1 PURPOSE

1.1 This guidance establishes the process for the one-time emergency use of an investigational drug, biological product, or device and establishes the process to review notifications of:

1.1.1 Emergency use of a drug, biologic, or device in a life-threatening situation.

1.1.2 Compassionate use of an unapproved device without an Investigational Device Exemption (IDE) for a serious condition.

1.2 The guidance begins when the Sharp HealthCare (SHC) Institutional Review Board (IRB) receives a notification of a proposed or actual use.

1.3 The guidance ends when a designated reviewer has:

1.3.1 Determined whether the proposed or actual use will follow or has followed Food and Drug Administration (FDA)-regulation and guidance; and

1.3.2 Notified the physician and IRB staff of the determination.

2 REVISIONS FROM PREVIOUS VERSION

2.1 If applicable, previous versions available in Human Research Protection Program Change Log.

3 POLICY STATEMENT

3.1 Whenever possible, physicians are to notify the IRB of a proposed emergency use of a drug, biologic, or device in a life-threatening situation in advance of the use.

3.2 Physicians are to notify the IRB of a proposed compassionate use of an unapproved device without an IDE for a serious condition.

3.3 The one-time emergency use of a test article is permitted provided a patient is in a life-threatening situation in which no standard acceptable treatment is available, and when there is not sufficient time to obtain IRB review and approval. Any subsequent use of a test article at the institution shall have prospective IRB review and approval

3.4 In reference to *POLICY: Investigational Drugs and Biologics (43019.01),* in certain emergency situations where IND submission and/or IRB approval is not possible, the FDA may authorize shipment of an investigational drug or biologic product for a specified use in advance of the submission of an IND. For further details, refer to 21 CFR 56.104(c).

3.5 In reference *POLICY: Investigational Devices (16509),* in emergency circumstances, approval for the emergency use of an investigational device shall be obtained from the IRB chair or designee in the absence of the chair.

3.6 The physician will consult with an independent physician (not involved in the patient's care) and obtain a written assessment from him/her that the emergency use criteria specified in this document have been met.

3.7 At the earliest opportunity, the clinician will notify the IRB of his/her intent to use or use of a test article in an emergency.

3.8 Informed consent will be obtained from the patient or his/her legally authorized representative unless the federal requirements for a waiver or exception from the informed consent requirement are satisfied.

3.9 The emergency use will be reported to the IRB, using the *WORKSHEET: Emergency Use (HRP-322)*, within five (5) working days.

3.10 The emergency use will be reported to the holder of the IND/IDE. If there is no IND or IDE, the emergency use will be reported to the FDA.

3.11 The SHC IRB and FDA acknowledge that it is inappropriate to deny emergency treatment to a second qualified individual if the only obstacle is that the IRB has not had sufficient time to convene a meeting to review the issue. Any emergency treatment to a second qualified individual must follow the same process as a first-time emergency use.

3.12 If, in the clinician's opinion, immediate use of the test article is required and if time is not sufficient to obtain the independent physician determination, the clinician should make the determination and, within five (5) working days after the use of the article, have the determination reviewed and evaluated in writing by an independent physician.

4 RESPONSIBILITIES

4.1 A clinician/physician and designated reviewer carry out these procedures.

5 PROCEDURE

5.1 For the one-time emergency use of an investigational drug, biological product, or device the clinician uses the following criteria:

5.1.1 The patient to be treated has a serious or immediately life-threatening disease or condition;

5.1.2 There is no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the disease or condition;

5.1.3 There is not sufficient time to obtain prior IRB review and approval;

5.1.4 The potential patient benefit justifies the potential risks of the treatment use and those potential risks are not unreasonable in the context of the disease or condition to be treated;

5.1.5 The probable risk to the person from the test article is not greater than the probable risk from the disease or condition; and

5.1.6 The provision of the test article for the requested use will not interfere with the initiation, conduct, or completion of clinical investigations that could support marketing approval of the expanded access use or otherwise compromise the potential development of the expanded access use.

5.2 Prior to emergency use, the clinician:

5.2.1 Contacts the manufacturer or sponsor to determine if the test article can be made available for the emergency use under the company's IND (drug, biologic product) or IDE (device).

5.2.2 If the manufacturer does not permit use of the test article under their IND/IDE, the clinician may request emergency use from the FDA by telephone, facsimile, or other means of electronic communication.

