

# CUPA

## The NYU Grossman School of Medicine Working Group on Compassionate Use and Preapproval Access

A Project of the NYU Grossman School of Medicine Division of Medical Ethics

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### 2019 Annual Report

The Working Group on Compassionate Use and Preapproval Access is proud to share its accomplishments from 2019 in our fourth annual report. As we enter a new decade—and our sixth year of work on preapproval access—we look forward to continuing to implement our mission: to advance research, policy, and education regarding the ethical issues surrounding access to investigational medical products, with the goal of ensuring the fair and transparent treatment of all patients.

#### Research

CUPA members continue to publish widely in the academic literature, advancing the conversation about ethical issues related to preapproval access.

- Arthur Caplan and Russell Teagarden, along with Hans Peter Bacher and Michael Jarvis, proposed “[A Patient Centric Model for Discontinuation of a Single-Sourced Approved Drug](#)” in *Clinical Pharmacology & Therapeutics* on April 12. The authors described the planning necessary to best accommodate those patients receiving a drug through a preapproval access program when development of the drug is discontinued.
- Carolyn Riley Chapman, Kelly Folkers, Andrew McFadyen, Lesha Shah, and Alison Bateman-House contributed a commentary to the June issue of the *American Journal of Bioethics*. “[Preapproval Nontrial Access and Off-Label Use: Do They Meet Criteria for Dual-Deviation Review?](#)” was a response to Jake Earl’s target article, “[Innovative Practice, Clinical Research, and the Ethical Advancement of Medicine](#),” which appeared in the same issue. They used preapproval access and off-label use of approved medical products to contextualize Earl’s argument about innovative medical practice that lies between treatment and research.
- Alison Bateman-House was a coauthor of “[Addressing the Dichotomy Between Individual and Societal Approaches to Personalised Medicine in Oncology](#),” in the June issue of the *European Journal of Cancer*. This article explored the tension between increasing calls for personalized oncology treatments based on individual molecular profiles and the need to make resource and regulatory decisions at the societal level in differing healthcare delivery systems around the globe.
- Jinsy Andrews, along with Lucie Bruijn and Jeremy Shefner, wrote about “[ALS Drug Development Guidances and Trial Guidelines: Consensus and Opportunities for Alignment](#)” for *Neurology* on June 6. Their paper discussed the FDA’s draft guidance for drug development for amyotrophic lateral sclerosis (ALS) and the external input from stakeholders within the ALS community. They recommended that patient engagement play a key role in every aspect of the drug development process.

CUPA members also conducted two empirical research studies, on the extent to which people understand preapproval access and on the availability of information available to them.

- Carolyn Chapman headed up an article published on April 9 in AJOB Empirical Bioethics that reported the results of a cross-sectional survey she conducted with Jenni Shearston and CUPA's Kelly Folkers, Barbara Redman, Arthur Caplan, and Alison Bateman-House. "[Single-Patient Expanded Access Requests: IRB Professionals' Experiences and Perspectives](#)" reveals that surveyed IRB professionals believe that single-patient expanded access requests should be reviewed by IRBs and that their respective IRBs are prepared to handle such requests.
- Kelly Folkers and Arthur Caplan examined, with Sarah Leone, "[Patient Advocacy Organizations' Information for Patients on Pre-Approval Access to Investigational Treatments](#)," in BMC Research Notes on Oct. 28. The article reports the results of an analysis of the quantity and quality of information posted on U.S. patient advocacy organization websites. The authors conclude that "...the quality and quantity of resources PAOs provide could influence patient decision making. The lack of information regarding non-trial preapproval access highlights areas in need of improvement."

CUPA has become increasingly interested in non-trial preapproval access to genetic technologies. "[What Compassionate Use Means for Gene Therapies](#)," by Carolyn Chapman, Kenneth Moch, Andrew McFadyen, Lisa Kearns, Tom Watson, Pat Furlong, and Alison Bateman-House, marks CUPA's first publication concerning this burgeoning therapeutic pathway. The article, in the April issue of Nature Biotechnology, reviews ethical concerns raised by both the manufacture of and access to gene therapies. In the December issue of the AMA Journal of Ethics, Carolyn Chapman and Arthur Caplan published "[How Should Physicians Respond When They Learn Patients Are Using Unapproved Gene Editing Interventions?](#)" in which they consider the hypothetical case of a patient with chronic pain who receives a CRISPR-based intervention outside the U.S.

### Policy

In "['Rescue Me' Revisited: A Five-Year Perspective on Preapproval Access to Experimental Medicines](#)," published by Health Affairs Blog on Nov. 1, Arthur Caplan and Kenneth Moch revisit the 2014 Josh Hardy case and review the many changes in preapproval access since then. These include the increasing influence of patient advocacy groups on preapproval access, the impact of attention to real world data and evidence, changes in legislation and regulatory policy, and more. They conclude with a call for transparency and continued attention to the ethical challenges of compassionate use.

CUPA continues to follow Right to Try (RTT) legislation in the U.S. and track the policy implications of this pathway. Kelly Folkers, Carolyn Chapman, and Barbara Redman surveyed the historical context and current landscape of RTT in "[Federal Right to Try: Where Is It Going?](#)" for the March-April issue of the Hastings Center Report. They conclude: "The newly enacted [federal law] will generate greater demand for experimental therapies, but whether the law will help patients get these therapies is unclear."

