

The AVMA contends that dispensing practices by veterinarians should be regulated by individual state boards of veterinary medicine. We would like the FDA to clarify what the agency would consider to be the "transfer" of compounded preparations to another veterinarian or a satellite facility.

### Section III.C.

(1) Please see our comments in the section below related to Appendix A. We have reservations about the outline drafted for the creation of such a list and whether patient needs can be met through the use of such a list.

(3) We do not oppose the requirement for a statement on the prescription or supporting documentation that “This drug will not be dispensed for or administered to food-producing animals.” Including such a statement is important to help minimize the risk of the medication being used in a food animal.

As stated previously, the AVMA contends that compounding from bulk drug substances in food-producing animals is medically necessary for certain poison antidotes, euthanasia, and depopulation medications. There must be some allowance for compounding from bulk ingredients for these explicit situations, when there is no FDA-approved product or the approved product cannot feasibly be used per label or in an extralabel fashion. Veterinarians must also be able to legally maintain sufficient quantities of these compounded preparations in their office for urgent administration needs or emergency situations in food animals. Without access, animals would die before the medication could be delivered; one example also stated previously is methylene blue, which is needed to treat nitrate toxicosis in cattle in the southeastern part of the USA. We recognize veterinarians’ needs to ensure food safety, maintain required records, and label drugs appropriately, as required under FDA’s extralabel drug use rules. We ask that FDA draft a separate guidance to address these needs.

(6) As the draft guidance is currently written, outsourcing facilities would be the only way by which a veterinarian could obtain office stock of certain compounded preparations. Many of these preparations are not only needed for immediate in-house administration by the veterinarian but also for dispensing to the patient’s owner or caretaker for treatment at home, up to a 14-day timeframe. This allows for dispensing for emerging needs, and to help ensure the drug is going to be effective in a particular patient. It would also help to avoid a client needing two prescriptions for one drug in a short timeframe (which could decrease compliance), and would allow time to detect any immediate adverse events (e.g., intolerance to the drug, such as seen when amlodipine results in inappetence in cats).

We request that the FDA amend the provision to allow dispensing: “...a sale or transfer does not include administration of a compounded drug by a veterinarian to a patient under his or her care, or the dispensing of a compounded drug by the veterinarian to the owner or caretaker of an animal under his or her care.” This would bring the provision in line with what is allowed for physicians under Sec. 503B of the FD&C Act.

(9) At this time, the AVMA has reservations related to the requirement that a veterinarian’s order state that the product will be used in a manner and in a species that complies with the list of permitted bulk ingredient uses under Appendix A. If any such list is created, it needs to be maintained properly and reflect veterinarians’ needs. These concerns will be further addressed in the feedback below on Appendix A.

(10) The AVMA contends that certain information should be incorporated into labels/packaging and generally agrees with inclusion of:

- a. Active ingredient(s)
- b. Dosage form, strength, and flavoring, if any
- c. Directions for use, as provided by the veterinarian prescribing or ordering the drug

- d. Quantity or volume, whichever is appropriate
- e. The statement "Not for resale."
- f. The statement "For use only in [fill in species and any associated condition or limitation listed in Appendix A]."
- g. The statement "Compounded by [name of outsourcing facility]."
- h. Lot or batch number of drug
- i. Special storage and handling instructions
- j. Date the drug was compounded, and date of dispensing, if dispensed
- k. Beyond use date (BUD) of the drug
- l. Name of veterinarian prescribing or ordering the drug
- m. The address and phone number of the outsourcing facility that compounded the drug
- n. Inactive ingredients
- o. The statement "Adverse events associated with this compounded drug should be reported to FDA on a Form FDA 1932a."
- p. If the drug is compounded pursuant to a patient specific prescription, the species of the animal patient, name of the animal patient, number of refills if applicable, and name of the owner or caretaker of the animal patient. We wish to underscore that "patient" can also mean a herd, collection or group of shelter animals. We assert that the AVMA's definition of "patient" should be used.

We also request that FDA require all compounded preparations be labeled that they are not FDA-approved products. We believe it is important for consumers to recognize that safety, efficacy, potency and sterility, where applicable, of compounded preparations have not been assessed or verified by the FDA.

Labeling requirements for preparations to be maintained for office use can be difficult for minor species, including but not limited to zoo, aquaria, laboratory-animal, and wildlife collections and/or facilities. For example, some compounds maintained for office use will be used to treat lameness in a number of species in a zoo collection. The labeling requirement as posed in (f) would be particularly difficult in these collections.

**Pertaining to Provisions Which Appear in Multiple Sections Related to Labeling by Pharmacies and Veterinarians (Section III.A.11 and Section III.B.9)**

AVMA requests that the labeling requirements for pharmacists and veterinarians include name of client; veterinarian's name and address; identification of animal(s) treated, species and numbers of animals treated, when possible; date of dispensing; name, active ingredient, and quantity of the drug preparation to be dispensed; drug strength (if more than one strength available); dosage and duration; route of administration; number of refills; cautionary statements as needed; beyond use date; and the statement "Compounded by [name, address, and contact number of the pharmacy or veterinarian]." We also assert that compounded preparations should be labeled that they have not been approved by FDA. Patient owners or caretakers should have information available to contact the compounding entity, be it a pharmacy, veterinarian or outsourcing facility.

The AVMA agrees with inclusion of the name of the owner or caretaker and species of animal. AVMA contends that a patient may be an animal or group of animals so the "name" of the animal patient should only be required for prescriptions where applicable and appropriate.

Related to Patient-Specific Prescriptions (Section III.A.2 and Section III.B.1)

Veterinarians must be able to legally maintain sufficient quantities of compounded preparations in their office for urgent administration needs or emergency situations. These cannot be obtained through patient-specific prescriptions. Examples are many, and include: methylene blue to treat nitrate toxicosis; apomorphine to induce emesis in dogs; antibiotics, such as metronidazole, formulated into an appropriate dose for small dogs and cats and a palatable flavor for non-human primates to treat acute diarrhea; and nonsteroidal anti-inflammatory drugs, such as meloxicam, for pain control in small mammals.

This guidance's allowance that preparations that appear in a list will only be available from an outsourcing facility will greatly restrict veterinarians' access to critical medications and hamstring their ability to provide appropriate care in a timely manner. We must ask the FDA to reconsider provisions related to preparations compounded for office use and engage in discussion with the AVMA and the veterinary profession to better ascertain how to best meet the needs of both the FDA and veterinary patients.

Related to Sourcing of, and Information on, Bulk Drug Substances (Section III.A.7, Section III.B.6, and Section III.C.5)

Section III.A.7 states that "Any bulk drug substance used to compound the drug is manufactured by an establishment that is registered under section 510 of the FD&C Act (21 U.S.C. 360) (including a foreign establishment that is registered under section 510) and is accompanied by a valid certificate of analysis." How does the intent related to this statement differ from the intents for Section III.B.6 and Section III.C.5, which both state "Any bulk drug substance used is manufactured by an establishment that is registered under section 510 of the FD&C Act (21 U.S.C. 360) (including a foreign establishment that is registered under section 360(i)) and is accompanied by a valid certificate of analysis"?

The AVMA agrees with the requirement that any bulk drug substance used by either a pharmacy, veterinarian, or outsourcing facility be manufactured by an establishment that is registered under section 510 of the FD&C Act (21 U.S.C. 360) (including a foreign establishment that is registered under section 360(i)) and is accompanied by a valid certificate of analysis.

Related to USP-Related Requirements (Section III.A.8 and Section III.B.5)

The AVMA asserts that compliance with USP guidelines continues to be an element that can be utilized when a veterinarian considers the quality of a compounding pharmacy's preparations. The AVMA supports the requirement that veterinarians, outsourcing facilities, and pharmacists compounding from bulk drug substances do so in accordance with USP—NF Chapters <795> and <797> (e.g., a sterile drug is compounded in an area with air quality that meets or exceeds ISO Class 5 standards (see USP—NF Chapter <797>, Table 1)).

Related to the Sale or Transfer of Compounded Preparations (Section III.A.9 and Section III.B.7)

The AVMA advocates that compounded preparations should not be wholesaled. However, we seek clarification from FDA related to the definition of "sale" and "transfer" as indicated previously in our comments.

Related to Adverse Event Reporting Requirements (Section III.A.10, Section III.B.8, and Section III.C.7)

The AVMA advocates for robust, strong adverse event reporting systems. However, we ask whether the FDA's current 1932a form, as a means of capturing adverse events, provides the robustness FDA

needs to detect and act on trends? The AVMA underscores that all adverse events associated with compounded preparations should be reported by those compounding the preparations, rather than just serious adverse events. Adverse events related to lack of efficacy should also be collected and analyzed.

