

Chapter 19
(revised 7/30/02)

EMERGENCY USE OF AN INVESTIGATIONAL DRUG OR DEVICE

A. Regulations

Under the Food and Drug Administration (FDA) regulations, a physician may administer an Investigational drug, device or other product on a human subject on an "Emergency Use" basis in a life threatening situation in which no standard acceptable treatment is available for the patient and in which there may not be sufficient time to obtain full Institutional Review Board (IRB) approval.

B. CAMC/WVU IRB Policy

1. Administration of an investigational product on an "Emergency Use" basis may be made on **one patient only** with no plans for subsequent use. **Although FDA regulations do not require prior IRB review for Emergency Use, it is the policy of CAMC and the CAMC/WVU IRB, that before administering an investigational product, the physician must give prior notification to the IRB Chairperson, or designee.**
2. According to Department of Health and Human Services (DHHS) regulations, any data generated during such use may not be claimed as research data, and the outcome of the Emergency Use may not be included as part of any report of a Clinical Trial.
3. According to federal regulations, any subsequent use of the Investigational Product (at CAMC) is subject to a prior full review by the IRB.

C. Conditions and Procedures for Emergency Use of Investigational Products on patients at CAMC are described in detail in the Emergency Use documents that follow:

TO: ALL PHYSICIANS

**FROM: John C. Linton, Ph.D.
Chairperson
CAMC/WVU Institutional Review Board
for the Protection of Human Subjects**

SUBJECT: Emergency Approval for the Use of Investigational Drugs, Devices and Other Products

Under the Food and Drug Administration (FDA) regulations, a physician may use an Investigational product (i.e. drug, device, biologic, etc.) on an **Emergency Use** basis. The use of an approved marketed device/drug for investigational purposes will require IRB approval for Emergency Use. However, **Emergency Use** of an investigational drug, device or biologic is strictly limited by the FDA and is permitted only when the human subject is in a life-threatening situation in which no standard acceptable treatment is available for the patient and in which there is not sufficient time to obtain full Institutional Review Board (IRB) approval. Administration of the above require informed consent from the human subject or their legal representative.

Under FDA regulations, all investigational drugs, devices, and biologics must be administered to a patient only under a claimed Investigational exemption for a new drug (IND) or device exemption (IDE) that is filed with the U.S. Food and Drug Administration (FDA). FDA regulations require that an IND or IDE be obtained prior to administration even in a situation which calls for an Emergency Use of the investigational drug, device or biologic.

According to Health and Human Services (HHS) regulations, patient data related to the Emergency Use may not be aggregated with research data even if the Emergency Use protocol is identical to that of a research protocol subsequently approved by the IRB.

Also, in accord with federal regulations, any subsequent use of the investigational product in another patient/subject must first receive prior review by the IRB.

PLEASE NOTE: "Single Patient Use", commonly referred to as "**Compassionate Use**" is not considered "**Emergency Use**". A patient requiring "Compassionate Use" is NOT considered to be in a life-threatening situation. In the case of Single Patient or Compassionate Use, the investigator must proceed through the routine IRB research approval process.

The appropriate procedures for Emergency Use are attached to this letter.

PROCEDURES FOR NOTIFYING THE IRB OF AN EMERGENCY USE SITUATION

Step 1: Notify hospital of emergency.

It is the policy of the Charleston Area Medical Center/West Virginia University Charleston Division IRB that in emergency use situations, prior notification to the IRB Chairperson or designee is required.

Before administering the investigational product (drug, device or other product), the following procedures should be followed:

1a. *From 8:00 a.m to 4:30 p.m.*

1. The physician or investigator must contact the IRB Chairperson (John C. Linton, Ph.D. at 341-1548; 340-5418 pager); or Vice Chair (Harry Reahl, M.D. at 342-3891; 935-2856 pager); or the IRB Office (388-9970 or 388-9975) to obtain procedural guidance for the administration of an investigational product at CAMC to either inpatients or outpatients. The IRB Chairperson or designee will review with the physician the additional steps required for implementation of emergency use.
2. The IRB Chairperson or designee will direct the IRB Office to fax the IRB Emergency Approval Guidelines and Procedures which includes the "Emergency Use Consent Form" (see attached) directly to the requesting physician.
3. The IRB Chairperson or designee will direct the physician to certify the following in a "Letter of Explanation", and provide other specific justification and information for administration of the investigational product including the patient's name, location in the hospital, name of the drug, etc.

The physician should certify in his/her "Letter of Explanation" that

- a. the patient is confronted by a **life-threatening** condition that needs immediate treatment and necessitates the use of the investigational product;

Emergency Use of an Investigational Drug or Device

- b. there is no alternative method (to which the patient is responding) of approved or generally recognized therapy or procedure available that provides an equal or greater likelihood of saving the patient's life.
4. The physician should fax this "Letter of Explanation" to the IRB Office at 388-9976 for immediate review, usually within the hour.
5. Following receipt of the "Letter of Explanation" by the IRB Chairperson or designee, the IRB Chairperson will review the request, confirm the need for emergency use, and respond in writing, by fax, to the physician.

