Department: **UAMS Institutional Review Board**
Policy Number: **18.3**
Section: **Drugs and Devices**
Effective Date: **July 31, 2002**
Revision Date: **August 26, 2004**

SUBJECT: Emergency Use of a Drug or Biologic (Source *FDA Information Sheets Guidance for Institutional Review Boards and Clinical Investigators 1998 Update*)

Emergency Use means the use of a test article on a human subject in a life-threatening situation in which no standard acceptable treatment is available, and in which there is not sufficient time to obtain IRB approval (21CFR56.102d).

Test Article. A test article is defined as any drug (including a biological product for human use), medical device for human use, human food additive, color additive, electronic product, or any other article subject to regulation under the act or under sections 351 and 354-360F of the Public Health Service Act (21CFR56.102(j)).

Life Threatening. Life threatening includes the scope of both life threatening and severely debilitating, as defined below:

> Life threatening means diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted and diseases or conditions with potentially fatal outcomes, where the end point of clinical trial analysis is survival. The criteria for life threatening do not require the condition to be immediately life threatening or to immediately result in death. Rather, the subjects must be in a life-threatening situation requiring intervention before review at a convened meeting of the IRB is feasible.
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> Severely debilitating means diseases or conditions that cause major irreversible morbidity. Examples of severely debilitating conditions include blindness, loss of arm, leg, hand or foot, loss of hearing, paralysis or stroke.

When a situation arises which, in the judgment of a physician, calls for the emergency use of an investigational drug or biologic in a single patient, an IND (Investigational New Drug) number is still necessary. The situation may arise when a patient does not meet the criteria of a study protocol, or where an approved study protocol does not exist. The usual procedure is to contact the manufacturer and determine if the drug or biologic can be made available for use (**in this one patient**) under the company's IND. Should the company elect not to name the physician as an investigator, the physician can contact the FDA directly for an IND. The physician will be placed in contact with a FDA physician familiar with the drug or biologic to review the proposed circumstances for use and the information to be submitted in the IND.

If in the physician's opinion, immediate use of a test article is required, to preserve the subject's life and the situation is so severe that there is not time to inform the IRB or obtain a supporting opinion from a second physician not associated with the study. The UAMS IRB requires that the investigator report the incident in writing within 5 days. Such activities are not considered research.

The physician's letter to the IRB should include the following information:

- Diagnosis
- Proposed treatment
- Date of treatment
- Drug or device names, if applicable
- Patient's name and age
- Hospital number
- Hospital name
- Date of verbal approval
- A copy of the signed consent form

The physician should inform the IRB prior to emergency use when possible or as soon as practical thereafter. However, this notification should not be construed as an IRB approval. Notification will be used by the IRB to initiate tracking to ensure that the investigator files a report within the five day time-frame required by 21 CFR56.104c; 45 CFR. 46. The investigator must notify the IRB within 5 working days after the use of the test article [21 CFR50.23(c); 21 CFR56; 104(c)].

Neither the common rule nor the FDA regulations provide for expedited IRB approval in emergency situations. Therefore "interim", "compassionate", "temporary" or other terms for an expedited approval process are not authorized. The IRB must either convene and give "full board" approval of the emergency use or, if it is not possible to convene a quorum with the time available, the use may proceed without IRB Approval. When this situation exists, the IRB may issue an acknowledgement letter that they have been made aware of the use.

Subsequent emergency use of the drug may not occur. B The emergency use provision in the FDA regulations (21 CFR 56.104©) is an exemption from prior review and approval by the IRB. The exemption allows for one emergency use of a test article without prior IRB review. FDA regulations require that any subsequent use of the investigational product at the institution have prospective IRB review and approval and IND if appropriate. FDA does acknowledge that it would be inappropriate to deny emergency treatment to a second individual if the ONLY obstacle is that the IRB has not had sufficient time to convene a meeting to review.

The IRB may require the submission of an amendment to the protocol or the investigator's request for an additional IND after the first emergency use report.

Consent. Even for an emergency use, the investigator is required to obtain informed consent of the subject or the subject's legally authorized representative unless both the investigator and a physician who is not otherwise participating in the clinical investigation certify in writing all of the requirements of exception for consent in emergency research detailed in section 15.2 of this manual.