



November 27, 2006

Division of Dockets Management
HFA-305
Food and Drug Administration
5630 Fishers Lane
Rm. 1061
Rockville, MD 20852

RE: **Docket No. 2006D-0331**

Draft Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors; Exception from Informed Consent Requirements for Emergency Research

Submitted Electronically to: <http://www.fda.gov/dockets/ecomments>

Dear Sir/Madam,

On behalf of Public Responsibility in Medicine and Research (PRIM&R), we appreciate the opportunity to comment on the above referenced Draft Guidance.

PRIM&R is an educational organization dedicated to creating, implementing, and advancing the highest ethical standards in the conduct of research. Its members represent a diversity of institutions and individuals throughout the world whose research efforts vary significantly. The membership includes a range of professionals from research administrators, government officials, and academic deans, to members and chairs of Institutional Review Boards (IRBs), Institutional Animal Care and Use Committees (IACUCs), and Institutional Biosafety Committees (IBCs).

PRIM&R congratulates the FDA on the Draft Guidance and its goal of clarifying the ambiguities of 21 CFR 50.24. Our comments follow.

- **Extraordinary Exception:** PRIM&R urges that the FDA Guidance highlight the extraordinary nature of emergency research conducted without consent, and that such research is only ethical and authorized by the FDA in the presence of a life threatening situation.
- **Study Design:** PRIM&R suggests it would be very useful to investigators and IRBs for the FDA to further explain (and perhaps give examples) of when Emergency Research having *morbidity* endpoints, without consent, is consistent with the regulatory requirement that emergency research may be conducted without consent only when “human subjects are in a life threatening situation.”
- **IRB Requirements:** The Draft Guidance should clarify what it means for current treatment to be “unsatisfactory or unproven.” If the intervention under study is believed to be better than standard care, then that does not mean that current standard care is “unsatisfactory.” Because most treatment situations can be improved upon, one could interpret “unsatisfactory” to mean any situation with less than 100% success. Clearly, this

is not what is meant by the Rule or the Guidance. Clarification of the meaning of “unsatisfactory” is thus required.

- **IRB Requirements:** The Draft Guidance should clarify on page 7, second bullet, that it is the responsibility of the IRB, not the members of the community, to determine whether the criteria under 21 CFR 50.24 have been satisfied.
- **IRB Requirements: Central IRBs:** The Draft Guidance could further clarify that central (non-local or non-institutional) IRBs should only be considered if there are mechanisms for local review and consultation with the local Human Research Protection Program, as well as local community consultation. This is most likely very difficult for a centralized IRB, but there may be situations where a central IRB is appropriate.
- **IRB Requirements: Documentation:** The Draft Guidance should require IRBs to document a separate finding and vote regarding each of the regulatory conditions that must be met to approve emergency research without consent. The IRB should also be required to specify in writing the information upon which it relied to make the required findings.

In addition, PRIM&R agrees with the following points contained in the document submitted by Leonard H. Glantz, JD; Professor of Health Law, Bioethics, and Human Rights, Boston University School of Public Health, on October 29, 2006, (hereinafter referred to as the “Glantz Comments”). Specifically:

- **Licensed Physician Concurrence:** The Draft Guidance should clarify the requirements pertaining to the concurrence of a licensed physician taking into consideration the ambiguities identified in the Glantz Comments.
- **Public Disclosure:** The public disclosure requirements contained in the Draft Guidance should be enhanced in the manner proposed in the Glantz Comments to ensure widespread distribution of information pertaining to the research. In addition, PRIM&R endorses the specific “Mandatory Disclosures” proposed in the Glantz Comments.
- **Methods for identifying individuals who do not wish to be a research subject:** PRIM&R endorses the recommendations contained in the Glantz Comments that would enhance opportunities for the public to identify themselves as persons unwilling to be a research subject in an emergency situation.
- **Public Disclosure After the Study is completed:** PRIM&R endorses the recommendations contained in the Glantz Comments for the information to be provided to the public following completion of an emergency research study.
- **Methods of Disclosure:** PRIM&R endorses the recommendation contained in the Glantz Comments that specific disclosure methods be provided in the Guidance. IRB IR

PRIM&R would also recommend creation of a National Review Panel for Emergency Research (in addition to local IRB review): Given the extraordinary nature of emergency research without subject consent, a National Panel should be established (similar to the “407” panel established under Sub-part D of the HHS regulations and FDA regulations to review certain categories of pediatric research) to review such studies. This panel should include national experts in pertinent disciplines, such as science, emergency medicine, ethics and law, and lay persons who do not fit any of these categories. The review should precede local IRB review, and documentation of deliberations should be made available to the local IRBs. This panel could suggest changes to the study to address scientific and ethical concerns, as

well as regulatory issues. The revised (if necessary) study would then be submitted to local IRBs for their review.

The National Panel is not meant to replace the local IRB's responsibilities but rather to add an additional level of scrutiny to studies that enroll subjects without consent. This approach would contribute to public disclosure and provide additional protections for potential subjects.

This National Panel may not be necessary to review all emergency research subject to 21 CFR 50.24, but rather be used at the discretion of FDA for more ethically and/or scientifically complex studies

Thank you for your consideration of these comments.

Respectfully submitted,

A handwritten signature in black ink that reads "Joan Rachlin". The signature is written in a cursive, flowing style.

Joan Rachlin, JD, MPH
Executive Director
On behalf of PRIM&R