

THE WAIT IS OVER . . . OPDP ISSUES ITS FIRST UNTITLED LETTER OF 2023

On June 7, 2023, the Food and Drug Administration's ("FDA") Office of Prescription Drug Promotion ("OPDP") issued its first **Untitled Letter** of the year regarding violative promotional materials for a prescription drug indicated for the treatment of endogenous hypercortisolemia (high cortisol) in adults with Cushing's syndrome. Specifically, OPDP alleged that a website promoting the drug contained false and misleading claims and representations about the safety and efficacy of the product. The website had been submitted to OPDP under the cover of FDA Form 2253.

As previously discussed [here](#), OPDP relies heavily on Untitled Letters as a way to achieve compliance in this space. For example, in 2022, OPDP issued a total of four letters in 2022 – three Untitled Letters and only one Warning Letter. Given that we are more than halfway through the year, it appears that the downward enforcement trend will continue through 2023.

Below is a brief summary of some of the key takeaways from the letter.

FALSE OR MISLEADING CLAIMS ABOUT EFFICACY

OPDP continues to scrutinize the use of study data in promotion. According to OPDP, the firm overstated the efficacy of the drug when it omitted information necessary to allow the reader to understand and evaluate the results of the study being presented. The firm claimed that "67% of patients who moved on to the second part of the study had normal cortisol levels by the end of the study." However, the study consisted of three phases and 67% of patients had normal cortisol at the end of the first phase vs. only 21% of patients that had normal cortisol levels at the end of the third phase. While FDA acknowledged that according to the Prescribing Information ("PI") for the product, 67% of patients in the study had normal cortisol levels at the end of the titration phase, that was not the "end of the study." Moreover, while the PI states that "51% of patients discontinued treatment prematurely due to adverse reaction, lack of efficacy, or other reasons, these results should be interpreted with caution," that information was omitted from the website consequently creating a misleading impression of efficacy.

OPDP also took issue with the statement that "[m]ore patients (52%) who were on a stable and steady dose of [drug] had normal cortisol levels." OPDP found that this statement implied the results represented the general experience of patients who used the drug; however, the claim was actually based on a select group in the study that had already demonstrated that they were able to tolerate and respond to the drug.

FALSE OR MISLEADING RISK INFORMATION

OPDP noted that the presentation of the drug's risk information minimized the serious risks associated with the use of the drug because although it acknowledged that side effects could occur, including some that are serious, it did not include information about the drug's boxed warnings or specific side effects, including some that could be potentially fatal. Additionally, OPDP found that the presentation of the risks suggested that heart and liver tests would help patients avoid potential drug side effects.

While the risk information was presented separately in the "INDICATION AND IMPORTANT SAFETY INFORMATION" section of the webpage, OPDP concluded that this did not mitigate the misleading impression created by the "Monitoring and side effects" presentation because the boxed warnings were "relegated to the middle of this consolidated risk section, after the indication and use statement and contraindications, and without any significant signal to alert the viewer to them. The overall effect of this webpage's presentation of risk information undermines the communication of the significant and potentially fatal risks associated with [the drug] and thereby misleadingly minimizes the risks associated with [its use]."

PRACTICAL TAKEAWAYS

- Be sure to carefully review any presentation of study data to avoid overstating the efficacy of the drug or creating a misleading impression of what patients may generally experience when taking the drug.
- Do not omit important contextual information that is necessary for the reader to understand and evaluate the presentation of the study data.

- When promoting a product with a boxed warning, avoid making general statements about side effects that can appear to minimize any serious and potentially life-threatening risks associated with the drug.
- Any boxed warnings and/or contraindications should be prominently included on any and all marketing materials.

CONCLUSION

Based on the above, we expect that the use of study data in the promotion and the presentation of risk information will continue to be two key issues for OPDP. As we have noted before, a company's promotional review process is the key to minimizing the chances of receiving an Untitled or Warning Letter from OPDP, especially when it comes to the promotion of products with boxed warnings.

If you have any questions or would like help with the advertising and promotion of drugs, biologics, or medical devices, please contact:

- **Carolina Wirth** at cwirth@hallrender.com or (202) 780-2989;
- **William Wurster** at wwurster@hallrender.com or (317) 977-1494; or
- Your primary Hall Render contact.

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