

(the Commissioner) on the Center Director's proposal to refuse to approve NDA 210934. If Lexicon decides to seek a hearing, it must file: (1) A written notice of participation and request for a hearing (see the **DATES** section) and (2) the studies, data, information, and analyses relied upon to justify a hearing (see the **DATES** section), as specified in § 314.200 (21 CFR 314.200).

As stated in § 314.200(g), a request for a hearing may not rest upon allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing to resolve. We note in this regard that because CDER proposes to refuse to approve NDA 210934 based on the multiple deficiencies summarized above, any hearing request from Lexicon must address all of those deficiencies. Failure to request a hearing within the time provided and in the manner required by § 314.200 constitutes a waiver of the opportunity to request a hearing. If a hearing request is not properly submitted, FDA will issue a notice refusing to approve NDA 210934.

The Commissioner will grant a hearing if there exists a genuine and substantial issue of fact or if the Commissioner concludes that a hearing would otherwise be in the public interest (§ 314.200(g)(6)). If a hearing is granted, it will be conducted according to the procedures provided in 21 CFR parts 10 through 16 (21 CFR 314.201).

Paper submissions under this notice of opportunity for a hearing should be filed in one copy. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, submissions may be seen in the Dockets Management Staff Office between 9 a.m. and 4 p.m., Monday through Friday, and on the internet at <https://www.regulations.gov>. This notice is issued under section 505(c)(1)(B) of the FD&C Act and §§ 314.110(b)(3) and 314.200.

Dated: February 25, 2021.

**Patrizia Cavazzoni,**

*Acting Director, Center for Drug Evaluation and Research.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2020-N-1413]

#### Michael Gurry: Final Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debaring Michael Gurry from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Gurry was convicted of a felony under Federal law for conduct that relates to the regulation of a drug product under the FD&C Act. Mr. Gurry was given notice of the proposed permanent debarment and an opportunity to request a hearing to show why he should not be debarred. As of October 22, 2020 (30 days after receipt of the notice), Mr. Gurry had not responded. Mr. Gurry's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this action.

**DATES:** This order is applicable March 8, 2021.

**ADDRESSES:** Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500, or at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jaime Espinosa (ELEM-4029) Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Drive, Rockville, MD 20857, 240-402-8743, [debarments@fda.hhs.gov](mailto:debarments@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act. On January 13, 2020, Mr. Gurry was convicted as defined in section 306(l)(1) of the FD&C Act when judgment was entered against him in the U.S. District Court for the District of Massachusetts, after a jury verdict, on one count of racketeering conspiracy in violation of 18 U.S.C. 1962(d). The pattern of racketeering activity he was convicted of included engaging in multiple acts of mail fraud (18 U.S.C. 1341) and wire fraud (18 U.S.C. 1343).

The factual basis for this conviction is as follows: Mr. Gurry held executive

management positions, to include Vice President of Managed Markets, of Insys Therapeutics Inc. (Insys), a Delaware Corporation, with headquarters in Chandler, Arizona. Insys developed and owned a drug called SUBSYS, a liquid formulation of fentanyl to be applied under the tongue. FDA approved SUBSYS for the management of breakthrough pain in adult cancer patients who are already receiving and are already tolerant to opioid therapy for their underlying persistent cancer pain. From early 2012 and continuing through 2015, Mr. Gurry participated in a conspiracy whereby employees of Insys bribed medical practitioners in various states to get those practitioners to increase prescribing SUBSYS to their patients, many of whom did not have cancer. Mr. Gurry, along with his coconspirators, measured the effect of these bribes on each practitioner's prescribing habits and on the revenue that each bribed practitioner generated for Insys. Mr. Gurry, along with his coconspirators, reduced or eliminated bribes paid to those practitioners who failed to meet the minimum prescription requirements or failed to generate enough revenue to justify additional bribes. To further this conspiracy, Mr. Gurry and his coconspirators misled and defrauded health insurance providers to ensure those providers approved payment for SUBSYS. Insys achieved this goal by establishing the "Insys Reimbursement Center", which was designed to shift the burden of seeking prior authorization for SUBSYS from practitioners to Insys. This allowed Insys to determine what medical information was presented to insurers. Mr. Gurry and his coconspirators directed Insys employees to mislead insurers to obtain payment authorization.

As a result of this conviction, FDA sent Mr. Gurry, by United Parcel Service, on September 21, 2020, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act, that Mr. Gurry was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. The proposal also offered Mr. Gurry an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted an election not to use the opportunity for a hearing and a waiver of any contentions concerning this

action. Mr. Gurry received the proposal on September 22, 2020. He did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and any contentions concerning his debarment (21 CFR part 12).

## II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Gurry has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Mr. Gurry is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(B) and (c)(2)(A)(ii) of the FD&C Act). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Mr. Gurry in any capacity during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Gurry provides services in any capacity to a person with an approved or pending drug product application during his period of debarment, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug application from Mr. Gurry during his period of debarment, other than in connection with an audit under section 306 of the FD&C Act (section 306(c)(1)(B) of the FD&C Act). Note that, for purposes of section 306 of the FD&C Act, a “drug product” is defined as a drug subject to regulation under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Any application by Mr. Gurry for special termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2020–N–1413 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions will be placed in the docket and will be viewable at <https://www.regulations.gov> or at the Dockets Management Staff (see

**ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: February 25, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2021–N–0104]

#### **PolyMedica Industries Inc., et al.; Proposal To Withdraw Approval of Three New Drug Applications; Opportunity for a Hearing**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration’s (FDA or Agency) Center for Drug Evaluation and Research (CDER) is proposing to withdraw approval of three new drug applications (NDAs) and is announcing an opportunity for the NDA holders to request a hearing on this proposal. The basis for the proposal is that the NDA holders have repeatedly failed to file required annual reports for those NDAs. **DATES:** The NDA holders may submit a request for a hearing by April 2, 2021. Submit all data, information, and analyses upon which the request for a hearing relies by May 3, 2021. Submit electronic or written comments by May 3, 2021.

**ADDRESSES:** The request for a hearing may be submitted by the NDA holders by either of the following methods:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments to submit your request for a hearing. Comments submitted electronically to <https://www.regulations.gov>, including any attachments to the request for a hearing, will be posted to the docket unchanged.

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- Because your request for a hearing will be made public, you are solely responsible for ensuring that your request does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. The request for a hearing must include the Docket No. FDA–2021–N–0104 for “PolyMedica Industries Inc. et al.; Proposal to Withdraw Approval of Three New Drug Applications; Opportunity for a Hearing.” The request for a hearing will be placed in the docket and publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

The NDA holders may submit all data and analyses upon which the request for a hearing relies in the same manner as the request for a hearing except as follows:

- *Confidential Submissions*—To submit any data analyses with confidential information that you do not wish to be made publicly available, submit your data and analyses only as a written/paper submission. You should submit two copies total of all data and analyses. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of any decisions on this matter. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov> or available at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Submit both copies to the Dockets Management Staff. Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law.

*Comments Submitted by Other Interested Parties:* For all comments submitted by other interested parties, submit comments as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to [https://](https://www.regulations.gov)