INFORMED CONSENT DOCUMENTATION: HOW TO DO IT RIGHT!

Emory University
Institutional Review Board
Webinar Objectives

- Overview of Consent = Process + Documentation
- Participants in Informed Consent Process
- Logistics of Informed Consent
Informed Consent

Informed consent is not just a document….it is also a PROCESS

“Rather than an endpoint, the consent document should be the basis for a meaningful exchange between the investigator and the subject.”

FDA IRB Information Sheets –“A Guide to Informed Consent”
ICF= Process + Documentation

- More than just a signature on a form.

- Process of information exchange that may include,
  - Reading and signing the ICF
  - Subject recruitment materials
  - Verbal instructions
  - Q/A sessions and measures of subject understanding.

- Documentation that the consent process has been handled correctly is crucial!
Who is responsible?

- We all are!

- “Institutional Review Boards (IRBs), clinical investigators, and research sponsors all share responsibility for ensuring that the informed consent process is adequate.”

Participants in Consent Process

- Check study requirements to determine who needs to be involved in the informed consent process.

- Person should be trained regarding informed consent process and be knowledgeable about the study.

- FDA Requirements: IRB must know who will conduct consent process.
  - FDA does not require the that the PI personally conduct the consent process, but the PI is always responsible for ensuring process is completed correctly.
Participants in Consent Process

Translators:

- Informed Consent must be presented in a language understandable to the subject. [45 CFR 46.116 & .117]

- If a non-English speaking population is expected to enroll in a study, then consent documents should be in their language.
  - Discrimination claims

- Translated form should be approved by IRB.
Participants in Consent Process

- Participant must be given sufficient time to consider participation in the study.

- Federal Regulations: “An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence.” 45 CFR 46.116; 21 CFR 50.20.
When things go wrong...

FDA's regulations at 21 CFR 50.20 state that except as provided in 21 CFR 50.23 and 21 CFR 50.24, no investigator may involve a human being as a subject in research covered by the regulations unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. The regulation specifies that an investigator shall seek such consent only under circumstances that provide the prospective subject or the subject's representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. Section 50.27 of FDA's regulations further provides that informed consent shall be documented by the use of a written consent document, which is to be signed by the subject or subject's representative only after the subject or the subject's representative is given adequate opportunity to read the document.

FDA WARNING LETTER 2/2/2009 (Dr. H. Neurological Assoc. of Albany)
When things go wrong...

For Protocol [(b)(4)], we were unable to determine from your site records if subjects gave informed consent prior to participation in the study and/or if subjects were given sufficient opportunity to consider whether or not to participate in the study. Specifically, we note that your site routinely used sign-in sheets to document the date and time of arrival of subjects.

Based on the times recorded for appointment time, sign-in, and the commencement of protocol procedures, it does not appear possible that you obtained legally effective informed consent from the subjects in the chart below, in compliance with 21 CFR 50.20 and 50.27. This is because either 1) study-related procedures are listed as having taken place prior to the scheduled appointment time and/or prior to the time the subject signed in, or 2) based on the study records, the time between the appointment time, the time the subject signed in and/or the commencement of the procedure(s) did not provide adequate opportunity for the subjects to read the informed consent document, and to consider whether or not to participate in the study, before signing the informed consent form. For example, Subject [(b)(6)] was enrolled into the study on March 25, 2006. The sign in sheet notes that Subject [(b)(6)] arrived at your site at 9:00 a.m. However, source documents showed that study related procedures were performed prior to the subject's arrival (i.e., a blood sample was drawn at 8:50 a.m. In addition, as detailed below...
Logistics of Informed Consent

- ICF should correctly document how and when informed consent process took place.

- ICF should correctly document who was involved in the process.
Logistics: Subject Signature

Informed Consent Document must be signed by:

- Subject; or

- Subject’s Legally Authorized Representative; or

- In the case of a child, the parent(s) or legal guardian of the child.

*Per 45 CFR 46.117(a) & 45 46.408(d); 21 CFR 50.27 & 50.55.*
When things go wrong

FDA Warning Letter 3/2/2009 (Dr. C., Mass. General Hosp.):

You failed to obtain legally effective informed consent [21 CFR part 50 and 21 CFR 312.60]

“Fabricated signatures of the subject's legally authorized representative were found on the consent forms for subjects 114403 and 114601, who were enrolled in protocol [(b)(4)], and subject 124402, who was enrolled in protocol [(b)(4)]. We note that you discovered the fabricated signatures through your own internal audit, and that you sent letters dated September 10, 2007 to the parents of subjects 114403 and 114601, and a letter dated December 11, 2007 to the representatives of subject 124402, requesting that the informed consent documents be signed again. In addition, you promptly reported the findings to the IRB. In your May 22, 2008 response to the Form FDA 483, you stated that you asked the study coordinator to ensure that copies of the original, signed consent forms were placed in the subjects' medical records, according to institutional policy, but you did not confirm this action. You stated that had this occurred, you would have been able to retrieve a copy of the original consent forms. You stated that it is presumed that your former research nurse (study coordinator) apparently falsified the signatures after she lost the original, signed consent forms. You also stated that you reported these findings to the Board of Registration in Nursing. As the clinical investigator, you are responsible for oversight of study activities delegated to study staff.”
Legally Authorized Representatives (LAR)

- Legally Authorized Representatives (LAR)

- LAR = An individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject’s participation in the procedure(s) involved in the research

*Per 45 CFR 46.102(c).*
LAR

- Must consider applicable state law: GA Law.
- Consider whether the research involves medical treatment vs. research that does *not* involve medical treatment.
- Medical treatment is considered “lawful surgical or medical treatment which may be recommended, prescribed or directed by a duly licensed physician.”
LAR

Research involving medical treatment:

- Is the person an adult or a minor?

