



# Stratton VA Medical Center IRB Standard Operating Procedure: Informed Consent Process

## REFERENCE DOCUMENTS

45 CFR 46

21 CFR 50, 56

38 CFR 16

VHA Handbook 1200.05 Requirements for the Protection of Human Subjects in Research

## POLICY

It is Stratton VA Medical Center's policy to comply with all applicable federal, state, and local regulations in the conduct of human subject research studies. Written procedures are required to guide the IRB in the review of informed consent.

### Consent Requirement

Investigators should understand that informed consent is a continual process throughout the participant's involvement in the research. Investigators should conduct the informed consent process in a way that meets the criteria for legally effective informed consent. The IRB requires that the investigator submit a summary of the consent process on the initial "Application to Undertake Research Involving Human Subjects" to include, but not limited to: examples, methods of communication, audio-visual disks, qualifications of persons conducting the consent interview, location, setting, time frame, family member involvement, etc. The IRB requires that all consent documents follow the Stratton VA IRB Consent Template to ensure that all required basic elements of information and appropriate additional elements of consent are present in the consent document as set forth in VA and other federal regulations. Consent forms must be approved by the IRB and signed by the subject or the subject's legally authorized representative, except in cases where documentation of informed consent is waived by the IRB. Exceptions are allowed on a case-by-case basis. The consent should be written at a 6<sup>th</sup> grade reading level and must be on the VA Form 10-1086. IRB approval of the consent document is documented through the use of a stamps on each page of Form 10-1086, which indicate the date and expiration of the most recent IRB approval of the document, whether full-board review, or expedited review when appropriate.

Unless informed consent has been waived by the IRB, the investigator must obtain consent prior to enrolling a subject into a study or conducting any study procedures required by the protocol. The consent document must be signed and personally dated by the subject or by the subject's legally authorized representative, and by the person who conducted the informed consent discussion. Before participation in the trial, the subject or the subject's legally authorized representative must be given a copy of the signed and dated written informed consent form and any other written information provided to the

subjects. During a subject's participation in the trial, the subject or the subject's legally authorized representative must be given a copy of the signed and dated consent form updates and a copy of any amendments to the written information originally provided.

### **Consent & Impaired Decisional Capacity**

In certain studies, or in particular participants, where the capacity to understand the nature and risks attendant with his/her participation in a study is questionable, consultation with a professional (independent of the study) capable of evaluating cognitive function is required prior to and throughout his/her enrollment in the study. Participants whose capacity to understand is compromised, a legally authorized representative (LAR) will be required. In these cases a "Surrogate Consent Form" must be used. In order of priority, the following persons can consent on behalf of the person who lacks decision-making capacity:

- Health care agent (i.e. a person named by the individual in a Durable Power of Attorney for Health care)
- Legal guardian or special guardian
- Next of kin in this order: a close relative of the patient 18 years of age or older, spouse, child, parent, sibling, grandparent, or grandchild, or
- Close friend

It should be understood that some prospective research subjects who are normally quite capable of making decisions under normal circumstances may be compromised by the stresses of their present circumstances and rendered less capable of understanding or making sound decisions without assistance. In such instances, it is advised that family members be included in the discussions regarding enrollment and consent.

### **Consent & English Language Proficiency**

When a prospective research subject is not conversant in English, and if the person administering the consent is not fluent in the language of the subject, a translator will be required to assist in communicating the elements of the consent. This is best performed by a relative or a reliable friend, selected by the subject. In instances where the person administering the consent had a command of the subject's language, it is still advisable to have a relative or friend conversant in the subject's native language be present to avoid the appearance of impropriety. In the absence of a relative or reliable friend, a translator, conversant in the prospective subject's native language, must be sought (consult the facility's list of translators for an appropriate candidate). When a translator is employed (relative, friend or other) in the consent process, this should be documented on the consent form over the name of the person administering the consent. Surrogate consent form must be used here as well.

Consent must be obtained without coercion or undue influence and must be communicated to prospective subjects or their legally authorized representative in a language that is understandable to the subject or representative. The prospective subject or legally authorized representative must be given sufficient opportunity to consider whether or not to participate.

