DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration

Center for Biologics Evaluation and Research
1401 Rockville Pike
Rockville, MD 20852-1448

ORDER TO CEASE MANUFACTURING of HCT/Ps

November 1, 2010

HAND DELIVERED

Trent C. Arsenault
38068 Canyon Heights Drive
Fremont, CA 94536-1810

Dear Mr. Arsenault:

Your firm, Trent Arsenault (or Establishment), located at 38068 Canyon Heights Drive, Fremont, California, recovers and distributes semen and therefore is a manufacturer of human cells, tissues, and cellular and tissue-based products (HCT/Ps). The Food and Drug Administration (FDA or agency) conducted an inspection of your Establishment between August 27 and September 16, 2010, and at the conclusion of the inspection, the FDA investigator issued you a Form FDA- 483, Inspectional Observations. Our review of the information and records examined and collected during the inspection revealed significant violations of Title 21, *Code of Federal Regulations*, Part 1271 (21 CFR 1271) issued under the authority of Section 361 of the Public Health Service Act (PHS Act) [42 *United States Code* (USC) 264]. The agency has determined that because your Establishment is in violation of 21 CFR Part 1271, your Establishment does not provide adequate protections against the risks of communicable disease transmission through the use of these HCT/Ps. This Order to Cease Manufacturing relates to conduct occurring on or after May 25, 2005, the effective date of the applicable regulations. FDA retains the authority to pursue other actions and remedies.

Because of your failure to provide adequate protections against the risks of communicable disease transmission, pursuant to 21 CFR 1271.440(a)(3), you must cease manufacturing until compliance with the regulations in 21 CFR 1271 has been achieved and you have been provided written authorization from FDA to resume operations. Under 21 CFR 1271.3(e) manufacture means, but is not limited to, any or all steps in the recovery, processing, storage, labeling, packaging, or distribution of any HCT/P, and the screening or testing of the HCT/P donor.

This order will be effective after one of the following events, whichever is later:

a) Passage of five (5) working days from your Establishment's receipt of this order; or

b) If your Establishment requests a hearing in accordance with 21 CFR 1271.440(e) and 21 CFR Part 16, a decision in, and in accordance with, those proceedings.

During FDA's inspection, investigators determined that from December 2006 until the present, you recovered and distributed 328 donations of semen (HCT/Ps) intended for the artificial insemination of 46 different recipients. The inspection and record review also noted significant noncompliance with the federal regulations in numerous areas of your Establishment's operations including, but not limited to, the following:

1. As the establishment responsible for donor testing [21 CFR 1271.150(c) (iii)], failure to test a donor specimen for relevant communicable diseases to adequately and appropriately reduce the risk of transmission of relevant communicable diseases [21 CFR 1271.80(a) and (c)]. For example:

a) A blood specimen for communicable disease testing was collected from you, the sole semen donor, on 10/04/2006, 12/18/2006, 01/21/2008, 12/29/2008, and 05/05/2009. The testing performed on those specimens did not include testing for all required communicable diseases agents specified in 21 CFR 1271.85.

b) There is no evidence that testing on the specimens noted above was performed using FDA-licensed, approved or cleared donor screening tests.

2. As the establishment responsible for donor testing [21 CFR 1271.150(c) (iii)], failure to test a specimen from you, the sole donor of viable, leukocyte-rich cells or tissue to adequately and appropriately reduce the risk of transmission of relevant cell-associated communicable diseases including Human T-cell Lymphotropic Virus types I and II (HTLV-I/II) and cytomegalovirus [21 CFR 1271.85(b)]; [21 CFR 1271.80(c)]. For example:

a) A blood specimen for communicable disease testing was collected on 10/04/2006, 12/18/2006, 01/21/2008, and 12/29/2008. The testing performed on those specimens did not include testing for all required cell-associated communicable diseases as noted above.

b) There is no evidence that testing on the specimens noted above was performed using FDA-licensed, approved or cleared donor screening tests.

3. As the establishment responsible for donor testing [21 CFR 1271.150(c)(iii)], failure to test a specimen from you, the sole donor of reproductive cells or tissue, to adequately and appropriately reduce the risk of transmission of relevant communicable diseases of the genitourinary tract including Chlamydia trachomatis and Neisseria gonorrhea [21 CFR 1271.85(c)]; [21 CFR 1271.80(c)]. For example:

a) The testing performed on 12/18/2006, and 05/05/2009 did not include testing for all required communicable diseases of the genitourinary tract.

b) There is no evidence that testing done on 10/04/2006, 01/21/2008, 12/29/2008 was performed using FDA-licensed, approved or cleared donor screening tests.

