1 PURPOSE

1.1 This procedure establishes the process a physician/investigator must follow for expanded access, emergency treatment of patients with a test article (i.e., investigational drugs, biologics, or medical devices).

1.2 The process begins when a physician determines (1) no generally accepted alternative for treating the condition is available; and (2) there is substantial reason to believe the patient will benefit from use of the investigational drug, biologic, or medical device.

1.3 The process ends when the IRB Office staff has communicated the results to the treating physician; and if necessary, initiated and finalized the non-compliance process.

1.4 This policy does not apply to non-emergent, expanded access of a test article or off-label uses of approved drugs, biologics, and medical devices.

2 REVISIONS FROM PREVIOUS VERSION

2.1 None

3 POLICY

3.1 LSUHSC-NO (LSUNO) requires its healthcare providers and its IRB to comply with all applicable regulations of the Food and Drug Administration (FDA) when using investigational drugs, biologics, and medical devices for clinical purposes.

3.2 The use of an investigational product for treatment use is not considered research under DHHS regulations.

4 DEFINITIONS

4.1 Emergency Use: The use of an investigational a drug, biologic, or medical device 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 (21 CFR 56.102(d)).

4.2 Expanded access: The FDA has several specific mechanisms and regulations that allow use of an investigational item outside of a formal clinical trial. This is called *expanded access*.

4.3 IDE: Investigational Device Exemption. An IDE application is the document submitted to the FDA for permission to conduct a clinical study using a significant risk device that is new or not approved for a given use. When the FDA approves an IDE application, it assigns an IDE number to the specific use of the device.

4.4 IND: Investigational New Drug. An IND application is the document submitted to the FDA for permission to conduct a clinical study using a drug or biologic that is new or not approved for a given dosage, formulation, or indication. When the FDA approves an IND application, it assigns an IND number to the specific use of the item.

4.5 Investigational: This term is used to refer to an item that is not FDA-approved for marketing in the United States, or to an item that is being evaluated for a new and not-yet-approved indication, dosage, or formulation.

4.6 Off-label use: The clinical use of an FDA-approved drug, device or biologic for a purpose or population that has not been approved by the FDA, or in a route or dose that has not been approved by the FDA.

Off-label use is not regulated by the IRB or the FDA; it is subject only to any policies and procedures of state law and the clinician's institution.

4.7 Sponsor: The person, company, organization, or other entity that initiates and takes responsibility for a clinical investigation using an FDA-regulated item. The sponsor does not actually conduct the investigation unless the sponsor is a sponsor-investigator.

5 RESPONSIBILITIES

5.1 Specific responsibilities for physician/investigators, LSUNO IRB (designated reviewer) and IRB Office staff are described throughout this document. However, the treating physician responsibilities described here are limited to those associated with IRB review and approval with minimal information about the treating physician's responsibilities to the FDA (whether as a sponsor, an investigator, or an investigator sponsor) or to a sponsor.

6 PROCEDURES

6.1 *Treating Physician Responsibilities*

6.1.1 **Before** emergency use of a test article (EUTA) for treatment

6.1.1.1 Consult "**WORKSHEET Emergency Use (HRP 322)**" to evaluate compliance with FDA requirements for EUTA. The worksheet does not need to be completed or submitted to the IRB.

6.1.1.2 Except under extenuating circumstances, the physician is expected to submit a new application using the EUTA application type in the electronic IRB (eIRB) system **prior** to the use of the test article.

6.1.1.2.1 Complete the "Pre-Treatment" section of the application.

6.1.1.3 Notify a member of the IRB Office or the IRB Chair immediately after submission of the EUTA application so that the application may be reviewed in a timely manner.

6.1.1.4 Obtain sponsor approval of emergency use of a test article under the company's IND (for drug or biologic) or IDE (for device and if an IDE exists).

6.1.1.5 If the manufacturer of a drug or biologic declines permission to use its IND or IDE, obtain an emergency IND or IDE by contacting FDA at:

6.1.1.5.1 (855) 543-3784, (301) 796-3400 or druginfo@fda.hhs.gov for an IND for an investigational drug;

6.1.1.5.2 (880) 835-4709, (240) 402-8020 or industry.biologics@fda.hss.gov for an IND for an investigational biologic; and

6.1.1.5.3 (301) 796-7100 or dice@fda.hhs.gov for investigational devices.