### **Witness Requirements**

If a subject is unable to read or if a legally authorized representative is unable to read, an impartial witness must be present during the entire informed consent discussion. After the written informed consent and any other written information to be provided to subjects is read and explained to the subject or the subject's legally authorized representative, and after the subject or the subject's legally authorized representative has orally consented to the subject's participation in the trial and, if capable of doing so, has signed and dated the informed consent form, the witness must sign and date the consent form. By signing the consent form, the witness attests to being present and observing the subject's signature. If the subject is unable to write, he/she will be required to make a mark, and at such time, there will need to be two impartial witnesses. Both will be attesting to the fact that the subject was unable to write, and placed their mark on the consent form. A dated copy of the signed consent form must be given to the participant or his/her LAR.

### **Waivers of Legal Rights**

No informed consent, whether oral or written, may include any exculpatory language through which the subject or legally authorized representative is made to waive or appear to waive any of the subject's legal rights, or to release or appear to release the investigator, the sponsor, the institution, or its agents from liability for negligence.

## **PROCEDURE**

### **Consent Basic Requirements (except when Consent Waived or exempted)**

The investigator or authorized representative informs prospective subjects about all aspects of the trial and obtains the legally effective informed consent of the subject or the subject's legally authorized representative.

If someone other than the investigator conducts the interview and obtains consent from a subject, the investigator must formally designate in writing in the protocol or the initial application who will have the responsibility and whether or not they have received the the appropriate training to perform this activity.

The investigator or authorized representative seeks 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. Generally, a minimum of a five (5) day waiting period should be provided to allow the prospective participant an opportunity to consider whether he/she wants to enroll in the study.

The investigator or authorized representative shall communicate with prospective subjects, on an individual basis, to obtain and document informed consent.

### **Basic elements of Informed Consent:**

**Unless exempted, waived, or altered by the IRB, the IRB may not approve a research protocol involving human subjects unless in seeking informed consent the following information will be provided to each subject:**

- The name of the study and the name of the Principal Investigator conducting the study.
- A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.
- A description of any reasonably foreseeable risks or to the subject.
- A description of any benefits to the subject or to others that may reasonably be expected from the research.
- Disclosures of appropriate less risky alternative procedures or courses of treatment, if any, which might be advantageous to the subject.
- A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained.
- A statement that the Food and Drug Administration (FDA), the Office of Human Research Protections (OHRP), the National Institutes of Health (NIH), and the VA Office of Research Oversight (ORO) may have access to the records.
- For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained.
- An explanation of whom to contact for answers to pertinent questions about the research and research subjects rights, and whom to contact in the event of a research-related injury to the subject.
- A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.
- A statement that if the subject takes part in the study, the subject may still have to pay the usual VA charges.
- Usual Care - The investigator, or designee, must ensure the Informed Consent process clearly defines for the subject which potential risks are related to the research (see subpar. 10g and 38 CFR 16.116(a)(2)) and, therefore, must be discussed with the research team, versus those associated solely with usual care provided by the subject's health care provider. The informed consent process must include language advising subjects to review the risks of the latter with their health care providers.

### **Additional Elements of Informed Consent**

**When appropriate, one or more of the following elements of information will also be provided to each subject:**

- A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) that are currently unforeseeable.
- Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.
- Any additional costs to the subject that may result from participation in the research consistent with the Federal laws concerning veteran's eligibility for medical care and treatment.
- The consequences of a subject's decision to withdraw from the research and procedures for orderly closure of participation by the subject.
- A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.
- The approximate number of subjects involved in the study.
- A statement that the human biologic specimens obtained could be part of, or lead to the development of a commercially valuable product, if applicable.
- A statement that indicates if the specimens are to be retained after the end of the study.
- The probability for random assignment to each treatment.
- The subject's responsibilities.
- Information regarding payment to subjects, including the methods, amounts, schedule of payment to trial subjects, and the way payment will be prorated.
- The IRB must assure that payment to subjects, if applicable, conforms with VA policies as described in VHA Handbook 1200.5.
- A statement that the monitor(s), the auditor(s), the IRB, and the regulatory authority (ies) will be granted direct access to the subject's original medical records, without violating the confidentiality of the subject, to the extent permitted by the applicable laws and regulations and that, by signing a written informed consent form, the subject or the subject's legally authorized representative is authorizing such access.
- A statement that records identifying the subject will be kept confidential and, to the extent permitted by the applicable laws and/or regulations, will not be made publicly available. If the results of the research are published, the subject's identity will remain confidential.

