# Practical Aspects of Informed Consent

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# What Is Informed Consent?

# Informed Consent in Human Research

- A vital step to any research project.
- The process in which a patient/participant voluntarily agrees to participate in a research project after being informed of its procedures, risks, and benefits.
- Must be obtained for all types of human subjects research (e.g., diagnostic, therapeutic, interventional, social and behavioral studies, and for research conducted domestically or abroad).

# Adequacy of Consent

- An investigator must 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
- The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. (See readability information in packet)
- No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

The VCU IRB has the authority to observe or have a third party observe the consent process and the research.

# Key Elements in Informed Consent

(1) disclosing to potential research subjects information needed to make an informed decision;

(2) facilitating the understanding of what has been disclosed; and

(3) promoting the voluntariness of the decision about whether or not to participate in the research

# When Is Informed Consent Required?

# General Requirements

**It has to be Human Subjects Research**

- **Research:** A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

- **Human Subjects:** Individuals whose physiologic or behavioral characteristics and responses are the object of study in a research project. Under the federal regulations, human subjects are defined as: living individual(s) about whom an investigator conducting research obtains: (1) data through intervention or interaction with the individual; or (2) identifiable private information.

# General Requirements

- Conducted or supported by the Common Rule (45 CFR 46) agency or covered by applicable FWA (We “check the box”)
- FDA (21 CFR 50.20)
- Not Exempt
- Not eligible for waiver of informed consent

# Waiver of Consent of Some or All Elements of Consent

The first situation [45 CFR 46.116(c)] is not used as frequently at VCU since the situation deals with specialized government programs.

- The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine: (i) public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; AND
- The research could not practicably be carried out without the waiver or alteration.

The second situation [45 CFR 46.116(d)] is used more frequently at VCU.

- The research involves no more than minimal risk to the subjects;
- The waiver or alteration will not adversely affect the rights and welfare of the subjects';
- The research could not practicably be carried out without the waiver or alteration; and
- Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

**Important Note: Researcher has to provide a rationale for waiver requests.**

# Waiver of Documentation

A waiver of documentation may be requested by the IRB under 2 (limited) circumstances:

45 CFR 46.117(c)

- That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. *Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; OR
- That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

IMPORTANT WAIVER NOTE: Limitations of waiver of documentation include the following:

- The VCU IRB cannot waive documentation of informed consent under 45 CFR 46.117(c)(1)(2) for FDA-regulated cannot waive documentation of informed consent under 45 CFR 46.117(c)(2) for FDA-regulated research.
- For EMERGENCY RESEARCH CONSENT Exception from Informed Consent, see special VCU IRB requirements at VCU IRB WPP#: XVII-16.
- If a PI requests waiver of informed consent documentation, the VCU IRB will review a written summary document that the investigators will use to guide them through the informed consent discussion/process (and will serve as an information guide to participants).

**Important Note: Researcher has to provide a rationale for waiver requests.**

# Who can Consent?

# Who Can Consent

VCU IRB must review credentials & responsibilities of the PI and staff. They will determine if study personnel are qualified for their roles/responsibilities. The PI attests to the staff training.

Responsibility

- It is the responsibility of the principal investigator to include all consent elements and plan for a consent procedure, which involves ongoing consent.
- "I understand and accept responsibility for ensuring the safety and welfare of all human subjects who participate in the proposed research study. I certify that all key study personnel, including myself, co-investigators, research coordinators, and students, have completed the VCU required training on human research protection at VCU.
- NOTE: The responsibilities of the principal investigator begin at the time of submission to the IRB. The VCU IRB reminds the principal investigator that he/she is ultimately responsible for all activities related to the research protocol, including the quality and timeliness of submission to the VCU IRB. Detailed information regarding submission requirements, ongoing reporting requirements, and terms of approval can be found within these WPPs.
- * PI must review the signed consents promptly.