The AVMA contends there is a need for the continued development and strengthening of adverse event reporting systems for all adverse events, including lack of efficacy. We believe there must be a strong, science-based, transparent and systematic surveillance system, especially considering the wide scope of species and disease conditions that veterinarians treat. The AVMA supports development of a user-friendly, easy to access form for all adverse events related to compounding. A user-friendly electronic system would be anticipated to promote both reporting by those compounding and ease of review by the FDA. For example, the FDA could maintain a database of recently reported adverse events for veterinarians and pharmacists to use as a resource. Sufficient and meaningful data inputs, or adverse event reports, are imperative for a strong reporting system.

Related to the proposed requirement for submission of all adverse events within 15 days, the AVMA asserts that this timeframe is acceptable for veterinarians. We hope that such a timeframe is amenable to pharmacies and outsourcing facilities.

#### **Appendix A, List of Bulk Drug Substances That May Be Used By An Outsourcing Facility to Compound Drugs for Use in Animals**

In GFI #230, the FDA conveys its general intent to enforce all adulteration and misbranding provisions of the FD&C Act against entities compounding animal drugs from bulk drug substances if they are not in accordance with provisions delineated within the guidance. The AVMA understands this to mean that while all compounding from bulk drug substances continues to be illegal, those activities not provided for within the confines of GFI #230 are subject to *greater* likelihood of enforcement.

Although we want compounded preparations that veterinarians maintain for office use to be safe, we have concerns that the explicit use of outsourcing facilities might have the unintended consequence of making some preparations unavailable.

The AVMA asserts that use of a compounded preparation should be limited to those individual patients for which no other method or route of drug delivery is practical; those drugs for which safety, efficacy, and stability have been demonstrated in the specific compounded form in the target species; or disease conditions for which a quantifiable response to therapy or drug concentration can be monitored. Needs vary greatly across species treated by veterinarians.

- Zoo animals, laboratory animals, wildlife, exotic pets, camelids, aquaria species, and non-food aquacultural species: These minor species have few FDA-approved animal or human drug products or indexed drugs that can be used as labeled or in an extralabel manner to treat conditions. For example, diminutive dosages and volumes are required for some exotic pets, so office use is critical. Zoo veterinarians have advised they need to have office stock to be able to readily treat lameness or other conditions that can arise at any time among the large collections of animals they treat. For that reason, the importance of having preparations compounded from bulk drug substances in anticipation of the patient's need and available in the hospital or clinic for administration, and dispensing when appropriate, is undeniable.
- Food-producing animals: The AVMA suggests that the FDA draft a separate guidance to address compounding from bulk drug substances for food producing animals. The draft GFI

#230 provides no allowance for the preparation of compounds from bulk drug substances for food-producing animals. The AVMA has advocated for a publically available, current list of bulk drug substances that can be legally compounded within a veterinarian-client-patient relationship specific and limited to euthanasia, depopulation, and poison antidote compounds for food-producing animals. There currently exist no FDA-approved animal or human drug products or indexed drugs that can be used for these specific needs. Therefore, it is imperative that veterinarians have these preparations available and in their clinic when the need arises. Not only is compounding from bulk drug substances necessary for food-producing animals, the FDA must allow for the preparations to be obtained in anticipation of a specific patient's need (i.e. via a nonpatient-specific prescription or prescription order) for treating certain toxicoses and for euthanasia or depopulation.

- Dogs, cats, and horses: While there are a number of FDA-approved drug products for dogs, cats and horses, there remain circumstances where there is no FDA-approved drug product available to treat a particular animal with a particular condition, because either no drug product is approved for a specific animal species or no approved drug product is available or feasible for use under the extralabel drug use provisions. For example, some shelters receive 20,000 to 30,000 animals per year and have immediate needs that require compounded preparations for adequate treatment. Another example is the need for compounded buprenorphine when an owner is unable to adequately medicate their painful cat with the injectable or oral treatment at home. In instances such as these, having access to these compounded preparations for administration and dispensing by the veterinarian is critical to preventing animal suffering and death.

The criteria that all substances must meet to be included on the list are challenging.

- As asked previously, will the identified "significant safety concern specific to the use of the bulk drug substance to compound animal drugs" be related to safety concerns for humans or for animal patients? For example, cisapride was removed from the market due to human safety concerns, but is critical in feline medicine. We contend that safety concerns related to the use of compounded medications in human medicine should have no bearing on their use in animal patients in most circumstances.
- Additionally, evidence clearly indicating the ineffectiveness of a substance to be used should be a criterion by which the substance is not included on the list.

We have concerns related to the feasibility of creating an all-encompassing list of bulk drug substances within the paradigm framed by FDA, with supporting documentation as outlined in the Docket No. FDA-2015-N-1196. In lieu of the list, we contend that compounding from bulk drug substances should be allowed in three general sets of circumstances: the approved product is not commercially available, the needed compounded preparation cannot be made from the approved product, or there is no approved product from which to compound the needed preparation.

AVMA will be providing a separate set of comments pursuant to the Federal Register notice titled, "List of Bulk Drug Substances That May be Used by an Outsourcing Facility to Compound Drugs for Use in Animals."

### ***Specific Topics for Comment***

*Should the final guidance address the issue of FDA-approved animal and human drugs that are in shortage or are otherwise unavailable (e.g., disruptions in the manufacture or supply chain; business*

*decisions to stop marketing the drug; drug is subject to Agency action based on safety, effectiveness, or manufacturing concerns)?*

The AVMA is committed to the continued availability of medicinal products that are pure, safe, potent and efficacious for animals. While we recognize that many factors can impact a manufacturer's decision or ability to produce and make FDA-approved drug products available, the short and long-term breaks in availability or complete withdrawal of a product from the market make access to compounded preparations even more important. Lack of information regarding why the products have been removed from the market and when they might return causes frustration and uncertainty for veterinarians and pet owners as they plan for treatment of patients.

Accordingly, the AVMA contends that the lack of commercially available FDA-approved drug products is a valid reason for veterinarians to prescribe compounds prepared from bulk drug substances for patients. For example, ticarcillin-clavulanic acid is critical for treatment of certain types of bacterial otitis externa in dogs and must be compounded when commercially unavailable. We ask that the final guidance address the issue of compounding preparations from bulk drug substances when the FDA-approved drug products are unavailable for any reason. As requested earlier in our comments, does the FDA have the needed resources to address and minimize impacts of drug unavailability on patient care? Additionally, what protocols and procedures will FDA follow to assure that timely notification is made regarding emerging drug shortages that impact veterinary medicine and notification when the drug is once again commercially available? And how does FDA know when a shortage of a human FDA-approved drug will impact veterinary medicine?

*How should these situations be addressed in the final guidance?*

The AVMA contends that a robust, nimble, current drug shortage list should be made publically available. While we do not yet have a recommendation on whether this action should be incorporated into the provisions delineated within GFI #230, implemented elsewhere for the agency to manage, or maintained by an external stakeholder(s), appropriate resources must be dedicated toward its continual upkeep. In the interim, any role that the FDA plays with regard to identification of drug shortages needs to be well-informed and more broadly encompassing than the current list housed at

<http://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm267669.htm>.

*How should the final guidance define the terms "shortage" and "unavailable"?*

A "shortage" refers to insufficient quantities of a needed FDA-approved product. "Unavailable" means that the FDA-approved product is entirely inaccessible to practitioners. Shortages and unavailability of products may be due to a back order, temporary discontinuation, or other supply interruption, resulting in limited or no accessibility through regular distribution channels.

*What criteria should FDA use to determine if an approved animal or human drug is in shortage or otherwise unavailable?*

FDA should consider products that are backordered, temporarily discontinued, no longer marketed, or provided intermittently in limited quantities when determining whether a product is in shortage or unavailable.

*Do United States Pharmacopeia and National Formulary (USP-NF) [2] chapters <795> and <797> provide suitable standards for animal drugs compounded by veterinarians, and if not, what standards of safety, purity, and quality should apply to animal drugs compounded by veterinarians?*

The USP chapters 795 and 797 are suitable standards for compounding from bulk drug substances by veterinarians.

*Should licensed veterinarians be able to sell or transfer an animal drug compounded from bulk drug substances by a State-licensed pharmacy or an outsourcing facility to owners or caretakers of animals under the veterinarian's care?*

We seek FDA's clarification related to the definitions of "sell," "transfer," and "dispense" before we can provide feedback related to this concept. In general, we assert that the prescribing veterinarian should be able to dispense preparations compounded by pharmacies or outsourcing facilities to his or her clients.