**The following types of studies require additional elements of informed consent:**

- Any study that involves currently unforeseeable risks to the subject (or to an embryo or fetus, if the subject is or may become pregnant). This is especially true with studies conducted under an Investigational New Drug Application (IND) or Investigational Device Exemption (IDE). The consent form should provide a statement that the particular treatment or procedure may involve risks to the subjects (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.
- Any study in which the protocol outlines circumstances under which the subject's participation may be terminated by the investigator, without regard to the subject's consent, requires a statement identifying these anticipated circumstances under which the investigator may terminate the subject's participation. An unexplained statement that the investigator and/or the sponsor

may withdraw subjects at any time does not adequately inform the subject of anticipated circumstances of withdrawal.

- If subjects may incur additional costs because they are participating in research, the costs should be explained. Some insurance and/or other reimbursement mechanisms may not fund care that is delivered in a research context.
- When withdrawal from a research study may have deleterious effects on the subject's health or welfare, the informed consent must explain any withdrawal procedures necessary for the subject's safety and state why they are important to the subject's welfare.
- Any study in which the subject's participation is expected to continue over a period of time during which new findings may become available requires a statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject.
- If the IRB determines that the number of subjects in a study is material to the subject's decision to participate, the informed consent document must state the approximate number subjects involved in the study. This is particularly true in studies involving small numbers of subjects, as in Phase 1 and 2 studies.

\* The IRB determines whether the criteria under which the additional elements disclosure should be provided are met, and if so, that the corresponding element of disclosure would be provided to the participant.

### **Basic Requirements for Consent Waivers**

**The IRB may approve a consent procedure which does not include, or which alters some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent (this does NOT apply to FDA-regulated research) provided the IRB finds and documents that:**

- 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:
  - Public benefit or service programs;
  - Procedures for obtaining benefits or services under those programs;
  - Possible changes in or alternatives to those programs or procedures; or
  - 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. Justification why the research could not practicably be accomplished without a waiver is required along with the "Application to Undertake Research Involving Human Subjects".

**The IRB may approve, per 21 CFR 56.109, a consent procedure that does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirement to obtain informed consent provided the IRB finds and documents that:**

- The research involves no more than minimal risk to the subjects;

- The waiver or alteration will not adversely affect the rights (including privacy rights) and welfare of the subjects;
- The research could not practicably be carried out without the waiver or alteration (fully justified and submitted with the :Application to Undertake Research Involving Human Subjects”); and,
- Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

**\* The IRB may require that information, in addition to that specifically mentioned immediately above, be given to the subjects when in the IRB’s judgment the information would add to the protection of the rights and welfare of subjects.**

\* The informed consent requirements in this SOP are not intended to preempt any applicable federal, state, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

\*\* Exception: For Department of Defense-sponsored research, if the research subject meets the definition of “experimental subject” a waiver of consent is prohibited unless a waiver is obtained from the Secretary of Defense. If the research subject does not meet the definition of “experimental subject” (as defined in the IRB SOP HRPP Overview, pg 2) the IRB may waive the consent process.

## **Consent Documentation Requirements**

**The IRB will not review or approve research that requests a waiver of the requirements for informed consent in FDA regulated studies per 21 CFR 50, 56. \* Exception from informed consent requirements for emergency use of a test device is outlined in 21 CFR 50.23 (Note: a review by the IRB is required within 5 days of the emergency use) and the requirements are:**

## **Documentation of Informed Consent**

- Informed consent must be documented by the use of a written form approved by the IRB, and signed and dated by:
  - The subject or the subject’s legally authorized representative,
  - A witness if required by the IRB, e.g. the IRB may require a witness if the study involves an invasive intervention or an investigational drug or device, however, in general a witness is not required by the IRB unless a short form is used.
  - The person obtaining the informed consent.
- VA Form 10-1086 must be used as the consent form.
- The consent form must be the most recent IRB approved consent form and must include the stamped approval and expiration dates on each page. The approval date is the date of the IRB meeting at which the consent was approved in the case of a full-board review, and the date that the consent was approved and signed in the case of an expedited review by the IRB Chairperson or designee.

The PI will assure that any past versions of approved consent forms will be kept in her/his records, and the document will have an obvious mark (e.g. large “X” across each page”) made on any past consent form to indicate its expiry.

- The original signed consent form must be filed in the subject's case history.
- A copy of the signed informed consent must be provided to the subject or the subject's legally authorized representative and to the Research Compliance Officer and HIMS for scanning into CPRS.

### **Electronic Medical Record (EMR) Documentation Requirement**

The subject's involvement in research must be documented in the individual's electronic medical record to protect the subject's safety.