4. As the establishment responsible for donor testing [21 CFR 1271.150(c)(iii)], failure to collect donor specimens to be used for testing for relevant communicable diseases at the time of, or up to 7 days before or after recovery of the cells or tissue (semen) [21 CFR 1271.80(b)]. For example, communicable disease test results used to determine donor eligibility were not always performed on a sample of blood collected at the time of, or up to 7 days before or after

recovery of the semen. A review of donor records found that only 19 out of 328 donations had blood samples collected within the 7 day time frame.

5. As the establishment that performs donor screening, failure to screen you, the sole donor, by reviewing the donor's relevant medical records for risk factors for, and clinical evidence of, relevant communicable disease agents and diseases, as well as communicable disease risks associated with xenotransplantation [21 CFR 1271.75(a)(1) and (2)]. For example:

a) Since October 2006, there is no evidence that you, the sole donor, obtained a physical examination, defined in 21 CFR 1271.3(s) as being a required relevant medical record.

b) Since December 2006, there is no evidence that you, the sole donor, were appropriately screened for human transmissible spongiform encephalopathy, including Creutzfeldt-Jakob disease.

c) Since December 2006, there is no evidence that you, the sole donor, were appropriately screened for communicable disease risks associated with xenotransplantation.

6. Failure to determine whether a donor is eligible based on the results of required donor screening and donor testing [21 CFR 1271.50(a)]. A donor eligibility determination must be made and documented by a responsible person who is defined in 21 CFR 1271.3 (t) as a person authorized to perform designated functions for which he or she is trained and qualified. During the inspection, you informed FDA investigators that the donor eligibility determination was not your responsibility and from December 2006 to the present, you failed to perform donor eligibility determinations for all (328) of the donations distributed.

7. Failure to ensure that distributed HCT/Ps were accompanied by the summary of records used to make the donor eligibility determination. [21 CFR 1271.55(a) (3) and (b)], including:

a) A statement that testing was conducted at a laboratory certified to perform such testing.

b) A list and interpretation of communicable disease tests performed.

c) The name and address of the establishment where donor eligibility was performed.

During the inspection, you informed FDA investigators that you distributed 328 HCT/Ps (328 semen donations) without the required accompanying records.

8. Failure to comply with record retention requirements [21 CFR 1271.55(d)]. For example, for each of the HCT/Ps that you recovered and distributed, you failed to maintain documentation of:

a) Results and interpretation of all testing for relevant communicable diseases.

b) Results and interpretation of all donor screening for communicable diseases.

c) The donor-eligibility determination including the name of the responsible person who made the determination and the date of the determination.

9. Failure to establish and maintain procedures for all steps performed in testing, screening, and determining donor eligibility [21 CFR 1271.47(a)]. For example:

   a) There is no written procedure for determining donor eligibility, including procedures for obtaining relevant medical history and a history of relevant social behavior to screen for risk factors for, and clinical evidence of, relevant communicable disease agents and diseases, including but not limited to Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV), and Hepatitis C Virus (HCV), as required under 21 CFR 1271.75(a).

   b) There is no written procedure specifying time frames for collecting blood samples for relevant communicable diseases, as required under 21 CFR 1271.80(b).

FDA has not received a written response to the Form FDA 483. You admitted during the close out interview with FDA investigators that you had not complied with the regulations in 21 CFR Part 1271 because you considered yourself to be a directed semen donor and therefore, exempt from the regulations. The investigator explained that your Establishment is subject to the applicable regulations. Should you provide a written response to the Form FDA 483, our specific comments to your response will be sent under separate cover.

This letter confirms the telephone conversation on November 1, 2010, in which notice was given that, pursuant to 21 CFR 1271.440(a)(3), within five (5) working days from receipt of this Order you must cease all manufacturing operations or request a hearing under 21 CFR Part 16.

Should you choose to request a hearing, you must within five (5) working days from receipt of this Order submit the request for a hearing on this matter in writing, in accordance with 21 CFR Part 16 (copy attached), to Mary A. Malarkey, Director, Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, 1401 Rockville Pike, HFM-600, Rockville, MD 20852 (telephone: 301.827.6190). If a hearing is not requested within the specified time period, the offer of a hearing is deemed to have been refused, no hearing will be held, and this Order will be effective five (5) days after your receipt of this Order. You may also wish to acquaint yourself with the agency's guidelines regarding electronic media coverage of its administrative proceedings, which can be found at 21 CFR 10, Subpart C.

Sincerely,

Karen Midthun, M.D.
Director
Center for Biologics Evaluation and Research

Date Signed: November 1, 2010 Time: 4:45 PM

Attachments (2)
21 CFR Part 1271
21 CFR Part 16