*How should FDA apply the condition to identify an individual patient when it is not possible to identify an individual animal (e.g., koi in a koi pond)?*

The AVMA contends that a "patient" is an animal or group of animals examined or treated by a veterinarian and does not need to always be individually identified. So long as the licensed veterinarian is meeting the requirements of his/her state veterinary practice act with respect to prescribing, then being able to identify an individual patient when it is not possible is unnecessary.

*Should facilities registered as outsourcing facilities under section 503B of the FD&C Act be able to compound animal drugs from bulk drug substances that do not appear on Appendix A for an individually identified animal patient under conditions similar to those applicable to state-licensed pharmacies (i.e., the conditions contained in section III.A. of the draft guidance)?*

Yes, so long as the outsourcing facility is a state-licensed pharmacy.

*Is additional guidance needed to address the repackaging of drugs for animal use?*

- *How widespread is the practice of repackaging drugs for animal use?*
- *What types of drugs are repackaged for animal use, and why are they repackaged?*
- *Have problems been identified with repackaged drugs for animal use?*

We understand repackaging to mean "The act of taking a finished drug product from the container in which it was distributed by the original manufacturer and placing it into a different container without further manipulation of the drug. Repackaging also includes the act of placing the contents of multiple containers (e.g., vials) of the same finished drug product into one container, as long as the container does not include other ingredients." If this is FDA's definition, the AVMA agrees and understands that veterinarians sometimes need to repackage drugs, including compounded preparations, into smaller aliquots for administration by the owner or agent, as long as the repackaging does not affect the stability, efficacy, purity, safety, and potency of the product (e.g., light-sensitive drugs).

*Is additional guidance needed to address the compounding of animal drugs from approved animal or human drugs under section 512(a)(4) or (a)(5) of the FD&C Act and part 530?*

No. The AVMA was a key leader in the development and advocacy for the Animal Medicinal Drug Use Clarification Act on behalf of our members and the patients they serve. Extralabel drug use, including the preparation of compounds from FDA-approved drugs, continues to be a needed activity in veterinary medicine, and our members continue to utilize this FDA-regulated activity in the practice of veterinary medicine, within the confines of the 21 CFR 530.

*Is additional guidance needed to address the compounding of animal drugs from bulk drug substances for food-producing animals?*

Yes. The AVMA suggests that the FDA draft a separate guidance to address compounding from bulk drug substance for food producing animals.

The AVMA continues to recommend that there be a publically available, current list of bulk drug substances that can be legally compounded within a veterinarian-client-patient relationship specific and limited to euthanasia, depopulation, and poison antidote compounds for food animal species. If adequate scientific information is not available to determine a withdrawal time, the AVMA contends that the compounded preparation cannot be used in a food animal or the treated animal cannot enter the food supply.

*As one condition under which FDA does not generally intend to take action for certain violations of the FD&C Act if this and the other conditions are followed, FDA is proposing that State-licensed pharmacies and veterinarians report any product defect or serious adverse event associated with animal drugs they compound from bulk drug substances to FDA within 15 days of becoming aware of the product defect or serious adverse event. Outsourcing facilities are required to report adverse events associated with the drugs they compound. FDA believes it is important to receive this information from State-licensed pharmacies and veterinarians because there are no other State Departments of Health or Federal Agencies (e.g., the CDC) charged with identifying and tracing animal injuries or disease associated with an animal drug compounded by these entities. FDA has the following specific questions with respect to this proposed condition:*

- *How many State-licensed pharmacies and veterinarians compound animal drugs from bulk drug substances and would potentially be reporting product defects and serious adverse events to FDA?*

We are unaware of any data that could assist in answering this question. Anecdotally, we understand that few veterinarians personally compound from bulk drug substances.

- *Are State-licensed pharmacies and veterinarians reporting the same or similar information to any State regulatory agency (e.g., State boards of pharmacy, State boards of veterinary medicine)? If so, how many reports on average does each State-licensed pharmacy and veterinarian submit to these State agencies each year?*

It is our understanding that adverse events are grossly underreported to FDA; however, members have conveyed that when they do report an adverse event, they generally report the adverse event to the respective compounding pharmacy. We do not know the actual number of these reports, nor are we aware of the number of events reported by veterinarians to their state boards.

- *For purposes of the guidance, how should FDA define the terms “product defect” and “serious adverse event”?*

AVMA contends that “serious adverse events” are ones that are fatal, life-threatening, require professional intervention, cause an abortion, stillbirth, infertility, congenital anomaly, prolonged or permanent disability, or disfigurement as referenced in 21 CFR 514.3.

A “product defect” would include any obvious physical abnormalities, such as consistency, color and precipitant materials or contents, or problems with the amount, type or effectiveness of an ingredient triggered by production errors, poor quality bulk drug substances, or problems with transportation and/or storage. Any obvious physical defects of the container, seal or stopper and of the label of the product container would also constitute a product defect.

AVMA believes lack of efficacy is an adverse event and should be included in any reporting system.

- *Can FDA achieve the same objective of identifying and tracing the source of injuries or disease associated with an animal drug compounded from a bulk drug substance through means other than product defect and serious adverse event reporting, and if so, what other means? For example, would reports of product defects alone achieve the same objective?*  
We are unable to provide a clear answer without additional definitions for the terms “product defect” and “serious adverse event,” which would help inform our understanding and opinion.

We appreciate the opportunity to comment on the draft Guidance for Industry and provide needed feedback on behalf of the AVMA’s membership. For questions or concerns regarding the AVMA’s comments, please contact Drs. Ashley Morgan ([amorgan@avma.org](mailto:amorgan@avma.org); 202-289-3210) and Lynne White-Shim ([lwhite@avma.org](mailto:lwhite@avma.org); (800) 248-2862 ext. 6784).

Sincerely,

W. Ron DeHaven, DVM, MBA  
CEO and Executive Vice President

## Malcolm J. Broussard

---

**From:** Malcolm J. Broussard  
**Sent:** Saturday, May 07, 2016 2:37 PM  
**To:** 'Mark.Johnston@CVSCaremark.com'  
**Subject:** Compounding for Veterinary Office Use

Hi Mark,

Now that the Board has completed the revision process of the original proposed rule, the members have directed the formal replies to all parties who have provided comments and testimony at both public hearings held on this topic.

The absence of veterinary compounding from the DQSA notwithstanding, the Board has taken note of the provisions of 21 CFR 530, which provides guidance on the compounding of veterinary drugs by pharmacists pursuant to the receipt of patient-specific prescriptions. Thus, the Board does not agree with your assertion that all veterinary compounding is illegal.

Following its review of the FDA's draft *Guidance for Industry #230 – Compounding Animal Drugs from Bulk Substances* issued in May 2015, and with the observation the agency has not yet issued its final guidance document on this topic, the Board is of the opinion that there will be additional federal legislation at some point in the future authorizing veterinary compounding at least by prescription which would cure the absence of this topic in the DQSA. With respect to compounding for office use, there is no clear authority for such practice; on the other hand, there is no clear prohibition on such practice. Faced with compelling evidence from the veterinary medical community as to the need for some products used in emergent medical conditions to be available for office use, the Board has determined it appropriate to permit compounding for office use for veterinarians. However, the members also understand the risk when such compounding for general use is performed with the lower quality standards from USP as opposed to the generally accepted CGMP quality standards. For that reason, the Board has imposed a 5% limit on such activities. Specifically, the products distributed pursuant to compounding for veterinary office use may not exceed 5% of the pharmacy's total dispensing plus distribution activity, as calculated using dosage units on a monthly basis.

In recognition of the lack of clear federal authority for the compounding for veterinary office use, the members voted to revise their original proposal by inserting language that places Louisiana-licensed pharmacists on notice that while the Board allows that practice, that rule would not provide immunity from any potential federal enforcement action. The Board is of the opinion the rule now provides pharmacists with sufficient authority to address the needs of the veterinary medical community in a manner which mitigates the inherent risk in using USP standards as opposed to CGMP standards when compounding for office use, and with sufficient notice of the lack of clear federal authority for such practice.

Thank you for your interest in our proposal to amend the Board's compounding rules for veterinary medical practice and for taking the time to submit your comments for the Board's consideration. The next step in the process is for the Board to compile a comprehensive report for the Joint Legislative Oversight Committee on Health & Welfare, detailing the proposal, the hearing records, and the Board's responses to the commentators. We intend to submit that report no later than May 9, 2016. Following the legislative review, we intend to publish the revised original proposal as a final rule.

