

# Innovative Care Guidelines

## Stanford University Medical Center

### I. Purpose

The purpose of these Guidelines is to assist members of the medical staffs of the SUMC hospitals and clinical academic units at Stanford University School of Medicine in appropriately identifying and making the distinction between innovative care and research. The Guidelines provide the definitions that support this distinction and a process for guidance and oversight of innovative care. These Guidelines are intended to minimize the potential risks to both patients and physicians in the delivery of innovative care as well as to further Stanford's academic mission.

These Guidelines are designed to support, not impede, physicians in their consideration of care and protection for their patients. For instance, one physician may have legitimate concerns that innovative care may later be criticized as constituting research without appropriate safeguards, or as being so far removed from customary practice that it constitutes an unacceptable risk to patients. Another physician may feel strongly that the planned course of treatment is not research and is definitely in the patient's interest, but may wish to get an objective evaluation before proceeding. These guidelines are intended to give direction to colleagues who find themselves in such situations, not to erect barriers to innovative care. They are meant to be timely, accessible and responsive.

This document is intended to help the physician, the leadership of the division/department and School of Medicine, and the Medical Staff to resolve such questions regarding a planned treatment as whether it is:

- Innovative care as defined in this document
- A medically justified and appropriate intervention
- Outside the approved scope of work of the physician (and therefore is one that may require an extension of privileges)
- Best undertaken under specified and limited circumstances
- Best undertaken as research and carried out with IRB approval

### II. Scope

These Guidelines apply to members of the Medical Staff at Stanford Hospital and Clinics and Lucile Packard Children's Hospital (the SUMC hospitals), including community physicians. They do not apply either to common "off-label" uses of FDA-approved drugs or devices or to IRB-approved pilot studies where additional studies are planned. However, they do apply to unusual or entirely

novel “off-label” uses of FDA-approved drugs or devices. These Guidelines are also not applicable to emergency situations in which medical decisions must be made in a matter of minutes or hours.

### **III. Definitions**

For purposes of these Guidelines, the following definitions apply:

**Innovative care:** Medical care which departs in a significant way from standard or accepted practice (Belmont Report, 1979). The primary purpose of innovative care is to benefit a patient(s), not to collect data to support a hypothesis or theory. It is a non-standard procedure or treatment that is employed solely to enhance the wellbeing of a patient, but for which there is limited prospective evidence of safety and efficacy.

**Research:** An activity designed to test a hypothesis, permit conclusions to be drawn, and thereby develop or contribute to generalizable knowledge. Research is usually described in a formal protocol that sets forth an objective and a set of procedures designed to reach the objective (Belmont Report, 1979). The primary purpose of research is to seek new knowledge, to reorder existing knowledge or to apply existing knowledge to a new situation.

Note that where a treatment, though new to an individual physician, is an incremental revision of an established procedure and does not present significant risk, such treatment is not likely to require review or discussion.

### **IV. Process of Consultation and Review**

The treating physician has the responsibility of determining whether a planned treatment is likely to be considered innovative care, as defined in these Guidelines. If so, the physician, division/department and School leadership and the Medical Staff should be engaged in the weighing of risks and benefits. The question of whether the proposed activity is most appropriately undertaken as a research study - and should therefore be referred to the IRB - or whether it simply requires a request for an extension of privileges must also be considered.

- a) The treating physician should first contact, as appropriate, the Vice Chief of Staff of SHC or the President of the Medical Staff of LPCH [Med Staff Leader] for consultation. The Credentials and Privileges Committee of SHC and the Credentialing Committee of LPCH will coordinate the administration of this function. The Med Staff Leader will consult with the relevant service chief (department chair), as well as the appropriate Senior Associate Dean for Clinical Affairs (Adult or Pediatric) and, as necessary, experts in the specific field of the proposed treatment. The Med Staff Leader may also consult with members of the review

committee (see below). It is expected that most consultation requests can be resolved at this point. In the event the designated leader is unavailable, the appropriate Med Staff leader will be responsible for ensuring a timely and effective review. The Director of Medical Staff Services will provide the contact information for this initial consultation.

- b) If, after reviewing the planned treatment and discussing it with the treating physician, the Med Staff Leader, along with the chief/chair and Senior Associate Dean, determine that more extensive consultation is needed, an appropriate innovative care review committee [Committee] will be convened. The Committee is a standing committee designed for rapid response and flexibility in composition for expertise. It consists of a core group of physicians with expertise in credentialing and ethicists who are part of the Spectrum Research Ethics Consultation Service. In addition, for each specific case, the Committee may be revised to include a physician, unaffiliated with the patient's care team, but with domain expertise, as well as ethicists and individuals experienced in both clinical care and research. The final composition of each Committee panel may vary depending on the nature of the questions posed by the proposal, but shall not become so large as to delay review or response.

The Med Staff Leader will keep the relevant service chief and Senior Associate Dean apprised of the Committee process and will provide them with the proposed determination prior to a final recommendation being made. The final recommendation will be submitted to the treating physician, the Med Staff Leader, the chief/chair, and the Senior Associate Dean.

