ACCESS TO MEPACT® (MIFAMURTIDE) IN THE UNITED STATES

In the United States, current treatment for osteosarcoma primarily involves surgery and chemotherapy. However, other therapies are available outside of the United States. These include Mepact (mifamurtide), a pharmaceutical product used for post-surgical treatment of non-metastatic osteosarcoma after complete surgical removal in children, adolescents and young adults, and intended for use in combination with multi-agent chemotherapy. Though not approved for use in the United States, Mepact is approved in the EU and a number of other countries. Mepact may potentially be obtained by U.S. patients in coordination with the U.S. Food and Drug Administration ("FDA"), through the FDA's "personal importation" policy.

Working with FDA

Osteosarcoma patients or patient advocates (e.g., parents) who are interested in obtaining access to Mepact for an osteosarcoma patient in the United States should work with FDA's Office of Health and Constituent Affairs ("OHCA"). OHCA is meant to serve as a bridge between patients, their advocacy groups and FDA. FDA has a designated cancer patient liaison and expanded access and personal importation liaison for patient, caregiver and industry inquiries at OHCA. This position is currently filled by Deborah Miller, who can be reached at Deborah.miller@fda.hhs.gov or 301-796-8472.

As a first step, patient advocates should send an email to the FDA cancer patient liaison with the following information:

1. A statement that his/her child has osteosarcoma.
2. A statement that he/she would like to personally import Mepact for his/her child's personal use.
3. A short statement of the other treatments that his/her child has already undergone.
4. A statement that he/she has a physician who will be treating his/her child with the drug, along with the name and contact information for the physician (address, phone, email).

After being contacted via email, the FDA cancer patient liaison will typically respond with specific instructions for how that patient advocate should proceed. In the past, this correspondence has included templates for letters that needed to be sent, along with other information. The FDA cancer patient liaison may coordinate with other offices and divisions within FDA and with Customs and Border Protection (CBP). The FDA cancer patient liaison may also communicate with the physician who will be responsible for treating the patient, and may facilitate access to third parties who are able to assist in securing access to the drug within the parameters of the personal importation program.

For more information about OHCA, please visit the OHCA webpage.

Questions & Answers

1. *Under what circumstances will FDA allow the personal importation of a pharmaceutical drug like Mepact?*

   FDA generally permits the personal importation of a prescription drug under the following circumstances.

   - The product is for a serious condition for which effective treatment may not be available domestically either through commercial or clinical means.
   - There is no known commercialization or promotion of the product to persons residing in the U.S.
   - The product does not represent an unreasonable risk.
   - The consumer affirms in writing that the product is for personal use.
   - The quantity is generally not more than a three month supply, and either:
     - The name and address of the doctor licensed in the U.S. who will be responsible for the consumer's treatment with the product is provided, or
     - Evidence that the product is for the continuation of a treatment begun in a foreign country is provided.

   Personal importation, rather than "expanded access," is generally the appropriate mechanism by which to access a drug that is neither approved nor under investigation in the United States, but which is available in another country (and which satisfies the conditions listed above). Please visit FDA's Personal Importation page and see FDA's Personal Importation Policy (PIP) Frequently Asked Questions (FAQs) for further information.

2. *What is the difference between "Right to Try," "Expanded Access" and "Personal Importation"?*

   The Trickett Wendler, Frank Mongiello, Jordan McLinn, and Matthew Bellina Right to Try Act of 2017 (the "**Right to Try Act**") was signed into law on May 30, 2018. The law makes investigational drugs that meet certain criteria accessible to eligible patients who would like to try them prior to the receipt of marketing authorization by the Food and Drug Administration, provided those patients meet certain criteria. In particular, the Right to Try Act enables eligible terminally ill patients to seek potential treatment with drugs that have completed a Phase 1 clinical trial but have not been approved by FDA.

   Though there are risks involved in the use of investigational therapies, the contended advantage of the "right to try" is that patients suffering from terminal conditions may have the opportunity to access treatments that, while still experimental, could prove beneficial. Critically, however, the Right to Try Act does not *require* pharmaceutical companies to provide the requested investigational drugs. Indeed, despite the fact that the law is referred to as the Right to Try Act, the law makes clear that it "does not establish a new entitlement or modify an existing entitlement, or otherwise establish a positive right to any party or individual." Pharmaceutical companies may be hesitant to provide such

drugs to patients due to a variety of considerations, including concerns regarding potential negative clinical outcomes or side effects, cost concerns or supply considerations. The Right to Try Act attempts to address certain of these factors. The law also establishes annual reporting requirements for sponsors of eligible investigational drugs, pursuant to which information will be made available on FDA's website regarding the uses for which the drug was made available, the number of patients treated and any known serious adverse events that occurred, along with other information.

To date, FDA has taken steps to implement the Right to Try pathway, but these efforts are still getting off the ground. In particular, on July 27, 2018, FDA Commissioner Scott Gottlieb told the House Energy & Commerce Committee that FDA had created a working group to look at how FDA can properly implement the right to try legislation, and FDA has created a Right to Try webpage which summarizes the provisions of the statute and informs patients interested in the Right to Try pathway to discuss the pathway with their physicians.

Prior to the Right to Try Act's passage, FDA already had an **Expanded Access** (or "**Compassionate Use**") program in place, which provides a pathway for patients with an immediately life-threatening condition or serious disease or condition to gain access to an investigational medical product (a drug, biologic or medical device) for treatment outside of clinical trials, when no comparable or satisfactory alternative therapy options are available. The Right to Try pathway is meant to provide an alternative pathway to this Expanded Access Program. One apparent difference at this stage is that Expanded Access requires the submission of a request to FDA, while the Right to Try Act does not establish such a requirement. However, the full extent of the differences between the two programs is likely to be shaped by how FDA ultimately implements the Right to Try pathway. While such implementation continues to take shape, FDA has simultaneously continued to administer its existing Expanded Access Program. In November 2018, the Agency announced plans to establish the Patient Affairs Staff and Health Care Provider Affairs Program, to help patients and physicians navigate the Expanded Access Program. Please visit FDA's Expanded Access for further information on this pathway.

While Expanded Access and Right to Try are both for drugs that are under investigation in the United States, Personal Importation is a pathway for drugs that are neither under investigation nor approved in the United States, but which are available in another country and satisfy certain conditions for personal importation (see Question 1, above).