Emergency Use Policy

1.0 Purpose

The purpose of this policy is to describe Wright State University Institutional Review Board (IRB) and investigator procedures for the emergency use of a Food and Drug Administration (FDA) regulated investigational device, drug or biologic.

2.0 Scope

This policy applies to emergency use involving Wright State University (Wright State) faculty, staff, and students and for Premier Health (Premier) and Dayton Veterans Affairs Medical Center (Dayton VAMC) physicians when the Wright State University IRB (hereafter referred to as IRB) acts as the IRB of record for this purpose.

Note that Premier/Dayton VAMC emergency use review by an IRB of Record other than the Wright State University IRB must follow Premier/Dayton VAMC policies and procedures.

3.0 Definitions:

3.1 **Biologics or Biological products** means a wide range of products such as vaccines, blood and blood components, allergenics, somatic cells, gene therapy, tissues, and recombinant therapeutic proteins. Most biologics are complex mixtures that are not easily identified or characterized.

3.2 **Emergency Use** means the use of a test article (e.g., investigational device, drug or biological product) in 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.

3.3 **Investigational Device Exemption (IDE)** means a submission to the FDA that allows the investigational device to be used in a clinical trial to collect safety and effectiveness data required to support a Premarket Approval Application (PMA). All clinical evaluations of investigational devices must have an approved IDE before the study is initiated.

3.4 **Investigational New Drug (IND)** means a new drug or biological drug that is used in a clinical investigation. The term also includes a biological product that is used in vitro for diagnostic purposes.

3.5 **Life-Threatening** means diseases of 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 subject must be in a life-threatening situation requiring intervention before review at a convened meeting of the IRB is feasible.

3.6 **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.

4.0 Policy

The need for an investigational drug, biologic or device may arise in an emergency situation that does not allow time for submission of an investigational new drug (IND) application or investigational device exemption (IDE) in accordance with federal regulations. In such a case, FDA regulations allow for emergency use in a single patient.

Even though FDA regulations negate the requirement for prior review and approval by the convened IRB in emergency cases, Wright State normally requires prospective confirmation that the use of the test article (e.g., drug, biologic or device) meets FDA criteria by the IRB Chair/Designee in these situations.

One exception to this requirement is if the immediate use of the test article is, in the treating physician's opinion, required to preserve the life of the patient and there is not enough time to obtain the assessment by the IRB Chair/Designee, in which case the treating physician must obtain written confirmation from a non-treating physician. The following procedures describe the submission requirements and timeline for both scenarios.

5.0 Procedure

5.1 Conditions for Emergency Use

Emergency use of a test article may only occur if all of the following FDA requirements for emergency use are met:

5.1.1 The patient has a life-threatening or serious disease or condition that needs immediate treatment.
5.1.2 No generally acceptable alternative treatment for the condition exists; and
5.1.3 There is insufficient time to obtain IRB approval from the IRB at a convened meeting.

It is important to understand however, if the proposed use is for a life-threatening or serious disease but time is sufficient to obtain convened IRB approval, the treating physician/PI should follow the procedures in the *Expanded Access Program for Drugs and Biologics Policy* or for devices Section 5.5.2 or 5.5.3 of the *Research Involving Medical Devices Policy*.

5.2 Emergency Use with Prior IRB Chair/Designee Concurrence

To request emergency use of a test article, the treating physician must submit the following documents to the IRB Office via IRB@Wright.edu or when applicable directly to IRB Chair/Designee for his/her formal concurrence that the use meets FDA requirements:

5.2.1 A completed and signed *Emergency Use Determination Form*
5.2.2 A copy of the consent form to be utilized (must include all relevant elements required by *Informed Consent* Policy)
5.2.3 Written authorization from the sponsor or FDA to allow use of the test article, if applicable
5.2.4 Hospital committee review and approval for emergency use of a device, when applicable
5.2.5 A written explanation that justifies administration of the test article (e.g., life-threatening situation, no standard acceptable treatment available, and not sufficient time to obtain full IRB approval), and
5.2.6 Any other information that may aid in the evaluation of the request.

If the treating physician requests to proceed without the informed consent of the patient or his/her legally authorized representative, the above request to the IRB Chair/Designee should include a written and signed statement from a non-treating physician that includes that the following conditions have been met:

5.2.7 The subject is confronted by a life-threatening situation necessitating the use of the test article.
5.2.8 Informed consent cannot be obtained because of the inability to communicate with or obtain legally effective consent from the patient
5.2.9 Time is insufficient to obtain consent from the subject's legally authorized representative, and

5.2.10 There is no alternative method of approved or generally recognized therapy available that will provide an equal or greater likelihood of saving the patient's life.

If, in the investigator's opinion, immediate use of the test article is required to preserve the subject's life, and if time is not sufficient to obtain a non-treating physician's determination that the four conditions above apply, the clinical investigator 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 a physician who is not participating in the clinical investigation.