5.2.3 Notifies an IRB on-call Chairperson to inform him/her of the intended emergency use and, as may be required by the manufacturer, request a *TEMPLATE LETTER: Emergency Use Acknowledgement Letter to Manufacturer (HRP-559)* from the IRB.

5.2.4 Obtains a written assessment from a physician not involved in the emergency use with documentation that the proposed emergency use is appropriate (i.e., the conditions for emergency use are met).

5.2.5 When informed consent can be obtained, the clinician uses *TEMPLATE: Consent - Emergency Use (HRP-506)* to document authorization from the patient or their legally authorized representative. The clinician provides a copy to the patient or his/her legally authorized representative.

5.2.6 When informed consent cannot be obtained, *FORM: Exception from Informed Consent for Emergency Use (HRP-228)* is to be used and both the clinician and an independent physician is to complete this form.

5.3 FDA regulations permit emergency use of a test article without informed consent where the clinician and an independent physician certify in writing:

5.3.1 The patient is confronted by a life-threatening or severely debilitating situation, necessitating the use of the test article.

5.3.2 Informed consent cannot be obtained from the patient (because the patient cannot communicate or is incompetent to give consent).

5.3.3 Time is not sufficient to obtain consent from the patient's legally authorized representative.

5.3.4 No alternative method of approved or generally recognized therapy is available that provides an equal or greater likelihood of saving the patient's life.

5.4 Patients receiving a test article in an emergency use as defined by FDA regulations may not be considered to be a research participant.

5.5 Data obtained from uses covered by this procedure cannot be used in a non-exempt systematic investigation designed to develop or contribute to generalizable knowledge. Such data cannot

be classified as human subjects' research and the outcome of such care may not be permitted to be included in any report of a research activity subject to DHHS regulations.

5.6 For IRB notifications of the emergency use of a test article in a life-threatening situation, the designated reviewer uses the *WORKSHEET: Emergency Use (HRP-322)* to determine whether the circumstances will meet the regulatory and guidance criteria.

5.7 After emergency use, the clinician:

5.7.1 Completes the *FORM: Emergency Use Notification (HRP-227)*, *FORM: Exception from Informed Consent for Emergency Use (HRP-228)*, and submits to the IRB with a copy of signed informed consent and PHI authorization documents, if applicable. Submit all required documents to the IRB within five (5) working days of the actual use of the test article.

5.8 For prospective IRB notifications of the emergency use of a test article in a life-threatening situation, the designated reviewer uses the *WORKSHEET: Emergency Use (HRP-322)* to determine whether the circumstances will meet the regulatory and guidance criteria and indicates the results of this determination to the physician. *TEMPLATE: EMAIL: Pre-Review of Emergency Use (HRP-570)*.

5.8.1 If met, inform the physician that the physician has met regulatory criteria for emergency use and can proceed with the use.

5.8.1.1 Use *TEMPLATE: Consent - Emergency Use (HRP-506)* for guidance on developing the informed consent.

5.8.1.2 Use *CHECKLIST: Waiver of Consent Process for Planned Emergency Research (HRP-419)* to determine if criteria for waiving consent is met.

5.8.2 If not met, inform the physician that if the physician proceeds with the use, the IRB will consider that action to be Non-Compliance.

5.9 Inform IRB staff of the results of the evaluation.

6 MATERIALS

6.1 POLICY: Investigational Drugs (43019.01)
6.2 POLICY: Investigational Devices (16509)
6.3 FORM: Emergency Use Notification (HRP-227)
6.4 FORM: Exception from Informed Consent for Emergency Use (HRP-228)
6.5 WORKSHEET: Emergency Use (HRP-322)
6.6 CHECKLIST: Waiver of Consent Process for Planned Emergency Research (HRP-419)
6.7 TEMPLATE: Consent - Emergency Use (HRP-506)
6.8 TEMPLATE: Letter: Emergency Use Acknowledgement Letter to Manufacturer (HRP-559)
6.9 TEMPLATE: EMAIL: Pre-Review of Emergency Use (HRP-570)

7 REFERENCES

7.1 21 CFR §50.23; 21 CFR §56.104(c)
7.2 21 CFR 50.23 – Exception from general requirements for informed consent
7.3 21 CFR 56.102(d) – Emergency Use definition

This document is available on www.sharp.com/research, IRBANA, or by contacting research@sharp.com.