

**UNIVERSITY OF TENNESSEE HEALTH SCIENCE CENTER  
INSTITUTIONAL REVIEW BOARD  
EMERGENCY USE**

**I. PURPOSE**

To document the review procedures for a submission regarding emergency use of a drug, biologic or device.

**II. SCOPE**

This SOP applies to the IRB administrative staff, IRB members, investigators and sponsors.

**Personnel Responsible:**

University of Tennessee Health Science Center Institutional Review Board administrative staff, members, investigators and sponsors.

**III. BACKGROUND**

The FDA recognizes that situations arise in which an investigational drug, biologic or device may be used on an emergency basis in a manner inconsistent with an approved protocol, in the absence of an approved protocol, or by a physician who is not an investigator on a clinical study. The FDA definition of the conditions under which emergency use is permissible involves two essential components: the presence of a life-threatening or severely debilitating situation in which no standard acceptable treatment is available, and insufficient time to secure prior IRB approval. The emergency use provision is an exemption from prior IRB review and approval as specified at 21 CFR 56.104(c). While this exemption allows use of a test article in one subject without prospective IRB review, any subsequent use requires prospective review and approval.

**Drug/biologic:** The emergency use of an unapproved investigational drug or biologic normally requires an existing IND. If medical circumstances require its use outside an approved protocol, the physician must contact the sponsor to determine if the drug or biologic can be made available for emergency use under the IND. The need for an investigational drug or biologic may also arise in an emergency situation that does not allow time for submission of an IND. In such a case, the FDA may authorize shipment of the test article in advance of the IND submission. Requests for such authorization may be made by telephone or other rapid communication means to the FDA.

**Device:** The Food and Drug Administration (FDA) recognizes that emergencies arise where an unapproved device may preserve life or prevent a severely debilitating condition, but the device must be administered outside an approved IDE and/or protocol. Using its enforcement discretion, the FDA has not objected if a physician chooses to use an unapproved device in a situation that satisfies the conditions for permissible emergency use. The physician must subsequently provide documentation to the FDA that an emergency actually existed.

When emergency care is initiated without IRB review or approval, the patient may not be considered a research subject. Such emergency care may not be claimed as research, nor can the outcome be included in any report of a research activity.

**In Accordance With:**

21 CFR 50(a)-(c); 21 CFR 56.102(d); 21 CFR 56.102(l); 21 CFR 56.104(c);

FDA Guidance on Emergency Use of an Investigational Drug or Biologic -  
Information Sheet

<http://www.fda.gov/RegulatoryInformation/Guidances/ucm126491.htm>

Information Sheet Guidance – Frequently Asked Questions about Medical  
Devices

<https://www.fda.gov/downloads/RegulatoryInformation/Guidances/UCM127067.pdf>

**Compliance with this policy also requires compliance with state or local laws or regulations that provide additional protections for human subjects.**

#### **IV. DEFINITIONS**

**Emergency Use** means the use of an investigational drug or biological product with 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.

**Life-Threatening** means diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted, as well as diseases or conditions with potentially fatal outcomes. The criteria for a life-threatening disease or condition does 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.

**Severely Debilitating** means diseases or conditions that cause major irreversible morbidity including blindness, loss of arm, leg, hand or foot, loss of hearing, paralysis or stroke.

**Test Article** means an unapproved investigational drug, biologic or device for human use, including human food additive, color additive, electronic product, or any other article subject to regulation under the act or under sections 351 or 354-360F of the Public Health Service Act.

## V. PROCEDURES

1. Full Board approval is normally required for emergency use of a test article. If it is not feasible to convene a quorum before the treatment must be administered, and the treatment will be administered in a Methodist Healthcare adult facility, then the emergency use may proceed without IRB approval only if an IRB Chairperson or designee **and** the Chief Medical Officer or his/her designee concur in its use. If the treatment will be administered at Le Bonheur Children's Hospital, then the emergency use may proceed without IRB approval only if an IRB Chairperson or designee **and** the Director of Research at Le Bonheur or his/her designee concur in its use. If the treatment will be administered at Regional One Health, then the emergency use may proceed without IRB approval only if an IRB Chairperson or designee **and** the Chief Medical Officer or his/her designee concur in its use. If the treatment will be administered in any other institution, emergency use may proceed without IRB approval only if an IRB Chairperson or designee concurs **and** the investigator obtains institutional clearance or approval according to the institution's policies and procedures. IRB approval using an expedited review procedure is not allowed.