- c) On occasion, a member of a patient's care team other than the treating physician may have questions about whether a planned treatment is innovative care. If feasible, that individual should bring these Guidelines to the physician's attention. If this is not feasible, the individual should bring the situation to the attention of the appropriate Med Staff Leader. The Med Staff Leader should discuss with the treating physician and consult with the service chief (department chair) and the appropriate Senior Associate Dean for Clinical Affairs (Adult or Pediatric). If there is continuing concern or disagreement, there should be a more extensive review by an appropriate innovative care review committee as described above.
- d) Committee Review Considerations and Outcomes:
- If the Committee believes that the proposed care is not truly innovative and should be considered under an existing privileging process, the requesting physician will be referred to the Credentialing and Privileging Committee.
  - If the Committee believes that the proposed care would be better undertaken as a research project, the physician will be asked to consider developing a research protocol

for submission to the IRB. The Clinical and Translational Research Center (Spectrum) will provide consultation and advice to the Committee and physician as requested on issues of compliance and/or experimental design. The physician should understand that carrying out human subjects research without an approved IRB protocol is not permitted.

- If the Committee believes that the apparent risk-benefit ratio *does not* support proceeding with the proposed care, it will communicate that opinion to the requesting physician and the Chief of Staff. Physicians who nevertheless proceed under such circumstances will understand that their actions are susceptible to *post hoc* peer review action. If the Chief of Staff determines that the proposed care is clearly imprudent and/or actually constitutes a threat to patients, action will be taken to prevent it from taking place at SUMC.
- If the Committee agrees that the proposed care is innovative and reasonable, approval may be given to proceed as proposed. It would normally be recommended that the treatment be restricted to a small number of patients (e.g., one to five). The Med Staff Leader will continue to provide support and consultation as well as to monitor the outcomes of the care.
- The principles of voluntary, informed consent to treatment must be respected even if the innovative treatment does not require the rigor of a research protocol. An enhanced consent process, including information about the innovative nature of the treatment, a detailed discussion of potential risks, and the alternative of receiving standard care, may be necessary to adequately inform the patient. In addition, a process for notification about adverse events and outcomes should be set up.
- If the activity is not initially recommended for consideration as a research project, but the physician decides to offer the intervention to a larger number of patients, there may be an ethical obligation to systematically study the intervention under a research protocol, if efficacy or safety is unknown. A “tracker” trial (Lilford et al., 2000<sup>1</sup>) might be recommended, and a consultation with the statistical consultation service could be advised.
- When there are multiple requests for approval of the same or very similar treatments, either serially from a single practitioner or from multiple practitioners, the Committee will consider whether the treatment should no longer be considered “innovative”. If so, the Credentialing and Privileging Committee will be asked to develop privileging criteria

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<sup>1</sup> Lilford RJ, Braunholtz DA, Greenhalgh R, et al. Trials and fast changing technologies: the case for tracker studies. B.M.J. 2000;320: 43–46.

in consultation with the appropriate service and/or division chiefs. However, medical staff should continue to follow these guidelines for approval of further treatments pending establishment of those privileging criteria. Alternatively, the Committee may recommend to the Credentialing and Privileging Committee that any further treatments would be best undertaken as research carried out with IRB approval. The Credentialing and Privileges Committee will make the final determination about continuing the treatments.

e) Record keeping:

The office of the Director of Medical Staff Services will keep records on:

- The number of requests
- How they are triaged
- How many innovative treatments become research
- Other relevant information as it becomes defined through use of the Guidelines

## FAQs

### **Q. Is what I am doing research or innovative care?**

- A.** Federal regulations define research as a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. The purpose of research is primarily to seek new knowledge, to reorder existing knowledge, or to apply existing knowledge to a new situation.

In contrast, the primary purpose of innovative care is to benefit a patient(s), not to collect data to support a hypothesis or theory. Innovative care is a non-standard procedure or treatment that is solely attempted to enhance the wellbeing of a patient. Innovative care is sometimes called 'nonvalidated' treatment, since it has not been formally evaluated for safety or effectiveness.

For additional information, see the Reference Definitions on page 7.

### **Q. What kind of oversight is required for research?**

- A.** Procedures and therapies that are determined to be research require review by the Institutional Review Board (IRB) in the Research Compliance Office. If you are uncertain if your proposed treatment should be considered research, you should begin with a consultation with the appropriate Medical Staff Leader identified in these Guidelines.

### **Q. What kind of review and monitoring is recommended for innovative care?**

- A.** Innovative care should be reviewed prospectively and monitored according the process described in these Guidelines. For innovative therapy/procedures that present a significant increase in risk over other acceptable alternatives or if the therapy/procedure is so novel or unique that it is not possible to evaluate the risk or benefit, an appropriate innovative care review committee may be organized to review the reasonableness of the proposed treatment and the patient's situation and to make recommendations to the appropriate Medical Staff Leader, your service chief, the appropriate Senior Associate Dean for Clinical Affairs (Adult or Pediatric) and you.