The required information in the medical record includes:

- The title of the research study.
- The name of the Principal Investigator and other relevant study personnel.
- The name of the individual who obtains the informed consent.
- Contact information in case of emergency or need for further information regarding the study or therapy.
- A statement that the study was explained to the subject.
- A statement that the brochure, “What you should know about participating in research” was provided to the subject.
- A statement that the subject was given the opportunity to ask questions.
- Study inclusion and exclusion criteria should be listed and documentation that the subject met all of the criteria.
- A note indicating when the subject actually entered into the study and when the subject's participation in the study is terminated.
- A statement that the research subject had capacity to consent and comprehend the research study, or that a legally authorized representative of the subject gave consent
- The date(s) of any amendment(s) to the original consent.

### **The IRB does not flag the medical record if:**

- The subject's participation in the study involves only one encounter, only the use of a questionnaire, or the use of previously collected biological specimens.
- The identification of the patient as a subject in a particular study would place the subject at greater than minimal risk.

### **Use of the ‘Short Form’ for Consent**

A short form of the written consent document stating the elements of informed consent and presented orally to the subject or the subject's legally authorized representative may be used if:

- The IRB approves the written summary of what is to be said to the subject or the subject's legally authorized representative.
- There is a witness to the oral presentation
- For subjects who do not speak English, the witness will be conversant in both English and the language of the subject

Only the short form is to be signed and dated by the subject or the subject's legally authorized representative. A copy would be given to the participant.

The witness must sign both the short form and a copy of the summary.

The original short form and summary must be filed in the subject's case history.

A copy of the summary must be given to the subject or the subject's legally authorized representative.

The person obtaining the consent must sign and date a copy of the summary.

### **Waiver of Documentation of Informed Consent**

The IRB may waive the requirement for the investigator to obtain a signed informed consent form for some or all subjects, if it finds either:

- Set 1: The only record linking the subject and the research is the consent; the principal risk to the subject would be potential harm resulting from a breach of confidentiality; each participant would be asked whether he/she wants documentation linking the participant with the research, and the participant's wishes would govern. **OR**
- Set 2: That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written document of the consent process is normally required outside of the research context.

\* The circumstances eligible for waiver in Set 1 above can not involve FDA-regulated research.

\* When the documentation requirement is waived, the IRB must document the reason for the waiver and may require the investigator to provide subjects with a written statement regarding the research. The IRB must review the written statement.

The IRB needs to consider and document protocol-specific findings justifying waivers of the consent process or waivers of the documentation of the consent process for both expedited and full committee reviews.

### **An addendum consent may be required if:**

The investigator or the IRB determines that additional information regarding the study should be distributed to subjects.

- \* The addendum consent format should include the basic elements of consent.
- \* The investigator may revise the original approved consent form, in lieu of an addendum consent, to be reviewed and approved by the IRB.
- \* Informed consent copies are to be sent to the Research Office within 5 days of obtaining signature and to HIMS for scanning into EMR.**
- \* The IRB does not permit the use of a group consent process.

### **Observation & Monitoring**

#### **Observation**

The IRB has the authority to observe the consent process as a method to protect participants. Instances where this might be necessary include, but are not limited to:

- When the subject has filed a complaint about their experience in the study
- When the conduct of the consent process is in question
- When research compliance has come into question
- As an audit tool

#### **Monitoring**

The following are mechanisms by which observation of the consent process could be conducted:

- When the IRB determines the need for observation of the consent process, its rationale for that decision will be described in the minutes of the convened IRB meeting. The observer will either be a member of the IRB or the Research Compliance Officer.
- The observer will contact the study coordinator and the study PI about the need for observing the consent process. They will work out a mutually agreeable date and time for the observer to observe the consent process.
- Prior to observing the consent process, the observer will: Introduce himself/herself to the potential study subject; explain the reason for the observer's presence; and obtain the potential study subject's verbal permission for observing the consent process.
- The observer will document his/her observations. During consenting, should any issues or questions arise that the consentor is unable to address and the observer is qualified to discuss or answer, the observer may offer appropriate explanations or information.
- The observer will prepare a written report to the IRB.
- The IRB will share the consent observation with the PI and the consentor.

- The IRB may schedule a second consent observation with the study staff member to determine if some observed “deficiencies” have been corrected.
- The results of the observation will be documented in the IRB minutes.