Malcolm J Broussard  
Executive Director  
Louisiana Board of Pharmacy  
3388 Brentwood Drive  
Baton Rouge, LA 70809-1700  
United States of America  
Telephone +1.225.925.6481

---

**From:** Johnston, Mark D. [<mailto:Mark.Johnston@CVSCaremark.com>]  
**Sent:** Thursday, July 30, 2015 5:56 PM  
**To:** info  
**Cc:** 'ccatizone@nabp.net'  
**Subject:** E-mail for Malcolm

Malcolm,

Mark Johnston here. As I left the ID BOP, some of my contacts did not transfer well, thus this e-mail to your Board's general e-mail box. I sure did enjoy this year's annual meeting in New Orleans, including getting to know your various Board members better.

I write today, because I read your news letter article concerning the compounding of veterinarian drugs for office use (pasted below). This is contrary to my understanding of federal law. The fact that the DQSA does not pertain to vet drugs is a bad thing, as the DQSA outlines the only legal way to compound. Thus, all vet compounding is illegal. I asked this question at this year's FDA 50 state meeting on compounding, and my reasoning was confirmed. Shortly thereafter, the FDA printed the proposed Guidance For Industry, Compounding Animal Drugs From Bulk Drug Substances. In this Guidance, the FDA explains that they will use enforcement discretion to allow certain vet compounding that adheres to certain conditions. Condition #2 is that the pharmacist compounds pursuant to the receipt of a valid prescription. Thus, office use compounding of vet drugs is clearly illegal and outside of the FDA's proposed enforcement discretion.

Idaho promulgated a similar 5% rule for all non-sterile drugs, even though this is illegal federally. Thus, I understand why LA would do the same, but the way the article reads, the LA Board believes that vet office use compounding is federally legal. Idaho chose to explain to our pharmacists that our Board will not take issue with the allowances within our 5% rule, but that they will have to weigh their options when it comes to the feds.

I hope this is received with the helpful intentions that it was sent with.

See you at the District 6, 7, 8 meeting.

Sincerely,

Mark Johnston

federal authority for pharmacists to compound veterinary preparations pursuant to patient/client-specific prescriptions but noted the absence of clear federal authority for pharmacists to compound veterinary preparations for office use by veterinarians, in the absence of such prescriptions. The board commissioned its rules committee to draft a revision of the original proposal that would place pharmacists on notice as to the absence of clear federal authority to compound veterinary preparations for office use for veterinarians, and would advise such pharmacists that no state rule could provide immunity from any federal enforcement action. The committee proposed a fourth Paragraph in Subsection E of §2535 with the requested advisory language. The board reviewed that proposed revision during its February 24, 2016 meeting and directed the continuation of the promulgation process. The proposed revision is noted below.

The Legislative Fiscal Office has evaluated the impact of the proposed revision of the original proposal and has opined the suggested revision would not adversely increase any cost to the stakeholders.

#### **Public Comments**

Interested persons may submit written comments to Malcolm J. Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding this proposed Rule as well as these proposed revisions to the original proposal.

#### **Public Hearing**

A public hearing on these proposed revisions to the original proposal is scheduled for Tuesday, April 19, 2016 at 9 a.m. in the board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 p.m. that same day.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part LIII. Pharmacists**

#### **Chapter 25. Prescriptions, Drugs, and Devices**

#### **Subchapter C. Compounding of Drugs**

#### **§2535. General Standards**

A. Compounding Practices. Compounded medications may be prepared using prescription medications, over-the-counter medications, chemicals, compounds, or other components.

1. ...

2. All compounding shall be accomplished utilizing accepted pharmacy techniques, practices, and equipment, as well as the Federal Food, Drug and Cosmetic Act of 1938 as subsequently amended, most recently in November 2013 (FDCA), the 2016 edition of Title 21 of the *Code of Federal Regulations (CFR)*, and all relevant chapters of the 2014 edition of the *United States Pharmacopeia-National Formulary (USP 37-NF 32)*.

A.2.a. - D. ...

E. Veterinarian-Administered Compounds, also referred to as Pharmacy-Generated Drugs

1. Upon receipt of a valid non-patient-specific medical order from a licensed veterinarian, the pharmacy may compound a preparation intended for administration to an animal patient by the veterinarian.

### **POTPOURRI**

#### **Department of Health and Hospitals Board of Pharmacy**

#### **Compounding for Office Use for Veterinarians (LAC 46:LIII.2535)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Board of Pharmacy published its Notice of Intent in the July 2015 edition of the *Louisiana Register*, specifying its proposal to amend §2535 of its rules to update the drug compounding standards to allow pharmacists to compound veterinary preparations for office use by veterinarians. As indicated in the notice, the board conducted a public hearing on August 26, 2015 to receive comments and testimony on the proposal.

During the board's consideration of those comments and testimony at its subsequent meeting on November 18, 2015, they took note of the comment which recognized the clear

2. These preparations may not be distributed to any other third party by the pharmacy, nor may these preparations be further re-sold or distributed by the veterinarian ordering the preparation from the pharmacy.

3. This authorization is primarily intended to facilitate the preparation of medications needed for emergency use in a veterinary office practice. Given the limited application of this authorization, which allows these products to be prepared using less rigorous standards applicable to compounding as opposed to the more rigorous standards applicable to manufacturing processes, the compounding pharmacy preparing these products shall be limited in the amount of such products they can prepare.

a. No Louisiana-licensed pharmacy may distribute any amount of practitioner-administered compounds in excess of 5 percent of the total amount of drug products dispensed and/or distributed from their pharmacy.

b. The 5 percent limitation shall be calculated on a monthly basis and shall reference the number of dosage units.

c. For those Louisiana-licensed pharmacies located outside Louisiana, the total amount distributed and/or dispensed shall reference the pharmacy's total business within the state of Louisiana.

4. The provisions of this Subsection E notwithstanding, pharmacists intending to engage in the compounding of veterinary preparations pursuant to non-patient-specific medical orders from veterinarians should be aware that federal law or rule may not permit such activity by a licensed pharmacy, and further, such pharmacists should be aware that the board's rules cannot legitimize an activity that is not permitted under federal law or rule, and further, such pharmacists should be aware that while this activity is permitted by the board, pharmacists engaging in this activity remain subject to the full force and effect of federal law enforcement.

F. Compounding Commercial Products not Available. A pharmacy may prepare a copy of a commercial product when that product is not available as evidenced by either of the following:

1. products appearing on a website maintained by the American Society of Health-System Pharmacists (ASHP);

2. products temporarily unavailable from manufacturers, as documented by invoice or other communication from the distributor or manufacturer.

G. Labeling of Compounded Preparations

1. For patient-specific compounded preparations, the labeling requirements of R.S. 37:1225, or its successor, as well as §2527 of this Chapter, or its successor shall apply.

2. For veterinarian administered compounds, the label shall contain, at a minimum, the following data elements:

- a. pharmacy's name, address, and telephone number;
- b. veterinarian's name;
- c. name of preparation;
- d. strength and concentration;
- e. lot number;
- f. beyond use date;
- g. special storage requirements, if applicable;
- h. identification number assigned by the pharmacy;

and

i. name or initials of pharmacist responsible for final check of the preparation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 23:1316 (October 1997), LR 29:2105 (October 2003), effective January 1, 2004, LR 41:97 (January 2015), LR 42:

Malcolm J. Broussard  
Executive Director

1603#077

**Louisiana Administrative Code**

**Title 46 – Professional and Occupational Standards**

**Part LIII: Pharmacists**

**Chapter 25. Prescriptions, Drugs, and Devices**

**Subchapter C. Compounding of Drugs**

**§2535. General Standards**

A. Compounding Practices. Compounded medications may be prepared using prescription medications, over-the-counter medications, chemicals, compounds, or other components.

1. ...

2. All compounding shall be accomplished utilizing accepted pharmacy techniques, practices, and equipment, as well as the Federal Food, Drug and Cosmetic Act of 1938 as subsequently amended, most recently in November 2013 (FDCA), the ~~2014~~ 2016 edition of Title 21 of the *Code of Federal Regulations (CFR)*, and all relevant chapters of the 2014 edition of the United States Pharmacopeia-National Formulary (USP 37 – NF 32).

a. The compounding of sterile preparations pursuant to the receipt of a patient-specific prescription shall comply with the provisions of Section 503-A of the FDCA and USP Chapter 797.

b. The compounding of non-sterile preparations pursuant to the receipt of a patient-specific prescription shall comply with the provisions of Section 503-A of the FDCA and USP Chapter 795.

c. The compounding of preparations for veterinary use shall comply with the provisions of Section 530 of Title 21 of the CFR.

d. The compounding of positron emission tomography (PET) drugs shall comply with the provisions of Section 212 of Title 21 of the CFR.