The physician may NOT initiate new procedures/administer new drugs/devices until he/she has received a written response from the IRB Chairperson or designee.

6. Upon receipt of the written response from the IRB Chairperson or designee, the physician must contact the **Investigational Drug Service (IDS) Pharmacist at 388-4256 or 388-2343** to report the need to administer an investigational drug or device. The physician will provide the IDS Pharmacist a copy of the written IRB approval letter prior to pursuance of drug or device. The physician will be advised as to the appropriate procedures for shipment, dispensing, storage, etc. of the investigational drug or device at CAMC.

[The physician must advise the IDS Pharmacist at this time if the company protocol and the IND# or IDE# and/or the investigational product has already been obtained. The physician will be advised to deliver the investigational product immediately to the Pharmacy location where the patient is located and to provide the copy of the company protocol/brochure for dispensing and dosage procedures.]

1b. *After 4:30 p.m. and on weekends*

1. The physician should contact the IRB Office at 388-9970 to receive voice mail instructions regarding the implementation of emergency use procedures. These instructions will provide pager numbers for contacting the IRB Chairperson, Dr. John Linton or IRB member taking call. Dr. Linton or designee will review with the physician the additional steps required.
2. The physician must contact the senior duty pharmacist in the central pharmacy at the appropriate division to obtain copies of the "Emergency Use Guidelines and Procedures" and the "Emergency Use Consent Form", and to report the need to administer an investigational drug or device in an emergency use situation. The physician will be advised as to the appropriate procedures for shipment, dispensing, storage, etc. of the investigational product at CAMC. The Senior Duty Pharmacist will also confirm that the physician has notified the IRB Chairperson or designee.

[The physician must advise the senior duty pharmacist at this time if the company protocol and the IND# or IDE# and/or the investigational product has already been obtained. The physician will be advised to deliver the investigational product immediately to the Pharmacy location where the patient is located and to provide the copy of the company protocol/brochure for dispensing and dosage procedures.]

Step 2: Procedures for Obtaining the Investigational Drug or Device

According to federal regulations, the physician must adhere to the following procedures in order to obtain an investigational product for use at CAMC:

Emergency Use of an Investigational Drug or Device

1. Physician must contact the manufacturer or sponsor of the product to request Investigator status to administer the drug in an emergency use under the manufacturer's IND# or IDE#. The physician will need to provide the status of the patient's condition.
2. If the manufacturer or Sponsor decides against providing the physician the IND# or IDE# and will not provide the product, the physician must then contact the U.S. Food and Drug Administration (FDA) at 310-443-4320, during normal working hours, to request permission to obtain and use the product in an appropriate emergency use situation. (After normal working hours, Eastern Standard Time, the request should be made to 202-857-8400.)

IMPORTANT NOTE: If neither the Sponsor, Manufacturer, or FDA will provide the Investigational product to the requesting physician, then the investigational product cannot be administered and the physician must be prepared to administer the best alternative therapy available for the patient.

3. The investigational drug or device must be shipped directly to: IDS Pharmacist, c/o Department of Pharmacy & Drug Information, 501 Morris Street, CAMC General Division, Charleston, WV 25326-1547 which will then supply the product to the Division where the patient is located.
4. Upon delivery to the CAMC Department of Pharmacy and Drug Information the IDS Pharmacist will contact the physician directly.

Step 3: Obtain Informed Consent

The physician shall use the "Emergency Use Consent Form" provided by FAX by the IRB Office or the Research Pharmacy to obtain informed consent from the patient, or the patient's authorized representative. The physician is required to obtain informed consent from the patient or the patient's authorized representative. If the patient is unable to give consent, and an authorized representative is not available, the product may be administered if both the primary physician or investigator, and a second physician who is not otherwise participating in the clinical investigation and who is not involved in the care of the patient or supervised by the investigator concurs with the primary physician's need and decision to apply emergency approval.

Step 4: Write research report.

According to federal regulations, the Physician must file a written report within 5 working days after notifying the IRB Office of the use of the investigational product. This report should be in the form of a cover letter addressed to the IRB Chairperson and must address the following outline prepared by the physician:

- 1) Name, department, address and phone number of physician(s) who made an Emergency Use of the investigational product;
- 2) Name of investigational product , generic name and IND# or IDE# as provided by the FDA;
- 3) Name of sponsor or company manufacturing the drug;
- 4) Date of actual Emergency Use of the investigational product;
- 5) Name of the patient;
- 6) Name of the organization/company that dispensed the drug to the physician (i.e., NCI, drug company, CAMC pharmacy, etc.)

- 7) Description of rationale for Emergency Use;
- 8) Description of the risks and/or side effects associated with the use of the investigational product in the patient;
- 9) Protocol followed and any additional effects associated from the manufacturer regarding use of the investigational product;
- 10) Results of the Emergency Use, Status of the patient (i.e. inpatient, location of patient, discharge date, etc.)