However, if in the investigator's opinion, immediate use of the test article is required to preserve the subject's life or prevent a severely debilitating condition, and the conditions for emergency use (#2 or #3 below) are met, the investigator may proceed without the concurrence of an IRB Chairperson or designee or the hospital administrative designee.

2. IRB approval or concurrence for emergency use of a drug or biologic will occur only if all of the following conditions (specified at 21 CFR 56.102(d)) are satisfied:

- a. The patient has a life-threatening or severely debilitating condition requiring treatment before review at a convened meeting of the IRB is feasible;
  - b. There is no generally acceptable alternative treatment available; and
  - c. There is not sufficient time to submit a protocol/amendment to the IRB for approval.
3. IRB approval or concurrence for emergency use of a medical device will occur only if all of the following conditions are satisfied:
  - a. The patient is in a life-threatening or severely debilitating condition that needs immediate treatment;
  - b. No generally acceptable alternative for treating the patient is available; and
  - c. Because of the immediate need to use the device, there is no time to use existing procedures to secure FDA approval for the use.
4. If the IRB approves or a Chairperson or designee concurs with the emergency use, then:
  - a. An IRB Chairperson or designee will notify the physician seeking emergency use approval or concurrence.
  - b. The IRB will use the date of concurrence to initiate tracking to ensure the investigator provides a report to the IRB within five working days as required by 21 CFR 56.104(c) and again at one month after use of the test article.
5. For any emergency use, the investigator is required to obtain informed consent of the subject or the subject's legally authorized representative using an informed consent document prepared according to the UTHSC IRB main consent form template unless both the investigator and a physician who is not otherwise participating in the clinical investigation certify in writing all of the following (21CFR50.23(a)):
  - a. The subject is confronted by a life-threatening or severely debilitating situation necessitating the use of the test article;
  - b. Informed consent cannot be obtained because of an inability to communicate with, or obtain legally effective consent from the subject;
  - c. Time is not sufficient to obtain consent from the subject's legally authorized representative; and
  - d. No alternative method of approved or generally recognized therapy is available that provides an equal or greater likelihood of saving the subject's life or preventing a severely debilitating condition.
6. If, in the investigator's opinion, immediate use of the test article is required to preserve the subject's life or prevent a severely debilitating condition, and if

time is not sufficient to obtain an independent physician's determination that the four conditions specified in (5) above apply, the clinical investigator should make the determination and, within 5 working days after the use of the article, have the determination reviewed and evaluated in writing by a physician who is not participating in the clinical investigation. The investigator must submit the written documentation regarding the decision to proceed without informed consent to the IRB within 5 working days after the use of the test article [21 CFR 50.23(c)].

7. The investigator must provide a report on the use of the test article and the outcome for the patient to the IRB within five working days as required by 21 CFR 56.104(c) and again at one month after use of the test article. All correspondence and documentation relevant to the use of the test article, including the consent form prepared according to the UTHSC IRB main consent form template when applicable, must be submitted to the IRB as soon as possible, but no later than 5 working days after notification of the use.
8. If the Sponsor requires a written statement that the IRB is aware of the proposed use and considers the use to meet the requirements of 21 CFR 56.104 (c) in order to approve shipment of the test article, the UTHSC IRB will provide such correspondence upon request.
9. After emergency use of a medical device, the investigator must notify the sponsor of the emergency use, if an IDE for the particular use exists. If an IDE does not exist, the investigator must notify the FDA of the emergency use and provide the FDA with a written summary of the conditions constituting the emergency, subject protection measures, and results. If the emergency use involves a humanitarian use device, the report should be submitted to the HDE holder. Copies of the correspondence should be submitted to the IRB.
10. If the emergency use of the test article has occurred without approval of the full Board, a Chairperson or designee will review the documentation submitted, report to the full IRB at the next convened meeting after the documentation is received, and notify the physician seeking emergency use that the Board acknowledges its use.
11. If the emergency use of the test article has occurred without prior approval of the full Board or concurrence of a Chairperson or designee, he/she will review the documentation submitted, report to the full IRB at the next convened meeting after the documentation is received, and notify the physician seeking emergency use whether the Board agrees that the conditions for emergency use were satisfied.

12. UTHSC IRB will include in its correspondence to the investigator/physician a statement indicating that any subsequent use of the test article at the institution requires prospective IRB review and approval, unless in the investigator's opinion, immediate use of the test article is required to preserve the subject's life or prevent a severely debilitating condition.
13. If the emergency use involves a test article utilized in an IRB-approved study, a copy of all correspondence and documentation concerning the emergency use will be kept in the IRB files for the study.