3. ...

B. Board Notification. ...

C. Training and Education. ...

D. Anticipated Use Preparations. ...

E. Veterinarian Administered Compounds, also referred to as Pharmacy-Generated Drugs

1. Upon receipt of a valid non-patient-specific medical order from a licensed veterinarian, the pharmacy may compound a preparation intended for administration to an animal patient by the veterinarian.

2. These preparations may not be distributed to any other third party by the pharmacy, nor may these preparations be further re-sold or distributed by the veterinarian ordering the preparation from the pharmacy.

3. This authorization is primarily intended to facilitate the preparation of medications needed for emergency use in a veterinary office practice. Given the limited application of this authorization, which allows these products to be prepared using less rigorous standards applicable to compounding as opposed to the more rigorous standards applicable to manufacturing processes, the compounding pharmacy preparing these products shall be limited in the amount of such products they can prepare.

- 51 a. No Louisiana-licensed pharmacy may distribute any amount of practitioner
- 52 administered compounds in excess of five percent of the total amount of drug
- 53 products dispensed and/or distributed from their pharmacy.
- 54 b. The five percent limitation shall be calculated on a monthly basis and shall reference
- 55 the number of dosage units.
- 56 c. For those Louisiana-licensed pharmacies located outside Louisiana, the total amount
- 57 distributed and/or dispensed shall reference the pharmacy’s total business within the
- 58 state of Louisiana.
- 59 4. The provisions of this Paragraph E notwithstanding, pharmacists intending to engage in the
- 60 compounding of veterinary preparations pursuant to non-patient-specific medical orders from
- 61 veterinarians should be aware that federal law or rule may not permit such activity by a
- 62 licensed pharmacy, and further, such pharmacists should be aware that the board’s rules
- 63 cannot legitimize an activity that is not permitted under federal law or rule, and further, such
- 64 pharmacists should be aware that while this activity is permitted by the board, pharmacists
- 65 engaging in this activity remain subject to the full force and effect of federal law enforcement.

66 ~~E. F.~~ Compounding Commercial Products not Available. ...

67 ~~F. G.~~ Labeling of Compounded Preparations.

- 68 1. For patient-specific compounded preparations, the labeling requirements of R.S. 37:1225, or
- 69 its successor, as well as §2527 of this Chapter, or its successor shall apply.
- 70 2. For veterinarian administered compounds, the label shall contain, at a minimum, the
- 71 following data elements:
  - 72 a. pharmacy’s name, address, and telephone number;
  - 73 b. veterinarian’s name;
  - 74 c. name of preparation;
  - 75 d. strength and concentration;
  - 76 e. lot number;
  - 77 f. beyond use date;
  - 78 g. special storage requirements, if applicable;
  - 79 h. identification number assigned by the pharmacy; and
  - 80 i. name or initials of pharmacist responsible for final check of the preparation.

81 AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

82 HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708  
83 (October 1988), effective January 1, 1989, amended LR 23:1316 (October 1997), amended LR 29:2105 (October  
84 2003), effective January 1, 2004, amended LR 41:97 (January 2015), amended LR

85 ...  
86  
87  
88



# Louisiana Board of Pharmacy

3388 Brentwood Drive  
Baton Rouge, Louisiana 70809-1700  
Telephone 225.925.6496 ~ Facsimile 225.925.6499  
[www.pharmacy.la.gov](http://www.pharmacy.la.gov) ~ E-mail: [info@pharmacy.la.gov](mailto:info@pharmacy.la.gov)



## Summary of Testimony & Public Comments re

Regulatory Project 2015-4 ~ Compounding for Office Use for Veterinarians

at

April 19, 2016 Public Hearing

1. Letter from Kirk Ryan, DVM, Immediate Past President, La. Veterinary Medical Assoc.

Dr. Ryan appeared at the hearing and reinforced his personal support for the proposed revision of the original proposed rule, as well as the revised proposed rule.

2. Letter from Trisha Marullo, DVM, President, La. Veterinary Medical Assoc.

Presented by Dr. Ryan and LVMA Executive Director Bland O'Connor, the letter is supportive of the proposed revision of the original proposed rule, as well as the revised proposed rule.

3. Letter from Rachael G. Pontikes, with the firm of DuaneMorris, on behalf of "several compounding pharmacies licensed in Louisiana that compound animal medications for veterinary office use."

Letter indicated support for the authority to compound for veterinary office use, but requests further amendment of the proposal by (1) removing the 5% limitation, believing it to be an arbitrary limitation on veterinarians ordering from the pharmacy of their choice, and (2) removing the cautionary language added advising pharmacists of the lack of clear authority for compounding for veterinary office use, suggesting that all veterinary compounding is regulated at the state level.

April 18, 2016

Malcolm J. Broussard, Executive Director  
Louisiana Board of Pharmacy  
3388 Brentwood Drive  
Baton Rouge, LA 70809-1700

Re: Notice of Intent: Compounding for Office Use for Veterinarians (LAC 46:LIII.2535)

Dear Board of Pharmacy Members:

As a veterinarian in the state of Louisiana, I am writing in support of the above referenced rule change (published in the March 2016 edition of the Louisiana Register).

Allowing compounded medications to be available for use in the veterinary office will be lifesaving in many situations and will substantially alleviate needless suffering caused by treatment delays which would occur if such products are not legally available.

I have followed the rule change process with interest and appreciate the time, effort and energy put forth by the Board in considering this issue. I have taken note of the additional language (4<sup>th</sup> Paragraph, Subsection E of §2535) in the updated rule which alerts practitioners to potential differences in federal and state law. Adding this information raises awareness without impeding animal care. I appreciate the Board's consideration in meeting the needs of animals, pet owners, and veterinarians. Please accept this letter in support of the rule.

Sincerely,



Kirk Ryan, DVM  
PO Box 78292  
Baton Rouge, LA 70837



8550 United Plaza Boulevard, Suite 1001, Baton Rouge, Louisiana 70809

1 (800) 524-2996 (225) 928-LVMA (225) 922-4611 Fax

**OFFICERS**

**PRESIDENT**  
**DISTRICT 5**  
Dr. Trisha Marullo  
Broussard Veterinary Clinic  
1723 Roper Road  
Maurice, LA 70555  
(337) 988-5022  
(337) 988-5029 Fax

**PRESIDENT-ELECT**  
**MEMBER-AT-LARGE**  
Dr. Marion Sewell  
Ruston Animal Clinic  
5605 Highway 167N  
Ruston, LA 71270  
(318) 255-6927  
(318) 255-1501 Fax

**VICE PRESIDENT**  
**MEMBER-AT-LARGE**  
Dr. Christie McHughes  
Crosspoint Veterinary Hospital  
70323 Hwy 1077  
Covington, LA 70433  
(985) 626-4862

**IMMEDIATE PAST PRESIDENT**  
**DISTRICT 9**  
Dr. Kirk Ryan  
LSU School of Veterinary Medicine  
Veterinary Teaching Hospital  
Skip Bertman Drive  
Baton Rouge, LA 70803  
(225) 578-9600  
(225) 578-9916 Fax

**TREASURER**  
Dr. Dale Peyroux  
46225 North Morrison Blvd  
Hammond, LA 70401  
(985) 345-5157  
(985) 429-8555 Fax

**BOARD MEMBERS**  
**DISTRICT 1**  
Dr. Glen Ritter  
Bossier City

**DISTRICT 2**  
Dr. James W. Rundell  
Monroe

**DISTRICT 3**  
Dr. Frank A. Fitzgerald  
Cheneyville

**DISTRICT 4**  
Dr. Matt Traylor  
Lake Charles

**DISTRICT 6**  
Dr. John Mauterer  
Baton Rouge

**DISTRICT 7**  
Dr. Paul Ritch  
Mandeville

**DISTRICT 8**  
Dr. Amanda Perkins  
Metairie

April 5, 2016

Louisiana Board of Pharmacy  
Baton Rouge, LA

Re: Notice of Intent: Compounding for Office Use for Veterinarians (LAC 46:LIII.2535)

Dear Board Members:

On behalf of Louisiana pet owners and veterinarians, we endorse the above referenced rule change as published in the March 2016 edition of the Louisiana Register.

As our association has noted in previous comment to the Board, compounding is a needed tool and it provides much-needed therapeutic flexibility for veterinarians, especially considering the wide range of species we treat. A typical companion animal veterinary clinic cares for pocket pets (guinea pigs, hamsters, rabbits, small reptiles, etc.), birds, cats, and dogs. Compounded medications are integral to treating these animals as often no approved products are available or because approved product formulations are impossible or impractical to administer to animals.