### **Q. Does every procedure that diverges from accepted practice fall under these Guidelines?**

- A.** It depends on the degree of deviation and the associated risks. The higher the associated risks, and the larger the divergence from accepted practice, the more important it becomes to consult the appropriate Med Staff Leader identified in these Guidelines. When in doubt, consult. The Medical Staff Organization, in consultation with the appropriate Senior Associate Dean for

Clinical Affairs (Adult or Pediatric) and the relevant service chief, is ultimately responsible for determining what kind of monitoring, support or oversight (if any) your activity requires.

**Q. What if my approved innovative treatment/procedure is successful and I want to repeat it?**

**A.** If you want to repeat the treatment beyond the number of times initially authorized, you should consult with the appropriate Med Staff Leader, who will in turn consult with the Committee that initially reviewed your treatment plan under these Guidelines. The Committee will consider whether the treatment should no longer be considered “innovative.” If so, the Credentialing and Privileging Committee will be asked to develop privileging criteria in consultation with the appropriate service and/or division chiefs. However, you should continue to follow these Guidelines for approval of further treatments pending establishment of those privileging criteria. Alternatively, the Committee may recommend to the Credentialing and Privileging Committee that any further treatments would be best undertaken as research carried out with IRB approval. The Credentialing and Privileges Committee will make the final determination about continuing the treatments.

**Q. What if I want to publish the outcome of or describe the procedures I’ve done in a medical journal article?**

**A.** The Federal Office of Human Research Protections (OHRP) has said that “the intent to publish is an insufficient criterion for determining whether an activity involves research.” Planning to publish an account of an activity does not necessarily mean that the project fits the definition of research. People seek to publish descriptions of clinical activities that are not research for a variety of reasons. In fact, Kennedy and Eaton (2007)<sup>2</sup> feel that “all innovating physicians should assume a duty...to educate about the impact of their changes on patient care.” They go on to say that “If formal research is not conducted...the least that innovating physicians can do is to collect outcome data on their patients and use it to inform themselves and other physicians.”

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<sup>2</sup> Eaton, Margaret L. and Donald Kennedy. Innovation in Medical Technology. Ethical Issues and Challenges. Baltimore: Johns Hopkins Press, 2007.

## Reference Definitions

### **OHRP (Federal Office for Human Research Protections and the Common Rule)**

**Research** means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research, whether or not they are conducted or supported under a program which is considered research for other purposes. [45 CFR 46 102(d)]

### **FDA**

**Clinical Investigation** means any research experiment that involves a drug, device, or biologic and one or more human subjects and is subject to requirements for prior submission to the FDA (e.g., a change in labeling) or the results of the research (e.g., safety and efficacy) are intended to be submitted to the FDA as part of an application for a research or marketing permit. Such research requires both IRB and FDA reviews. The terms research, clinical research, clinical study, study, and clinical investigation are deemed to be synonymous for this definition. [21 CFR 50.3(c)]

**Off-Label Use of Marketed Drugs, Devices, and Biologics** refers to use of a product for an indication not in the approved labeling. Good medical practice and the best interests of the patient require that physicians use legally available products according to their best knowledge and judgment. If physicians use a product for an indication not in the approved labeling, they have the responsibility to be well informed about the product, to base its use on firm scientific rationale and on sound medical evidence, and to maintain records of the product's use and effects. Use of a marketed product in this manner when the intent is the "practice of medicine" does not require a submission to the FDA or review by an IRB. [FDA Guidance documents]

### **Belmont Report and Other Sources**

**Innovation** is when a physician departs in a significant way from standard or accepted practice. The innovation does not, in and of itself, constitute research. The fact that it is new, untested or different does not automatically place it in the category of research. [Belmont Report, 1979]

**“Innovative treatment”** is an activity designed primarily to benefit the individual patient, but where the activity is un-validated, i.e., where there is limited evidence to establish that the activity will be successful. It will typically be offered to a small number of individuals on an ad hoc basis.

**“Treatment”** is defined as an activity designed primarily to benefit the individual patient (and can include diagnostic, prognostic, or therapeutic activities) where there is a reasonable expectation of success.



**Practice** refers to interventions that are designed solely to enhance the well-being of an individual patient or client and that have a reasonable expectation of success. The purpose of medical or behavioral practice is to provide diagnosis, preventive treatment, or therapy to particular individuals. [Belmont Report, 1979]

**Research** designates an activity designed to test a hypothesis, permit conclusions to be drawn, and thereby to develop or contribute to generalizable knowledge (expressed for example in theories, principles, and statement of relationships). Research is usually described in a formal protocol that sets forth an objective and a set of procedures designed to reach that objective. [Belmont, 1979]

**“Research”** means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. It is usually described in a formal protocol that includes a clear objective and a set of procedures to reach that objective. Publication alone does not necessarily constitute research (e.g., a case series).