



Food and Drug Administration
Washington DC

By Fax: 301-827-6870

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**Comments on Docket Nos. 2006N-0061 and -0062
RIN 0910-AF13 and AF-14**

**“Expanded Access to Investigational Drugs for Treatment Use” and
“Charging for Investigational Drugs”**

Vital Therapies is a small, private drug development company based in San Diego. Our lead product, ELAD®, for the treatment of life threatening liver failure, has completed phase 1 and 2 trials in the USA and is now completing its pivotal trial in China. We have an open IND with FDA and will be submitting an allowance to FDA to conduct a pivotal phase 3 study later this year.

ELAD consists of four dialysis-like cartridges grown with a proprietary line of human liver cells and is delivered to the patient on an extracorporeal bedside unit. The live cartridges are difficult and expensive to manufacture and currently cost about \$25,000 per patient. Since we are breaking new ground in cell culture manufacturing, we cannot contract out production of ELAD but must manufacture in our own GMP plant, which is expensive and challenging to operate.

ELAD has been in development for over 16 years and is now giving remarkable results in the China trial.

We would like to respectfully offer the following comments on FDA’s proposed “Expanded Access to Investigational Drugs for Treatment Use” and “Charging for Investigational Drugs”.

**1. Expanded Access to Investigational Drugs for Treatment Use
Docket No. 2006N-0062
RIN 0910-AF14**

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2006N-0062

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Vital Therapies, Inc.

We fully support the intent and substance of this proposed new regulation. We applaud your effort to improve access to investigational drugs for immediately life threatening diseases and intend to take advantage of this new opportunity.

In our clinical trials, we have seen the devastating impact of severe liver disease and have grieved for patients who have died as a result of there being no treatment options except donor-limited transplantation. We have also experienced the euphoria of seeing patients' lives being saved with ELAD and welcome the chance to make it available prior to formal market approval.

2. Charging for Investigational Drugs

Docket No. 2006N-0061

RIN 0910-AF13

We note that FDA says on page 75173 of the Federal Register: "The purpose of permitting cost recovery for expanded access is to encourage sponsors to make investigational drugs available for treatment use". However, it seems that the new regulations are more restrictive than the current regulation and will not provide a financial incentive to make such drugs available since a large proportion of costs are excluded.

The new regulation only allows charging for direct costs and for administering treatment use programs and leaves the sponsor to absorb the other costs which, for a product like ELAD, are substantial. While a large pharmaceutical company may find this to be no barrier, it is a significant disincentive to a small company such as ours which is struggling to bring an innovative life saving therapy to market.

Please consider adding several categories of costs to be eligible for inclusion in the charge. Examples are:

- *Allocation of production fixed costs.* In our case, we would envision utilizing the same facility to manufacture ELAD cartridges for our clinical trial and expanded access patients. There is considerable capital investment and fixed manufacturing expense involved. We suggest that sponsors be allowed to allocate these costs on a pro rata basis to the product used in the expanded access program. This

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enables the sponsor to recoup some of the fixed costs and provides an incentive. It also sets the cost at the level that a sponsor would incur if the product manufacturing is contracted out, insuring that a sponsor that manufactures its own product is not placed at a disadvantage to one that contracts out the production since the latter is allowed to charge for the expense that it pays the contractor, which will include this overhead plus a profit.

- *Cost of drug delivery.* These costs can be substantial due to formulation, packaging, instrumentation, monitoring, disposables, set-up, nurses and similar costs. For ELAD, we require an expensive bedside unit, disposables and trained staff, which will add several thousand dollars per patient. We should be allowed to recover these costs.
- *Research and Development.* We regret that this cost has been eliminated from the eligible charges. We would like to see it reinstated and better defined to remove the subjective element in the current regulation. This is a very substantial cost and allowing some recovery would indeed provide some of the incentive that you seek. May we suggest that it be included and defined as the portion of cost of regulatory and clinical development activity calculated by a pro rata allocation between the expanded access and regular clinical trial quantities of drug used. Discovery and product research would be specifically excluded.

If these amendments could be made, then there would be a much better incentive to participate and to benefit patients with life threatening diseases.

Respectfully



Terry Winters, PhD, Chairman and CEO



Kameron Maxwell, PhD, COO