These medications are often urgently needed because many animals do not show clinical signs of illness until they are life-threateningly ill. Biologically speaking, to display signs of illness/weakness is to become prey for predators. Consequently, animal diseases are often diagnosed in advanced stages after the animal can no longer 'hide' its illness. Without access to compounded medications for office use, animals may die or be euthanized because emergency medications are not available or their treatment is inconvenient.

Permitting compounded medications to be available for veterinary office use, as published in the notice of intent, will avoid a daily impact on the health and safety of companion animals. In support of this goal, we have no objection to the additional language (4<sup>th</sup> Paragraph, Subsection E of §2535) in the updated rule which alerts veterinarians and pharmacists that federal and state laws may vary. We appreciate the Board's consideration in meeting the needs of animals, pet owners, and veterinarians.

Sincerely,

Trisha Marullo, DVM  
President, Louisiana Veterinary Medical Association

NEW YORK  
LONDON  
SINGAPORE  
PHILADELPHIA  
CHICAGO  
WASHINGTON, DC  
SAN FRANCISCO  
SILICON VALLEY  
SAN DIEGO  
SHANGHAI  
BOSTON  
HOUSTON  
LOS ANGELES  
HANOI  
HO CHI MINH CITY

# DuaneMorris®

FIRM and AFFILIATE OFFICES

RACHAEL G. PONTIKES  
DIRECT DIAL: +1 312 499 6757  
PERSONAL FAX: +1 312 277 6903  
E-MAIL: rgpontikes@duanemorris.com

[www.duanemorris.com](http://www.duanemorris.com)

ATLANTA  
BALTIMORE  
WILMINGTON  
MIAMI  
BOCA RATON  
PITTSBURGH  
NEWARK  
LAS VEGAS  
CHERRY HILL  
LAKE TAHOE  
MYANMAR  
OMAN  
A GCC REPRESENTATIVE OFFICE  
OF DUANE MORRIS  
MEXICO CITY  
ALLIANCE WITH  
MIRANDA & ESTAVILLO  
SRI LANKA  
ALLIANCE WITH  
GOWERS INTERNATIONAL

April 18, 2016

## **BY FED EX**

Malcolm H. Broussard  
Executive Director  
Louisiana Board of Pharmacy  
3388 Brentwood Drive  
Baton Rouge, Louisiana 70809-1700

Re: **Regulatory Project 2015-4 - Compounding for Office Use for Veterinarians**

Dear Mr. Broussard:

We submit these comments to the amended Emergency Rule (Regulatory Proposal 2015-D, Compounding for Office Use for Veterinarians, Draft #3) ("Amended Emergency Rule") on behalf of several compounding pharmacies licensed in Louisiana that compound animal medications for veterinary office use. As this Board has recognized, veterinarians need compounded medications on hand, in their office, to timely prevent animal suffering, the worsening of animal disease, and death. We appreciate that in May 2015 the Board acknowledged this important animal medical need and adopted the initial Emergency Rule (Emergency Rule adopted May 27, 2015).

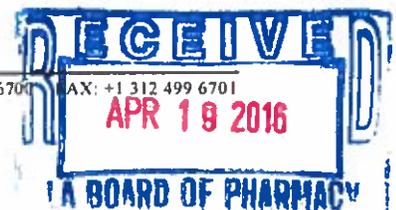
We support the renewal of this Amended Emergency Rule, as the Board's renewed recognition of how important it is for veterinarians to have access to compounded medications for office use. We submit the following three comments with suggestions to improve the Amended Emergency Rule.

First, we provide examples demonstrating the importance of allowing pharmacies to provide veterinarians with compounded medication for office use. Some animal conditions require immediate treatment with compounded medications, while others require compounded medications that must be ordered from a specialty veterinary compounding pharmacy. Allowing veterinarians to have compounded medications on hand reduces animal suffering and death.

DUANE MORRIS LLP

190 SOUTH LASALLE STREET, SUITE 3700 CHICAGO, IL 60603-3433

PHONE +1 312 499 6700 FAX: +1 312 499 6701



Malcolm H. Broussard  
April 18, 2016  
Page 2

Second, we recommend that the Board eliminate the 5% limitation on office use compounding as this limitation does not best serve animal health—quantity limitations on pharmacies serve only to keep veterinarians from using the trusted pharmacy of their choice to prepare the compounds they need in their office to properly treat their animal patients.

Third, we recommend the Board eliminate paragraph E(4) of the Amended Emergency Rule, which warns pharmacies that federal law may not permit a pharmacy to compound for veterinary office use, because it is inaccurate. There is no federal law that prohibits pharmacies from compounding for veterinary office use. Veterinary compounding is currently exclusively regulated exclusively by the states. A misleading statement only serves to confuse veterinarians and pharmacists.

We discuss these three comments below.

**I. Veterinarians Need Compounded Medication In Their Office To Properly Treat Their Animal Patients.**

Veterinarians often treat animals in situations where a few hours can make a significant difference in health outcomes. For example, veterinarians need to have compounded apomorphine on hand to administer to dogs who ingest a toxic substance. Forcing a poisoned dog to wait a couple of hours, let alone days, to fill a patient specific prescription for compounded apomorphine would cause unnecessary animal suffering. Metronidazole benzoate is another example of an important life-saving compounded treatment. Veterinarians use it to treat G.I. infections, such as giardia, that cause severe diarrhea and dehydration. Like apomorphine, veterinarians must keep metronidazole benzoate on hand in order to start treatment immediately and to dispense to pet owners, so the medication is provided, uninterrupted, twice-daily for five to seven days.

Further, many compounded medications veterinarians prescribe are not available at a local pharmacy, but must be ordered from pharmacies that specialize in dispensing veterinary compounded medication. It is therefore crucial for the veterinarian to have certain medications on hand in their offices to begin treatment at the moment of diagnosis. Otherwise, it could take several days or up to a week for the animal's owner to receive the proper medication from a specialty pharmacy, creating unnecessary animal suffering. Many compounding pharmacies that specialize in animal health carry more than 500 active pharmaceutical ingredients and over 30 animal friendly flavors to properly provide for the diverse health care needs of this patient population.

Veterinarians know the patient population they are treating, and thus can predict the types of medications that they will need on hand to properly and adequately treat their animal patients. In order to protect public health, it is imperative that the Board give veterinarians all the available and necessary tools to treat their animal patients by ensuring they have access to *all* available treatments, including compounded medications for office use.



**II. The Board Should Eliminate The 5% Limitation On Pharmacies That Prepare Compounded Medications For Veterinary Office Use.**

The Amended Emergency rule limits each pharmacy to dispensing 5% of the total amount of drug products dispensed or distributed in Louisiana calculated on a monthly basis. This limitation will have negative consequences on animal health by preventing veterinarians from ordering medications for office use from their preferred pharmacy if that pharmacy has reached its 5% limit. Veterinarians typically develop relationships over the course of several years with the pharmacy or pharmacist who they prefer to work with for compounding pharmacy services. The Board's proposed limitation on dispensing more than 5% of total medications for office use thus denies veterinarians the right to access pharmacies of their choice. Veterinarians understandably prefer to obtain compounded medications from the pharmacy with which they are most familiar and in which they have the most confidence to provide compounded medications of the highest quality, whether pursuant to a patient-specific or non-patient-specific medical order. The arbitrary proposed 5% limitation on office use medication in practice will force veterinarians to order medications from pharmacies other than their preferred pharmacy. Furthermore, the comparison to standards for manufacturing processes are inapplicable. The compounded medications to which this rule would apply are not available as commercially available manufactured drug products. Thus, the proposed limitation does not push veterinarians to order commercially manufactured drug products, but instead would force veterinarians to order compounded medication from a pharmacy other than their first-choice.

Specialized compounding pharmacies dispensing compounded medications for veterinary office use provide unique preparations that require a high level of expertise to compound. For example, there are a very limited number of compounding pharmacies that can prepare controlled substance medications. And only certain pharmacies have the ability, equipment, and licensure to perform sterile compounding services. These specialized formulations are not available as commodities from any pharmacy. Often a veterinary practice has a unique need for a specific compounded medication for which they worked with one specific pharmacy to develop the compounded formulation. Such medications are available from that pharmacy alone. If a veterinarian is forced to go to a second pharmacy to get the medication, that second pharmacy will not readily have the medication available, but will have to go through the process of developing their own formulation. Further, the pharmacists and staff at these specialty pharmacies undergo extensive training and attend medical conferences related to the various therapies utilized in the patient populations that they most often serve. As a result, these specialized compounding pharmacies rightfully earn the trust of many veterinarians as well as animal owners and caretakers to address the unique needs of the animals under their care.