To CUPA's knowledge, fewer than 10 patients have received access to an investigational product via the federal Right to Try law. All but one of these cases are related to the cancer vaccine produced by ERC-USA, a U.S. subsidiary of the Brussels-based pharmaceutical company Eritopoietic Research Corporation. In January 2019, a patient at the University of California, Irvine, received access to this vaccine. This led Arthur Caplan, Kelly Folkers, and Andrew McFadyen to write "[A Bizarre Claim of Right to Try](#)", which was published in the Health Care Blog. Kelly Folkers and Alison Bateman-House dissected

the case further in the Feb. 1 issue of the Cancer Letter in an essay entitled "[Glioblastoma Patient Is First to Receive Treatment under Right to Try. Our Question Is Why?](#)" They conclude, "In an area already rife with confusion, right to try laws are only making it more difficult to navigate seeking non-trial access to unapproved agents. To help patients with no other possible treatment options who wish to try experimental treatments, we need one system that works for everyone. Using RTT laws moves us further away from that possibility."

Arthur Caplan asserted that there has been minimal uptake of RTT in an opinion piece for STAT News on June 3, "['Right-to-Try' Laws Provide Little Access to Investigational Drugs. We Created a Process that Does.](#)" He acknowledges that while "real issues exist in getting very sick patients onto the pathway that right to try was meant to create," workable solutions to patient access should be pursued—such as the [Compassionate Use Advisory Committees](#) that he chairs. CompAC is a collaboration between the NYU Grossman School of Medicine and Janssen Pharmaceuticals through which independent, international panels of health professionals, medical ethicists, and patient representatives advise the company on the fair, transparent allocation of its investigational products. As Caplan notes in the article, CompAC has helped hundreds of patients gain access to investigational drugs, whereas the number who have been helped by RTT legislation "can currently be measured in single digits." Indeed, the Reagan-Udall Foundation for the FDA recognized the success of CompAC with an [Innovation in Regulatory Science Award](#) in December. Information about CompAC and publications stemming from the collaboration can be found through the link above.

CUPA's Ethics & Real World Evidence (ERWE) subgroup expanded its leadership this year and will be ramping up its activities in 2020. Members are interested in the use of real world evidence, defined by the FDA as "the clinical evidence about the usage and potential benefits of a medical product derived from real world data," which are "data relating to health status and/or the delivery of healthcare routinely collected from a variety of sources." ERWE's mission is to research and advance policy approaches for the interpretation of real world data and the generation of real world evidence by centering ethical concerns, patient welfare, and societal issues at the core of its work. Its goal is to identify best practices for the ethical use of real world evidence by industry, regulatory bodies, and payers, with a specific focus on non-trial preapproval access as a source of real world data. ERWE's members include experts in bioethics, biostatistics, industry, patient advocacy, and big data.

### Education

CUPA updated its frequently asked questions page, a popular section of the group's website. Please feel free to use this [FAQ](#) as a resource and to share it widely.

In November, CUPA hosted a free webinar, "Introduction to Preapproval Access to Investigational Medical Products," featuring Lisa Kearns, Alison Bateman-House, and Christopher Robertson. It covered non-trial preapproval access to drugs, biologics, and vaccines and explained the two pathways for preapproval access in the United States: Expanded Access and Right to Try.

CUPA is hosting its inaugural solo conference, "[Non-Trial Preapproval Access to Investigational Medical Products: Lessons Learned and Practical Advice Moving Forward.](#)" on January 13 in New York City. Experts from all stakeholder groups involved in preapproval access are participating.

This year, CUPA members were quoted and our work cited in the following journals and news outlets:

BioCentury	New Scientist
BreastCancer.org	Pink Sheet/Pharma Intelligence
The Cincinnati Enquirer	RAPS Regulatory Focus
CNN.com	Relias Media
FactCheck.org	Science Based Medicine
Fox Business	Sinclair Broadcast Group
JAMA	S&P Global Market Intelligence
JAMA Oncology	STAT News
Journal of Clinical Pathways Podcast	USA Today
Medscape	The Washington Examiner
Nature Medicine	The Washington Post
NBC	The Verge
The New York Times	Yahoo News

CUPA members spoke at the following events and for the following groups:

9th Annual Conference on Orphan Drugs and Rare Diseases	Food and Drug Law Institute
American Society for Bioethics and the Humanities Annual Meeting	Icahn School of Medicine at Mount Sinai, Public Health Program
Amicus Therapeutics	International Bar Association's 7th Annual World Life Sciences Conference
Boston Bar Association	Oligonucleotide-Based Therapeutics Conference
Capital Health Medical Center	Life Science Compassionate Access Summit
CBI Expanded Access Programs Conference	National Academy of Science/Biomedical Engineering Materials Applications Roundtable (BEMA)
Charité BIH Entrepreneurship Summit	New York State Bar Association's Health Law Section's Annual Meeting
Coalition Against Childhood Cancer (CAC2) Summit	NYU Grossman School of Medicine Department of Population Health
Columbia University, School of Social Work	NYU Tisch Hospital Ethics Committee
DIA Global Annual Meeting	PRIM&R's Advancing Ethical Research Conference
Early and Managed Access Programmes Europe	
Expanded Access Summit	

The Rare Fair

Wake Forest Journal of Law and Policy Symposium

Society for Clinical Trials Annual Meeting

Weill Cornell Medicine

American Society of Gene & Cell Therapy Annual Meeting

WIRB-Copernicus Group

Technology & Rare Neurological Diseases Symposium

World Orphan Drug Congress

We are so grateful for your continued interest in and support of CUPA's mission! We believe that our research and scholarship into the ethical issues surrounding preapproval access is of vital, practical import to patients, industry, and the public. If you would like to receive our free monthly newsletter, contact [Kelly Folkers](#). If you would like to support CUPA—which operates solely on donations—please contact [Lisa Kearns](#).

We're excited to dive into the next decade and to continue our work!

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