# Required Signatures

VCU enforces the following requirements for all consent documents (beyond summary documents) unless waiver of all consent elements or waiver of documentation is approved:

- Subjects must sign and date the consent form, as required by the regulations.
- The Principal Investigator or equally qualified Sub-Investigator must sign and date the consent forms approved by the Panel
- The Panel also accepts the signature of a sub-investigator for the purpose of fulfilling this requirement. If a sub-investigator has signed the consent form, the investigator does not need to sign the form.
- The IRB recognizes that the investigator or sub-investigator is not always present when consent is obtained, and therefore does not expect that the date of the subject's signature will be the same as the date of the investigator's signature*. (BUT it must be signed promptly)*
- The Commonwealth of Virginia requires that a witness sign the informed consent document as a witness to the signature of the research subject (but not necessarily a witness to the entire consent process).
- In order to meet International Conference on Harmonization (ICH) guidelines, a dated signature line for the person conducting the informed consent discussion is required by the IRB.
- The IRB must consider whether one or two parents/guardians must sign the parental permission form for Categories 404 and 405. The form should allow signature lines for 2 signatories even if only 1 parent/guardian must sign.

# Informed Consent Process

VIRGINIA COMMONWEALTH UNIVERSITY

VCU

Make it real.

Office for Human Research Protections (OHRP)
Office for Protection from Research Risks

# TIPS ON INFORMED CONSENT

1. Informed Consent is a process, not just a form.
2. Designed to educate the subject population in terms that they can understand.
3. Used to document the basis for consent and for the subjects' future reference.
4. Must be written in "lay language", (i.e. understandable to the people being asked to participate).
5. Should be revised when deficiencies are noted or when additional information will improve the consent process.
6. Avoid use of the first person.
7. Avoid use of scientific jargon and legalese.
8. Should be revisited when new information is available.

http://www.hhs.gov/ohrp/policy/ictips.html

Secretary's Advisory Committee on Human Research Protections (SACHRP)
(SACHRP) October 27-28, 2008 Meeting Presentations
Subpart A Subcommittee (SAS)
http://www.hhs.gov/ohrp/sachrp/mtgings/mtg10-08/present/subparta.html

## Consent Process

- Pre-consent education
- (Continual) improvement of the consent process
- Determination of comprehension prior to enrollment
- Ongoing determination of comprehension
- Exit interview

## Ongoing Consent Process

- Consent never ends!
- As the study progresses, subjects often more clearly understand the purpose of the study and may have new questions
- Revisiting of main research components nurtures truly informed consent and contributes to the process (e.g., reuse initial tool, new consent document)

# Consent Must Be:

- Individual
- Voluntary
- Informed
- Effective
- Continuous / on-going
- Understandable

# HIPPA (Health Insurance Portability and Accountability Act

- HIPAA regulations use the term “authorization” to describe the process through which a patient allows researchers to access protected health information.
- Blanket authorizations for research to be conducted in the future are not permitted.  Each new use requires a specific authorization.
- The authorization for disclosure and use of protected health information may be combined with the consent form that a research subject signs before agreeing to be in a study.  It may also be a separate form.

# What Elements Should Be Included In An Informed Consent?

# Required Elements

- Study involves research
  - Purpose of the research
  - Duration of participation
  - Procedures to be followed
  - Procedures which are experimental
- Foreseeable risks and discomforts
- Reasonably expected benefits

**45 CFR 46.116;  21 CFR 50.25**

# Required Elements (cont.)

- Alternative procedures
- Protection of confidentiality
- For research involving greater than minimal risk: compensation/treatment, if any, for research-related injury
- Contacts for questions about the research, research-related injury, subjects' rights
- Voluntary participation, refusal without loss of benefits, withdraw at any time

**45 CFR 46.116, 21 CFR 50.25**

# Additional Elements (When Appropriate)

- Unforeseeable risks to subject (and fetus)
- Anticipated reasons for termination by investigator
- Additional costs to subjects
- Consequences of withdrawal by participant
- New findings; incidental, risks/benefits, etc.
- Number of subjects
- Mandated reporting
- Taxable income

**45 CFR 46.116, 21 CFR 50.25**

# Understanding Privacy Related to Informed Consent

The consenting discussion must take place in a location that protects the potential subject's privacy.

**PRIVACY** Control over the extent, timing, and circumstances of sharing oneself (physically, behaviorally, or intellectually) with others

**CONFIDENTIALITY** Pertains to the treatment of information that an individual has disclosed in a relationship of trust and with the expectation that it will not be divulged to others without permission in ways that are inconsistent with the understanding of the original disclosure.

http://www.hhs.gov/ohrp/archive/irb/irb_glossary.htm

# Reading Levels & Evaluation of Comprehension

- The procedures used in seeking and obtaining informed consent should be designed to communicate with the subject population in terms they can understand.
  - 6th- 8th grade reading level

VCU IRB Informed Consent Evaluation Tool

http://www.research.vcu.edu/forms/ICEval.doc

# Types of Informed Consent

Subject Consent

- Participants who are 18 or older
- Capable of giving permission to participate in a research study.