The Board's proposed arbitrary 5% limitation on dispensing compounded medication for office use impedes a veterinarian's ability to treat their patients by prohibiting those veterinarians from obtaining medications from the pharmacy of their choice simply because that pharmacy may have already reached a 5% limit for the month. Veterinarians should not be forced to make medical decisions based on whether their pharmacy of choice has reached an arbitrary 5% limit



Malcolm H. Broussard  
April 18, 2016  
Page 4

on office use medications. As such, we recommend the Board eliminate the 5% limitation from its Amended Emergency Rule.

### **III. The Board Should Eliminate Paragraph E(4) Of The Amended Emergency Rule**

Paragraph E(4) of the proposed rule has no force or effect, but may serve to create confusion among pharmacists and veterinarians. Paragraph E(4) states as follows, "... pharmacists intending to engage in the compounding of veterinary preparations pursuant to non-patient-specific medical orders from veterinarians should be aware that federal law or rule may not permit such activity by a licensed pharmacy, and further, such pharmacists should be aware that the board's rules cannot legitimize an activity that is not permitted under federal law or rule, and further, such pharmacists should be aware that while this activity is permitted by the board, pharmacists engaging in this activity remain subject to the full force and effect of federal law enforcement." Regulatory Proposal 2015-D, Compounding for Office Use for Veterinarians, Draft #3.

There is no federal statute that regulates veterinary compounding, and therefore, no need for this warning. As the Board recognized when it adopted this Emergency Rule, the Federal Drug Quality and Security Act ("DQSA") applies only to compounded medication for use in humans, and does not apply to medications compounded for use in animals. Accordingly, any provisions of the DQSA do not apply to compounded medications ordered for office use by veterinarians. The DQSA is the only federal law that regulates compounding, and it is limited to regulating compounding for human use.

The Board's stated concern is that "there does not appear to be clear federal authority for the compounding of veterinary products for office use by veterinarians." The more apt statement would be that there is no federal prohibition against compounding medications for office use by veterinarians. The practice of pharmacy has been governed by state law for more than a century, and every action of a pharmacist does not require explicit approval from the federal government.

Proposed paragraph E(4) is of no force or effect, it merely directs pharmacies and pharmacists to be aware of federal law, but as the Board seems to acknowledge, there is no federal law directed to compounding medication for office use by veterinarians. Accordingly, this paragraph will not further the goals of protecting animal health, but will only serve to potentially confuse veterinarians, pharmacists, and the general public. Accordingly, we request that this paragraph be deleted from the rule.

### **IV. Conclusion**

In closing, we appreciate the Board's consideration of this topic because it is of vital importance to animal health. We appreciate the Board's efforts to ensure that pets and other animals in Louisiana have timely access to appropriate medical treatments, and that regulatory hurdles don't impede the provision of veterinary medical care. As such, we respectfully request that the Board adopt a permanent rule that allows compounding pharmacies to provide



DuaneMorris

Malcolm H. Broussard  
April 18, 2016  
Page 5

compounded medication to veterinarians for use in animals on receipt of a non-patient specific medical order. We specifically request that the Board adopt a rule without the proposed arbitrary 5% limitation on office use medication, and without Paragraph E(4) concerning the lack of federal law addressing this issue.

Very truly yours,

*/s/ Rachael G. Pontikes*

Rachael G. Pontikes

RGP:ral





# Louisiana Board of Pharmacy

3388 Brentwood Drive  
Baton Rouge, Louisiana 70809-1700  
Telephone 225.925.6496 ~ Facsimile 225.925.6499  
[www.pharmacy.la.gov](http://www.pharmacy.la.gov) ~ E-mail: [info@pharmacy.la.gov](mailto:info@pharmacy.la.gov)



May 7, 2016

Trisha Marullo, DVM, President  
&  
Kirk Ryan, DVM, Immediate Past President  
Louisiana Veterinary Medical Association  
8550 United Plaza Boulevard, Suite 1001  
Baton Rouge, Louisiana 70809

Re: Regulatory Project 2015-4 ~ Compounding for Office Use for Veterinarians

Dear Drs. Marullo and Ryan:

Now that the Board has completed the revision process of the original proposed rule, the members have directed the formal replies to all parties who have provided comments and testimony at both public hearings held on this topic.

As you may recall, the Board completed a major update to its compounding rules in January 2015. As part of that update, the quality standards for pharmacists engaging in compounding patient-specific prescriptions were specifically identified – USP Chapter 797 for sterile preparations and USP Chapter 795 for non-sterile preparations. Although these quality standards are less rigorous than the CGMP quality standards applicable to drug manufacturing activities, both federal and state regulatory authorities have reached national consensus this is an appropriate balance of risk and safety. Manufacturers prepare large quantities for the general patient population using higher quality standards to protect the public health. Pharmacists compound patient specific prescriptions using stringent, but less rigorous, quality standards. In the event of a breach of the standards at the pharmacy, the risk to the general public health is minimized.

Pursuant to that January 2015 update, which also removed the authority for pharmacists to compound medications for office use, your association petitioned the Board to re-consider that action. The removal of that authority in the January 2015 update was based upon the removal of that authority relative to drugs for human use in the recent federal legislation from November 2013 and subsequent federal agency guidance issued in the summer of 2014. On clarification that the federal legislation and guidance documents specifically excluded veterinary and nuclear medicine compounding, the Board re-opened the compounding rule to consider the question of compounding for veterinary office use.

At every point along the way, be it committee meeting, public hearing, or board meeting, Dr. Ryan has been there to educate the members as to the needs of veterinary medicine. He has consistently presented compelling evidence for the need to allow pharmacists to compound preparations for veterinary office use. The members agreed to re-introduce that authority in our rules, but then needed to address the inherent safety risk of allowing compounding for general patient population using the less stringent USP standards instead of the more rigorous CGMP standards. In their attempt to reach a balance of need and risk, the members decided to limit pharmacies compounding for veterinary office use such that no pharmacy may distribute office use products in excess of 5% of their total dispensing and distribution activities.

Finally, in recognition that Louisiana will be allowing their pharmacists to engage in activities for which there is no clear federal authority, the Board revised its original proposal to place its pharmacists on notice that while the Louisiana Board of Pharmacy allows such activities, its rules provide no immunity to any potential federal enforcement action.

The Board is appreciative of your association's participation and support of this regulatory project. The next step is a compilation of the entire record – from the original notice of intent, through the public hearings, to the Board's responses to all the commentators – and the submission of that record to the Joint Legislative Oversight Committee on Health & Welfare. We intend to submit that record no later than May 9, 2016. Following the legislative review, we intend to publish the revised proposed rule as a final rule.

For the Board:



Malcolm J. Broussard  
Executive Director



# Louisiana Board of Pharmacy

3388 Brentwood Drive  
Baton Rouge, Louisiana 70809-1700  
Telephone 225.925.6496 ~ Facsimile 225.925.6499  
[www.pharmacy.la.gov](http://www.pharmacy.la.gov) ~ E-mail: [info@pharmacy.la.gov](mailto:info@pharmacy.la.gov)



May 9, 2016

Rachael G. Pontikes  
Duane Morris LLP  
190 S. LaSalle St., Suite 3700  
Chicago, IL 60603-3433

Re: *Regulatory Project 2015-4 ~ Compounding for Office Use for Veterinarians*

Dear Ms. Pontikes:

Now that the Board has completed the revision process of the original proposed rule, the members have directed the formal replies to all parties who have provided comments and testimony at both public hearings held on this topic.

The Board reviewed your April 18 letter during their May 4 meeting, taking note of your three numbered comments.

- Your first comment provided information supporting the need for pharmacists to have the authority to compound medications for veterinary office use. The original proposed rule establishes that authority and the proposed revision of the original proposal has no effect on that.
- Your second comment recommends the deletion of the 5% limitation the Board included in the original proposal. The hearing on the original proposal was held in August 2015; the Board received no comments on the 5% limitation, nor did we receive any comments from your firm at that hearing. The Board did receive comments on the potential conflict between federal and state regulatory authorities and addressed those comments with a proposed revision of the original proposal. That proposed revision – not the original proposal – was the subject of the April 19 public hearing, at which time we received your letter. Your comments on the original proposed rule were not timely filed; however, the Board did request a formal reply to your recommendation.
- Your third comment recommends the deletion of the proposed revision of the original proposal, more specifically, "Paragraph E(4) of the Amended Emergency Rule." The proposed revision consisted of the addition of Paragraph E(4) to §2535 of the Board's rules; that paragraph includes information that the compounding of medications for veterinary office use, as opposed to patient-specific prescription, does not appear to be authorized by federal law or rule, and further, that while the Board's rule may authorize such practice, that rule cannot provide any immunity from any potential federal enforcement action.