Upon completion of his/her review of the above information, the IRB Chair or his/her designee will communicate (verbally, email or formal letter) to the treating physician to confirm that the criteria have been met and acknowledge that it is appropriate to proceed with the proposed emergency use. The IRB Office will provide the treating physician with an acknowledgment letter as soon as possible.

Within five (5) working days after the emergency use, the treating physician must submit a completed *Emergency Use Follow-Up Report Form* to the IRB Office that includes any known patient outcomes and/or adverse events subsequent to the emergency use and non-treating physician consent certification, if applicable. This information along with the information provided to the IRB Chair/ Designee (i.e., 5.2.1-5.2.9) will be provided to the convened IRB for review at its next scheduled meeting (see Section 5.4).

5.3 Emergency Use without Prior IRB Chair/Designee Concurrence

If the treating physician determines that concurrence of the IRB Chair/Designee is not feasible prior to the emergency use, he/she must obtain a written and dated confirmation from a non-treating physician that all the following are true:

5.3.1 The patient has a life-threatening or serious disease or condition that needs immediate treatment
5.3.2 No generally acceptable alternative treatment for the condition exists, and
5.3.3 There is insufficient time to obtain IRB approval from the IRB at a convened meeting.

Within five (5) working days of the emergency use, the treating physician must submit both the *Emergency Use Determination Form* and the *Emergency Use Follow-Up Report Form* to the IRB Office that includes the written confirmation from the non-treating physician, as well as, all of the required documents, applicable non-treating physician consent certification, and post-use information described in Section 5.2.

5.4 Review by Convened IRB after Emergency Use

At a convened meeting, the IRB Chair/Designee will present the emergency use request and the documentation provided by the treating physician (initial request and follow-up report) with members and, if appropriate, vote to verify the following criteria to approve the emergency use:

5.4.1 The patient was confronted by a life-threatening situation necessitating the use of the test article.
5.4.2 No alternative method of approved or generally recognized therapy was available that provided an equal or greater likelihood of saving the patient's life, and
5.4.3 Time was not sufficient to obtain prospective approval from the convened IRB.

These findings will be documented in the meeting minutes and in writing to the investigator.

5.5 Use of Data Collected During Emergency Use

According to the FDA, a patient treated under FDA's emergency use provision is considered to be a research subject (21 CFR 56.102(e)). Therefore, the outcome of the emergency use, including any unanticipated problems, must be reported to FDA.

The Department of Health and Human Services (DHHS) agrees that emergency medical care for patients may be provided without regard to IRB review and approval. However, whenever emergency care is initiated without prior IRB review and approval, DHHS holds that the patient may not be considered to be a research subject, and such emergency care may not be claimed as research, nor may the outcome of such care be included in any report of a research activity sponsored or funded by a DHHS agency.

Therefore, it is Wright State policy that data obtained when an investigator utilizes the emergency use provisions may not be used for DHHS-funded research. Investigators are encouraged to consult with the IRB prior to use of data collected under emergency use to ensure compliance with this requirement.

5.6 Subsequent Use

Treating physicians must understand that the emergency use procedure cannot be done more than once for a single investigational device, drug or biologic. After the single emergency use, the physician must evaluate the likelihood of a similar need for the device, drug or biologic occurring again, and if future use is likely, immediately initiate efforts to obtain sponsor, FDA and convened IRB approval.

However, since 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 protocol, it is permissible to treat a second patient prior to full IRB approval if the protocol has been submitted to the IRB and IRB review is in process and the notification requirements listed above in 5.2 are submitted prior to use.

5.7 Requirement for an Emergency IND

The emergency use of an unapproved investigational drug or biologic requires an emergency IND. The investigator must contact the manufacturer and determine if the drug or biologic can be made available for emergency use under the company's IND.

When an IND does not exist and the situation does not allow time for submission of an IND, the FDA may authorize the shipment of the test article in advance of the IND submission. The request for such authorization may be made by telephone or other rapid communication means to the appropriate FDA Office/Division.

5.8 Failure to Report

If an investigator fails to comply with the requirements of this policy and 21 CFR 56.102(d) for emergency use or 21 CFR 50.23(a) for exception of informed consent, the IRB will evaluate the situation in accordance with its *Human Subject Research Non-Compliance Policy*.

6.0 Responsibilities and Authorities

In accordance with applicable FDA regulations, the physician/investigator, Wright State IRB Chair/Designee and the convened IRB are responsible for ensuring that the procedures detailed in this policy are followed and that detailed written records are maintain to document all actions taken under this policy.

7.0 Records

All records related to this policy will be stored and maintained in accordance with any Wright State policy, federal regulations and sponsor requirements associated emergency use.

8.0 References

8.1 21 CFR 50.23(a) and (c)
8.2 21 CFR 56.102(d)
8.3 21 CFR 56.102(e)
8.4 21 CFR 56.104(c)
8.5 Emergency Use of an Investigational Drug or Biologic – FDA Information Sheet
8.6 Expanded Access for Medical Devices – FDA Guidance