ANDA 75-347 March 23, 2000

Andrx Pharmaceuticals, Inc.
Attention: Diane Servello
4001 S.W. 47th Avenue
Fort Lauderdale, FL 33314

Dear Madam:

This is in reference to your abbreviated new drug application dated March 17, 1998, submitted pursuant to Section 505(j) of the Federal Food, Drug, and Cosmetic Act (Act), for Omeprazole Delayed-release Capsules, 10 mg, 20 mg, and 40 mg.

Reference is also made to your amendments dated April 17 and August 14, 1998; June 14, July 28 and August 6, 1999; and January 20, and March 22, 2000.

We have completed the review of this abbreviated application and have concluded that based upon the information you have presented to date, the drug product is safe and effective for use as recommended in the submitted labeling. Therefore, the application is tentatively approved. This determination is based upon information available to the Agency at this time, (i.e., information in your application and the status of current good manufacturing practices (CGMPs) of the facilities used in the manufacture and testing of the drug product), and is subject to change on the basis of new information that may come to our attention. This letter does not address notice issues related to the 180-day exclusivity provisions under section 505(j)(5)(B)(iv) of the Act.

The listed drug product (RLD) referenced in your application, Prilosec Delayed-release Capsules of Astra Zeneca, L.P., is subject to a periods of patent protection which expire on April 5, 2001, (U.S. Patent No. 4,255,431); May 30, 2005, (U.S. Patent No. 4,636,499); April 20, 2007 (U.S. Patent Nos. 4,853,230 and 4,786,505); February 2, 2010 (U.S. Patent No. 5,093,342); and February 4, 2014 (U.S. Patent Nos. 5,599,794 and 5,629,305). Your application contains a Paragraph III Certification under Section 505(j)(2)(A)(vii)(III) of the Act to the ‘’431 patent stating that this drug product will not be marketed prior to the expiration of this patent. Your

application originally contained Paragraph IV Certifications to the ‘342, ‘794, and ‘305 patents. These certifications were subsequently withdrawn pursuant to 21 CFR 314.94(a)(12)(iii) based upon your statement that they are “method of use” patents and that such uses are not included in your proposed labeling.

Your application also contains Paragraph IV Certifications to the ‘499, ‘505, and ‘230 patents under Section 505(j)(2)(A)(vii)(IV) of the Act. These certifications state that your manufacture, use, or sale of this drug product will not infringe upon any of these patents (‘499, ‘505, or ‘230). Section 505(j)(5)(B)(iii) of the Act provides that approval of an abbreviated new drug application shall be made effective immediately, unless an action is brought against Andrx Pharmaceuticals, Inc. (Andrx) for infringement of any patent which is the subject of the certifications. Such action must be taken prior to the expiration of forty-five days from the date the notice provided under paragraph (2)(B)(I) is received by both the holder of the new drug application designated as the RLD and the patent holder(s). You have notified the agency that Andrx has complied with the requirements of Section 505(j)(2)(B) of the Act, and as a result litigation is currently underway in the United States District Court for the Southern District of Florida involving a challenge to these patents (Astra Aktiebolag, Aktiebolaget Hassle, Astra Merck Enterprises Inc. and Astra Merck Inc. v. Andrx Pharmaceuticals, Inc., Civil Action No. 98-6521). Therefore, with respect to the patents which are subject to the Paragraph IV Certification, approval cannot be granted until:

1. a. the expiration of the 30-month period provided for in section 505(j)(5)(B)(iii) since the date of receipt of the 45-day notice required under section 505(j)(2)(B)(i), unless the court has extended or reduced the period because of the failure of either party to reasonably cooperate in expediting the action, or,

   b. the date of court decision [505(j)(5)(B)(iii)(I), (II), or (III)], or,

   c. each patent has expired, and

2. The Agency is assured there is no new information that would affect whether final approval should be granted.

However, we also note that should the patent litigation be resolved in favor of Andrx prior to the expiration of the ‘431 patent which is the subject of a Paragraph III Certification, final approval of this application may not be made effective pursuant to 21 U.S.C. 355(j)(5)(B)(ii) of the Act until the ‘431 patent has expired, currently April 5, 2001.

Because the Agency is granting a tentative approval for this application, please submit an amendment at least 60-days (but not more than 90-days) prior to the date you believe your application will be eligible for final approval. This amendment should identify changes, if nay, in the conditions under which the drug product was tentatively approved, and should include updated information such as final-printed labeling, chemistry, manufacturing and controls data, as appropriate. This amendment also serves to reactivate this application prior to final approval and should be submitted even if none of these changes were made since the date of this tentative approval letter. This amendment should be designated clearly in your cover letter as a MINOR AMENDMENT. With respect to the patent issues noted above, this amendment should also provide information such as a copy of a final order or judgement from the court, a notice of a settlement agreement between the parties, a licensing agreement between you and the patent holder, or any other relevant information as appropriate to address these unexpired patents.
In addition to this amendment, the Agency may request at any time prior to the date of final approval that you submit an additional amendment containing the information described above. Failure to submit either or, if requested, both amendments may result in rescission of the tentative approval status of your application, or may result in a delay in the issuance of the final approval letter.

Any significant changes in the conditions outlined in this abbreviated application and the status of the manufacturing and testing facilities' compliance with current good manufacturing practices (CGMPs) are subject to Agency review before final approval of the application will be made.

The drug product that is the subject of this abbreviated application may not be marketed without final Agency approval under section 505 of the Act. The introduction or delivery for introduction into interstate commerce of this drug before the effective final approval date is prohibited under section 501 of the Act. Also, until the Agency issues the final

approval letter, this drug product will not be listed in the Agency's "Approved Drug Products with Therapeutic Equivalence Evaluations" list.

Please contact Kassandra Sherrod, Project Manager, at (301) 827-5849, for further instructions prior to submitting further amendments to this application.

Sincerely yours,

Janet Woodcock, M.D.
Director
Center for Drug Evaluation and Research