6.1.1.5.4 **On Nights and Weekends:** FDA Emergency Call Center | (866) 300-4374 | (301) 796-8240

6.1.2 **After** emergency use of a test article

6.1.2.1 Complete the "Post-Treatment" section of the initial EUTA application within five (5) business days of the emergency use.

6.1.2.2 Report the emergency use of an investigational device to the sponsor within five (5) business days.

6.1.2.3 Submit a new Full Board application if it is possible that the investigational drug, biologic or medical device will be used again in the same patient or in a different patient.

6.2 ***Designated Reviewer and IRB Office Staff Responsibilities***

6.2.1 For applications submitted **prior** to EUTA, the Designated Reviewer uses "**WORKSHEET: Emergency Use (HRP 322)**" to determine if the proposed use complies with the FDA requirements.

6.2.1.1 If the Designated Reviewer has indicated that the proposed use complies with FDA regulations:

6.2.1.1.1 IRB Office staff member completes a "**TEMPLATE LETTER: Pre-Review of Emergency Use - Criteria Met (HRP-570)**," or equivalent, and send to the treating physician.

6.2.1.1.2 The letter also informs the treating physician that he/she is obligated to submit a follow-up report within 5 days of the emergency use. The follow-up should be submitted by completing the "Post-Treatment" section of the initial EUTA application.

6.2.1.2 If the Designated Reviewer has indicated that the proposed use is not compliant with FDA regulations:

6.2.1.2.1 IRB Office staff member completes a "**TEMPLATE LETTER: Pre-Review of Emergency Use - Criteria Not Met (HRP-571)**," or equivalent, and send to the treating physician.

6.2.1.2.2 The letter also informs the physician that if he/she proceeds with the use, the IRB will consider that action to be an instance of Non-Compliance.

6.2.2 For applications updated **after** EUTA, the Designated Reviewer uses "**WORKSHEET Emergency Use (HRP 322)**" to determine if the actual use complies with the FDA requirements.

6.2.2.1 If the Designated Reviewer has indicated that the actual use described in the 5-day report followed FDA regulations

6.2.2.1.1 IRB Office staff member completes a "**TEMPLATE LETTER: Review of Emergency Use - Criteria Met (HRP-572)**," or equivalent, and send to the treating physician.

6.2.2.1.2 The letter also informs the physician that, for additional emergency uses of the same drug or biologic, he/she will have to submit a full protocol to the IRB for approval prior to use.

6.2.2.1.3 IRB Office staff approve the EUTA application.

6.2.2.2 If the Designated Reviewer has indicated that the actual use did NOT follow FDA regulations:

6.2.2.2.1 IRB Office staff member completes a "**TEMPLATE LETTER: Review of Emergency Use - Criteria Not Met (HRP-573)**," or equivalent, and send to the physician.

6.2.2.2.2 In the letter, the physician/investigator will be informed that the EUTA will be subjected to a Non-Compliance review.

6.2.2.2.3 IRB Office staff member will manage EUTA as Non-Compliance under "**SOP: Reportable New Information (HRP-024)**".

7 MATERIALS

7.1 WORKSHEET Emergency Use (HRP 322)

7.2 SOP: Reportable New Information (HRP-024)

7.3 TEMPLATE LETTER: Pre-Review of Emergency Use - Criteria Met (HRP-570)

7.4 TEMPLATE LETTER: Pre-Review of Emergency Use - Criteria Not Met (HRP-571)

7.5 TEMPLATE LETTER: Review of Emergency Use - Criteria Met (HRP-572)

7.6 TEMPLATE LETTER: Review of Emergency Use - Criteria Not Met (HRP-573)

8 REFERENCES

8.1 21 CFR §50.23; 21 CFR §50.24; 21 CFR §56.102(d); 21 CFR §56.104(c).

8.2 21 CFR §312.310

8.3 21 CFR §812.36; 21 CFR §812.47.

8.4 (FDA Information Sheet Guidance for IRBs, Clinical Investigators, and Sponsors) Frequently Asked Questions About Medical Devices: http://www.fda.gov/downloads/RegulatoryInformation/Guidances/UCM127067.pdf.