CALIFORNIA VETERINARY MEDICAL ASSOCIATION

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California Board of Pharmacy
2720 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

RE: Discussion and Consideration of Compounding Animal Drugs from Bulk Drug Substances

Dear Board of Pharmacy Members,

The California Veterinary Medical Association (CVMA), representing over 7800 veterinary medical professionals in the state including veterinarians, registered veterinary technicians, and students from the University of California at Davis School of Veterinary Medicine and the Western University College of Veterinary Medicine in Pomona, is concerned about recent Board of Pharmacy (Board) policy changes and enforcement activity in relation to the compounding of animal drugs from bulk drug substances. The CVMA understands that the Board must enforce laws and regulations for consumer protection, but feels that recent enforcement actions related to compounding from bulk substances are cause for concern. The following are the concerns that the CVMA would like to address to the Board.

A. Veterinary Drug Availability and Patient Welfare

Currently, the CVMA is aware of several important medications used commonly in veterinary medicine that may only be obtained through compounding from bulk substances. Examples include:

- **Apomorphine hydrochloride** – Indication: For the induction of emesis in dogs.
- **Cisapride** – Indication: For management of gastrointestinal disorders in cats, including general constipation and constipation from megacolon.
- **Guaifenesin** – Indication: For muscle relaxation in the horse during anesthetic induction and/or surgery.
- **Metronidazole benzoate** – Indication: For the treatment of feline inflammatory bowel disease in cats.
- **Miconazole nitrate** – Indication: For treatment of fungal keratitis in horses.
- **Potassium bromide** – Indication: For initiation of treatment for seizures in dogs.
- **Tacrolimus** - Indication: For treatment of dogs with keratoconjunctivitis sicca (KCS) that is non-responsive to cyclosporine.
- **Itraconizole with DMSO** - Used to treat ophthalmic fungal infections.

- **Dexamethasone** - A corticosteroid widely used on a daily basis in veterinary practice. (This substance is currently unavailable because veterinary supplies have been diverted to human medicine to treat COVID-19.)

California Code of Regulations, title 16, section 2030(f)(12) requires that all registered veterinary premises have appropriate drugs readily available to treat an animal emergency. Many of the drugs on the list above are considered emergency animal drugs. Veterinarians need these drugs and others to be able to provide life-saving medical care to animal patients. Additionally, the Veterinary Medical Board (VMB) looks for the presence of these drugs in registered veterinary premises during routine inspections, and the absence of such drugs may be considered to be below a minimum standard of practice. Because no equivalent products approved by the United States Food and Drug Administration (FDA) exist, the only available supply of these critical medications must be derived through compounding from bulk drug substances.

The FDA has demonstrated sensitivity to this need, as reflected in a statement made in its draft Guidance for Industry #256:

> FDA has generally exercised enforcement discretion with regard to animal drug compounding from bulk drug substances under certain circumstances when no other medically appropriate treatment options exist. This guidance, a continuation of this practice, is intended to provide additional information and clarity to veterinarians and pharmacists about FDA's current thinking with respect to animal drug compounding from bulk drug substances.
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> At this time and based on our current understanding of the risks of animal drugs compounded from bulk drug substances, FDA does not intend to take enforcement action for violations of the FD&C Act's requirements for approval, adequate directions for use, and cGMP requirements, for these products that meet the circumstances described below. The policies described in this document aim to protect human and animal health by limiting the use of animal drugs compounded from bulk drug substances primarily to situations in which a veterinarian is acting within a valid veterinarian-client-patient relationship (VCPR) 3 and there is no medically appropriate drug that is FDA approved, conditionally approved, or on the Index of Legally Marketed Unapproved New Animal Drugs for Minor Species (indexed) to treat the animal.

The FDA's statement reflects its recognition of the clinical importance of bulk drug compounding, and it is no exaggeration to say that the Board's prohibition of such compounding will have massive adverse effects on the health and welfare of companion animals in California.

B. Lack of Legal Support

We also question the Board's legal interpretation of the language of Section 530.13(a) in the Animal Medicinal Drug Use Clarification Act (AMDUCA). Clearly, by the mere existence of the above-referenced GFI #256, the FDA has no intention of banning the compounding of animal drugs from bulk drug substances. In that regard, and to the best of our understanding, the Board's contrary position is based entirely on the following sentence of 21 CFR section 530.13(a): "Nothing in this part shall be construed

as permitting compounding from bulk drugs." Although the Board now interprets that sentence as an affirmative preclusion on bulk substance compounding, it is not. While the language does not itself operate as an independent compounding *authorization*, it equally does not operate as an independent compounding *prohibition*. If another, separate, provision erected such a prohibition, then the language of Section 530.13(a) would not undo that prohibition; however, no such separate provision exists.

The overarching application of the "plain meaning" rule governing statutory and regulatory interpretation finds a home in this dialogue. If the FDA had intended to affirmatively prohibit bulk drug compounding in Section 530.13(a), it would have said so. It did not. Instead, the language makes clear that neither Section 530.13 itself nor the surrounding regulatory framework may be invoked as an independent authorization of bulk drug compounding. In that regard, it is probable that the FDA included the second sentence of Section 530.13(a) simply to ensure that the FDA's narrowly-tailored regulations dealing with extralabel use would not be independently bootstrapped into a broad, unrestricted authorization of bulk substance compounding. However, the negative corollary of the language used is equally important: Section 530.13(a) cannot be invoked as a broad-brush prohibition on such compounding. Simply stated, the plain language of the federal regulation does not support the interpretation by the Board.

If the Board's legal counsel has an opinion that differs from that stated above, we would welcome further dialogue. We also are available to further discuss our concerns about the consequences of the Board's actions.

Thank you for your consideration.

Sincerely,

Dan Baxter
Executive Director