The cover letter described above must have as attachments 1) the approved FDA protocol or brochure; and 2) the consent form(s) signed by the patient and physician (i.e. IRB consent form and company provided consent form).

NOTE: Failure to provide this report is in violation of FDA regulations. In addition, the omission of any of the above items, will necessitate that an addendum correcting such omission be provided to the IRB.

Adverse Reaction/Event: If there is any adverse reaction by the patient due to the administration of the investigational product, you must submit a report to the IRB within 14 working days which outlines the adverse reactions. Any adverse reactions of an investigational product may require a report to the FDA by the IRB.

IRB Requirements for the Use of Other Classes of Investigational Drugs for Treatment Purposes

1. **"Open-Label" Study** - The investigator must provide information from the Sponsor or FDA describing whether the study is being conducted under an active IND#. If so, the IND# will need to be provided prior to research approval. This type of study may be classified as Phase III or Phase IV and will be considered investigational unless the manufacturer's protocol describes otherwise. THE CAMC-WVU IRB requires that these studies receive Full Board IRB review according to the standard format.
2. **"Treatment IND" or "Treatment Protocol under Existing IND"** - Under the FDA regulations, an Investigational New Drug (IND) sponsor (i.e. a pharmaceutical company) or a licensed medical practitioner may apply for a Treatment IND or a treatment protocol administered under an existing IND from the FDA. If the FDA grants the Treatment IND, the investigational drug may be used to treat patients with serious or immediately life threatening diseases for whom no comparable or satisfactory alternative drug or therapy is available.

CAMC-WVU IRB policy states the Investigator must complete the IRB Protocol Form and accompanying materials according to the CAMC-WVU IRB format for Full-Board Review and submit to the IRB Office. This requirement applies even if the drug is to be administered to only one patient.

NOTE: FDA regulations specify that "the provision for emergency use of a Treatment IND protocol would almost never apply because these are planned uses of the investigational products and there is sufficient time available to obtain IRB review and approval".

3. **"Investigational Drugs Designated as Group C"** - Investigational drugs used in cancer therapies may be designated by the FDA and the National Cancer Institute as "Group C" drugs. Investigational drugs which have been given a Group C designation may under certain conditions be administered for treatment purposes.

Use of Group C Drug for Clinical Purposes: Under FDA/NCI policy, administration of Group C drugs for FDA approved clinical purposes does not require "Full-Board" Review, but according to CAMC-WVU IRB policy, will require "Prior Review" by the IRB Chairperson if an emergency situation exists.

Emergency Use of an Investigational Drug or Device

Use of Group C Drug in a Clinical Trial: In accord with federal policies, use of a drug classified in Group C which is under an active clinical investigation requires review by the full IRB.

4. **"Parallel Track Drugs"** - Although the FDA does not require local IRB review, the policy of the CAMC-WVU IRB is that use of these drugs received review by the Chairperson in an emergency situation, or Full-Board review when the drug is under an active clinical investigation.

Consent for Emergency Use of an Investigational Product

(revised 7/30/04)

Introduction: My doctor has informed me that my condition, which is described as the following, is now an emergency situation:

The condition needs to be treated because:

Description of Investigational Product: I understand that this investigational drug _____ (IND#) _____, device _____ (IDE#) _____, is currently being studied as a possible treatment for my condition, but it has not yet received approval from the U.S. Food and Drug Administration (FDA) for that purpose.

Risks: My doctor has informed me that the following risks may be associated with the use of this investigational drug, device or biologic.

I understand that this treatment may involve risks that are unforeseeable.

Benefits: I also understand that this product is not guaranteed to improve my condition.

Financial Considerations: If injury occurs as a result of this treatment, medical care will be provided, but there will be no voluntary compensation for my injury or for the costs of this medical care. I understand that my insurance carrier (i.e. Medicare, medicaid, etc.) may not pay for the use of investigational products for my care. In any case, I understand that I will be responsible for payment of my health care costs.

Confidentiality: I understand that my hospital records may be subpoenaed by court order or may be inspected by federal regulatory authorities.

I have read all of the above information or it has been read to me. I have had the opportunity to ask questions and have received satisfactory explanations. I realize that I may at any time request that the use of this investigational product be discontinued without any penalty and that I will continue to be cared for by my doctor. Upon signing this form, I will receive a copy.

I voluntarily consent to the use of the above named investigational product in the treatment of my condition.

Patient's Signature Witness Date Time

The patient is unable to sign because _____ I declare that I have personally explained the above information to the patient or the patient's representative.

I therefore consent for the patient.
Name (please print): _____

Relationship to patient: _____

Representative's signature: _____

Witness signature: _____

Date: _____ Time: _____

Please complete and FAX to IRB office at 388-9976

Signature of Physician

Date: _____ Time: _____ Pager: _____

Department: _____ Fax: _____

Since the patient could not provide consent and the person authorized to sign for the patient is unavailable, I concur with the attending physician that emergency use care with the above stated product for the above named patient is necessary: _____

Second physician signature Date Time