Parental Permission

- When a parent/guardian signs permission for children/minor to participate in research.
- Some situations require permission from at least one parent, while other situations require permission from both parents.

Assent Form

- Children in age ranges 7-11 & 12-17 who are capable of providing assent depending on the maturity and psychological state of the children involved on the research.
- The assent form must be written at the appropriate reading level for the lowest age in the range and use simple terminology.

# Types of Informed Consent (continued)

Verbal/ Telephone

- Still contains all elements of written consent, however, the participant is verbally read the elements and verbally agrees to participate.
- Scripts read by the researcher in consenting participants must be submitted to the IRB for review and approval.
- No “Cold Calling”

Short Form

- States the required elements of informed consent
- Generally used when there is a language barrier
- Witness needed

# Types of Informed Consent (continued)

It's not always a form!  For example:

- Internet Research
- Video consenting with comprehension questions
- Computer consenting with comprehension questions

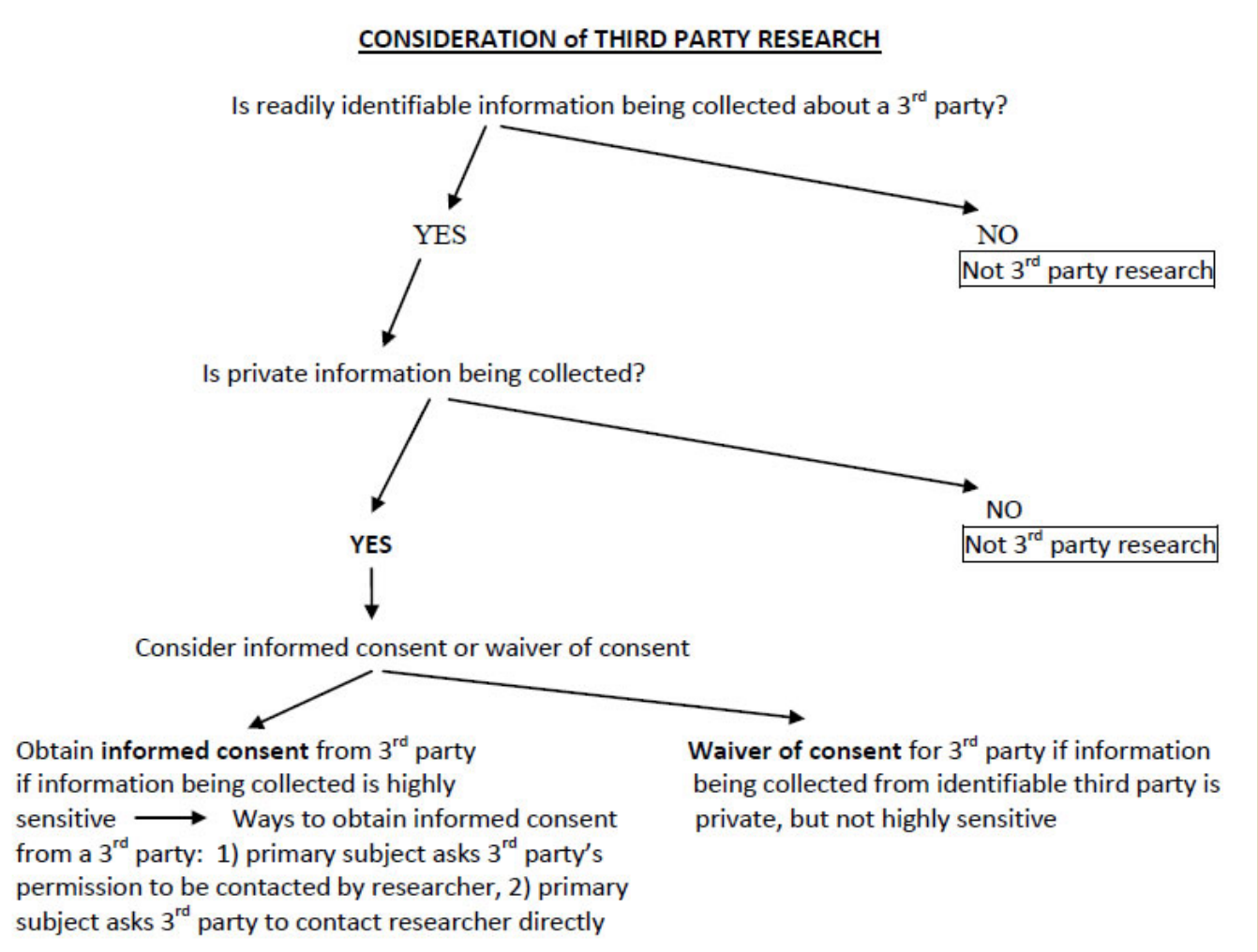
# Third Party Issues

- **Third (3rd) party**: Anyone other than the enrolled research subject who meets the definition of a 'human subject' in the regulations may be considered a third party.

As per 45 CFR 46.102(f), a human subject is: A living individual about whom an investigator conducting research obtains identifiable private information.

# Third Party Research

## Logic Tree



# LAR (Legally Authorized Representative)

VA Code §321.162.16:

1. the parent or parents having custody of a prospective subject who is a minor
2. the agent appointed under an advance directive, as defined in § 54.1-2982, executed by the prospective subject, provided the advance directive authorizes the agent to make decisions regarding the prospective subject's participation in human research
3. the legal guardian of a prospective subject
4. the spouse of the prospective subject, except where a suit for divorce has been filed and the divorce decree is not yet final
5. an adult child of the prospective subject
6. a parent of the prospective subject when the subject is an adult
7. an adult brother or sister of the prospective subject or
8. any person or judicial or other body authorized by law or regulation to consent on behalf of a prospective subject to such subject's participation in the particular human research

# Special Considerations

Emergency Research:

- The investigator is required to obtain informed consent of the subject or the subject's legally authorized representative, unless both the investigator and a physician who is not otherwise participating in the clinical investigation certify in writing [*21 CFR 50.23(a)*]:

# Continuous Consenting

It is both an initial and ongoing process, not just a form or document, which enables them to voluntarily decide whether or not to participate as a research subject (or to continue participation).

It is the responsibility of the principal investigator to include all consent elements and plan for a consent procedure, that involves ongoing consent.

http://www.research.vcu.edu/irb/wpp/flash/XI-1.htm

# Re-Consenting

- Consent is an on-going process. The PI may need to consent the subject again if:
  - A minor reaches majority (ages up)
  - Some aspect of the research is different than described in the Informed Consent document which represents the agreement between the subject and the PI.
  - Re-contacting is requested for more data, etc.
  - Subject's mental capacity improves/changes.
  - Risk to subjects' changes.
  - Considerable time passes between study contact.

# “Aging Up”

The human subject research regulations define “children” as follows:

- “Children” are persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted (45 CFR 46.402(a)).

http://www.hhs.gov/ohrp/policy/childrenfaqsmar2011.pdf

# What happens if a child reaches the legal age of consent while enrolled in a study?

- When a child reaches the age of majority, the parental/guardian permission and subject's assent are no longer in regulated by 45 CFR part 46.408.
- Unless the Institutional Review Board (IRB) determines that the requirements for obtaining informed consent can be waived, the investigators should seek and obtain the legally effective informed consent, as described in 45 CFR 46.116, for the now-adult subject for any ongoing interactions or interventions with the subjects.
- The IRB could approve a waiver of informed consent under 45 CFR 46.116(d), if the IRB finds and documents that the required conditions are met.
- The PI should seek and obtain the legally effective informed consent of the now-adult subjects if
  - The research continues to meet the regulatory definition of "human subjects research" (for example,
  - It involves the continued analysis of specimens or data for which the subject's identity is readily identifiable to the investigator(s)),
  - Even if it does not involve any ongoing interactions or interventions with the subjects.

# Where To Go For Additional Information

- FDA: http://www.fda.gov/

- DHHS: http://www.hhs.gov/
- VCU IRB WPPs: http://www.research.vcu.edu/irb/wpp_guide.htm
- VCU IRB Consent Templates:
  http://www.research.vcu.edu/forms/biomedical_consent_template.docx
  http://www.research.vcu.edu/forms/Social-BehavioralConsentTemplate.docx
  http://www.research.vcu.edu/forms/Social-BehavioralAssentTemplate.doc
- VCU IRB Forms: http://www.research.vcu.edu/forms/vcuirb.htm
- VA Code-LAR: https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+32.1-162.16

*Plus, see Links to Resources Page in your workshop notebook

# Thank You!