- If a minor, is the minor emancipated, or does the research involve the type of procedure to which minor can consent.

- For example:
  - Research Involving Medical Treatment for Pregnancy, Childbirth, Pregnancy Prevention
  - Research Involving Treatment for Drug Abuse or Certain Venereal Disease
• Research involving medical treatment:
  • If an adult, look at whether person is of sound mind and body; is conscious, mentally unimpaired and physically able to read and/or hear and understand; and has not been declared to be legally incompetent.
  • If adult does not meet requirements above, then the following persons can consent:
    • Another adult, per legal document, e.g., advanced directive.
    • Adult child for parent.
    • Parent for adult child.
    • Adult for his/her brother/sister.
    • Grandparent for grandchild.
LAR

- If the research does not involve medical treatment, then:

- If adult cannot consent for himself/herself, another adult may consent if he/she has been legally delegated authority to do so by appropriate legal document, e.g., power of attorney.
Special Considerations

- **Subjects Who Cannot Read**
  - Person obtaining consent should read aloud entire consent document to subject.
  - Document that subject cannot read.
  - Provide adequate time to discuss and answer questions.
  - Impartial person (person not on study team) should witness consent process and document that process took place; subject understands research and consent process; and subject consented to participant.

- For persons who can’t write, “making their mark” is sufficient.
Dating the Consent Form

- **OHRP**
  - Signatures not required to be dated
  - Advisable to get date to show consent was signed prior to participation.

- **FDA**
  - In addition to signing the consent, the subject should enter the date of signature on the consent document, to permit verification that consent was actually obtained before the subject began participation in the study.
  - If consent is obtained the same day that the subject's involvement in the study begins, the subject's medical records/case report form should document that consent was obtained prior to participation in the research.

Dating the Consent Form

Neither the PI nor the Research Coordinator should enter a “date” for the subject’s signature. Only the subject or the subject’s legal representative should enter a date for the subject’s or representative’s signature.
Issues with Dating

FDA Warning Letter 4/9/2009 (Dr. B., Snellville, GA)

- You failed to maintain adequate and accurate case histories that record all observations and other data pertinent to the investigation on each individual [21 CFR 312.62(b)].

- “For subjects 8202, 8203, and 8205, the dates next to the subjects' signatures on the consent forms were initially dated 6/8/06 and then changed to 6/15/06. For subject 8202, the date was then revised back to 6/8/06 and multiple date changes were made to most of the pages in the Screening Visit Source Documents for these subjects. No documentation was provided to explain these changes.”

- You failed to obtain informed consent in accordance with the provisions of 21 CFR Part 50 [21 CFR 312.60 and 21 CFR 50].

- “Subject 8210 was randomized to protocol [(b)(4)] on June 12, 2006. You did not obtain informed consent from this subject until June 26, 2006.”
Issues with Dating

FDA Warning Letter 3/2/2009 (Dr. C., Mass. General Hosp.):

- You failed to obtain legally effective informed consent [21 CFR part 50 and 21 CFR 312.60].

- “Informed consent documents were dated by study personnel rather than the legally authorized representative for subjects 114302, 114401, and 114504 enrolled in protocol [(b)(4)], and subject 124601 enrolled in protocol [(b)(4)]. In your May 22, 2008 response to the Form FDA 483, you acknowledged that it was your routine practice to insert the date yourself, prior to the parents’ signatures, in order to simplify the process. You stated that you now know that subjects and parents must date the consent forms themselves. We acknowledge your assurance that corrective actions have been taken to ensure that this finding is not repeated in any future studies.”
Copy of Consent

It is a federal requirement that the patient be given a copy of the consent form.

- “A copy of the consent document must be provided to the subject and the original signed consent document should be retained in the study records.”

- “Note that the FDA regulations do not require the subject's copy to be a signed copy, although a photocopy with signature(s) is preferred.”

Source Documentation

- Informed Consent Form + Source Documentation of Consent Process = No Audit Findings

- Remember to include in research and/or medical record a contemporaneous note describing consent process and statement that subject received a copy of the signed consent.
HIPAA

- Informed consent document may or may not have all elements necessary for HIPAA Authorization.

- If HIPAA Authorization is to be combined with the consent form, remember to check to make sure that all Authorization Elements are included.

"According to your HIPAA release form I can't share anything with you."
HIPAA

- Must be in writing unless otherwise approved by IRB.
- Must be signed by the patient or patient’s personal representative and dated.
- Must state what PHI will be used or disclosed and purposes of use/disclosure.
HIPAA

- Must state who may disclose PHI and to whom it may be disclosed.
- Must state that if PHI is re-disclosed it may not be subject to HIPAA.
- Must have an expiration date or event, or state that there is “none” because it is for research.
Common Audit Findings

- Informed consent process & documentation
- Accurate and complete study records
- Determination and documentation that eligibility criteria are satisfied
- Adverse event review and reporting
- Drug/Device accountability
- Protocol Adherence
- Poor regulator site documentation
- Failure to address monitor findings
Audit Findings for Consent Process

- Incorrect version date
- No source documentation of consent process and fact that subject was provided a copy of consent
- Consent not dated by the subject
- Check boxes left blank; pages not initialed by subject
- No HIPAA authorization
- Original consent missing
- Not re-consented when required
Resources

- Common Rule - [45 CFR Part 46](#)
- FDA - [45 CFR Parts 50 and 56](#)
- Office of Human Research Protections (OHRP) Guidance
- FDA Guidance on Informed Consent
If you have additional questions...

- Website: [www.irb.emory.edu](http://www.irb.emory.edu)
- Main Phone: 404-712-0720
- Education and QA Team
  - Maria G. Davila at (404)712-0724 or maria.davila@emory.edu
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Thank you!