In specific reply to your comments:

- The Board appreciates your support for the establishment of the authority for pharmacists to compound medications for veterinary office use.
- With respect to the limitation on that authority to compound medication for veterinary office use, you indicated the comparison to standards for manufacturing processes are inapplicable because the compounded medications to which this rule would apply are not available as commercially manufactured products.
  - The Board is cognizant of the public health risk management principles in use with respect to the manufacturing and compounding of medications in the United States. For medications intended for use in general patient populations, drug manufacturers are obliged to adhere to the stringent quality standards commonly referred to as Current Good Manufacturing Practices (CGMP). However, for those medications intended for use in one specific patient, pharmacies licensed by the Louisiana Board of Pharmacy are required to the less stringent quality standards published in the United States Pharmacopeia (USP), more specifically USP Chapter 797 for sterile preparations and USP Chapter 795 for nonsterile preparations. In the event of a breach of those standards at a pharmacy, the risk to the public health is limited to one patient.
  - Compounding of medications for veterinary office use by pharmacies violates the risk management paradigm described above by allowing pharmacies to prepare products used in general patient populations in the veterinary office using compounding standards instead of manufacturing standards. The risk to the public health in the event of a breach in the quality standards is no longer limited to one patient.
  - Your statement that the compounded preparations to which this rule would apply are not commercially available as manufactured products precisely makes the Board's point. The pharmacy proposes to make a product for use by the general patient population, acting as a surrogate drug manufacturer, using the less rigorous quality standards applicable to patient-specific compounding. Although there were certainly other issues in play in that tragic case, New England Compounding Center (NECC) was a manufacturer hiding behind a pharmacy permit, using less rigorous compounding standards preparing products for office use across the country.
  - The 5% limitation is the Board's attempt to balance the need for compounded preparations for veterinary office use with the inherent risk to the public health by allowing such activity for the general patient population to be accomplished with the less rigorous compounding standards. The low number for the limitation is a reflection of the Board's intent to favor public safety in the risk management analysis.
  - Your letter includes information suggesting the veterinarian will be disadvantaged by the limitation, by forcing the practitioner to obtain products from another pharmacy if their preferred pharmacy has reached their 5% limit for that month. In addition to pharmacies, outsourcing facilities may also be available to supply veterinarians with their office use needs. These outsourcing facilities are required to use the CGMP standards and are permitted to compound for office use, and therefore do not have that limitation

- With respect to the inclusion of cautionary language for the Board's licensees relative to the authority to compound medications for veterinary office use, you indicated there is no federal statute prohibiting such practice, that state law governs the practice of pharmacy, and that every action of a pharmacist does not require explicit approval from the federal government.
  - With the enactment of the Drug Quality & Safety Act, we agree there is no longer any federal statute relative to compounding veterinary medications. As referenced elsewhere in §2535 of the Board's existing rules, all compounding for veterinary use shall comply with 21 CFR 530, a federal rule which permits the compounding of veterinary preparations pursuant to patient-specific prescriptions. There is a federal rule which permits compounding veterinary preparations pursuant to prescriptions, but there is no federal rule which permits compounding veterinary preparations for office use.
  - The Board has taken note of the May 2015 draft Guidance for Industry #230, relative to compounding of veterinary preparations using bulk chemicals. Within that guidance document, the federal Food & Drug Administration (FDA) has served notice it will not initiate any enforcement actions against pharmacies compounding veterinary preparations as long as such activities comply with the criteria enumerated therein. One of those criteria relates to the presence of prescriptions. There is no provision within that guidance document for office use, other than the discussion of outsourcing facilities which are required to adhere to the CGMP standards and may produce products for office use using those more rigorous standards.
  - While it is true the practice of pharmacy is governed by the state, part of that practice involves drugs, which remain a federally-regulated commodity. No state pharmacy law or rule may compromise any federal law or rule. The Board has observed its action to authorize compounding for veterinary office use appears to be in the absence of any federal law permitting such activity, and is contrary to existing federal rule as well as draft federal guidance documents on the topic. The Board is of the opinion it is only fair to place pharmacists on notice of the absence of a clear federal authority to engage in the practice which involves medications, which again, remain a federally regulated commodity.

Thank you for your interest in the Board's regulatory project relative to compounding for veterinary office use. The next step in the rule promulgation process is to compile a report of all activities to date and submit that report to the Joint Legislative Oversight Committee on Health & Welfare. We intend to submit that report no later than May 9, 2016. Following legislative review, we intend to publish the revised original proposal as a final rule. In the interim, the Board intends to maintain the Revised Emergency Rule.

For the Board:



Malcolm J. Broussard  
Executive Director

# Louisiana Administrative Code

## Title 46 – Professional and Occupational Standards

### Part LIII: Pharmacists

#### Chapter 25. Prescriptions, Drugs, and Devices

...

#### Subchapter C. Compounding of Drugs

...

#### §2535. General Standards

- A. Compounding Practices. Compounded medications may be prepared using prescription medications, over-the-counter medications, chemicals, compounds, or other components.
1. ...
  2. All compounding shall be accomplished utilizing accepted pharmacy techniques, practices, and equipment, as well as the Federal Food, Drug and Cosmetic Act of 1938 as subsequently amended, most recently in November 2013 (FDCA), the 2016 edition of Title 21 of the *Code of Federal Regulations (CFR)*, and all relevant chapters of the 2014 edition of the United States Pharmacopeia-National Formulary (USP 37 – NF 32).
- A.2.a – D. ...
- E. Veterinarian Administered Compounds, also referred to as Pharmacy-Generated Drugs
1. Upon receipt of a valid non-patient-specific medical order from a licensed veterinarian, the pharmacy may compound a preparation intended for administration to an animal patient by the veterinarian.
  2. These preparations may not be distributed to any other third party by the pharmacy, nor may these preparations be further re-sold or distributed by the veterinarian ordering the preparation from the pharmacy.
  3. This authorization is primarily intended to facilitate the preparation of medications needed for emergency use in a veterinary office practice. Given the limited application of this authorization, which allows these products to be prepared using less rigorous standards applicable to compounding as opposed to the more rigorous standards applicable to manufacturing processes, the compounding pharmacy preparing these products shall be limited in the amount of such products they can prepare.
    - a. No Louisiana-licensed pharmacy may distribute any amount of practitioner administered compounds in excess of five percent of the total amount of drug products dispensed and/or distributed from their pharmacy.
    - b. The five percent limitation shall be calculated on a monthly basis and shall reference the number of dosage units.
    - c. For those Louisiana-licensed pharmacies located outside Louisiana, the total amount distributed and/or dispensed shall reference the pharmacy's total business within the state of Louisiana.
  4. The provisions of this Paragraph E notwithstanding, pharmacists intending to engage in the compounding of veterinary preparations pursuant to non-patient-specific medical orders from veterinarians should be aware that federal law or rule may not permit such activity by a licensed pharmacy, and further, such pharmacists should be aware that the board's rules cannot legitimize an activity that is not permitted under federal law or rule, and further, such pharmacists should be aware that while this activity is permitted by the board, pharmacists engaging in this activity remain subject to the full force and effect of federal law enforcement.
- F. Compounding Commercial Products not Available. A pharmacy may prepare a copy of a commercial product when that product is not available as evidenced by either of the following:
1. Products appearing on a website maintained by the American Society of Health-System Pharmacists (ASHP).

2. Products temporarily unavailable from manufacturers, as documented by invoice or other communication from the distributor or manufacturer.
- G. Labeling of Compounded Preparations.
1. For patient-specific compounded preparations, the labeling requirements of R.S. 37:1225, or its successor, as well as §2527 of this Chapter, or its successor shall apply.
  2. For veterinarian administered compounds, the label shall contain, at a minimum, the following data elements:
    - a. pharmacy's name, address, and telephone number;
    - b. veterinarian's name;
    - c. name of preparation;
    - d. strength and concentration;
    - e. lot number;
    - f. beyond use date;
    - g. special storage requirements, if applicable;
    - h. identification number assigned by the pharmacy; and
    - i. name or initials of pharmacist responsible for final check of the preparation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 23:1316 (October 1997), amended LR 29:2105 (October 2003), effective January 1, 2004, amended LR 41:97 (January 2015), amended LR

...