

<b>Title:</b>	Informed Consent
<b>Responsible Office:</b>	Institutional Review Office (IRO)
<b>Responsible Official:</b>	Karen Hansen, IRO Director
	<i>Karen Hansen October 20, 2009</i>
	Signature/date
<b>Effective Date:</b>	November 01, 2009
<b>Policy:</b>	2.11

**POLICY STATEMENT**

Investigators at the Fred Hutchinson Cancer Research Center (FHCRC) are responsible for obtaining legally effective informed consent prospectively from each research participant or the legally authorized representative, as required by the FHCRC Institutional Review Board (IRB) and by the regulations for the protection of human research subjects. 45 CFR 46.116 and 21 CFR 50.20..

Informed consent documents used in studies of human subjects are approved by the IRB. Approvals and consent documents are maintained by the IRO in each protocol file.

**DEFINITIONS**

**IRO website:** <http://www.fhcrc.org/intranet/iro/> and sub pages.

**Elements of consent:** By regulation, the information to be provided to each prospective research participant. Basic elements are listed at 45 CFR 46.116(a), additional elements (included when appropriate) at 45 CFR 46.116(b). Consent documents used for FDA-regulated studies should refer to the elements of consent found in 21 CFR 50.25.

**Vulnerable populations:** Prospective research participants who lack the capacity to provide informed consent or who are likely to be vulnerable to coercion or undue influence. Examples include children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

**REFERENCES**

- 21 CFR 50.20
- 21 CFR 50.24
- 21 CFR 50.25
- 21 CFR 50.27
- 21 CFR 56.109
- 21 CFR 56.111(a)(4)-(5)
- 45 CFR 46.111(a)(4)
- 45 CFR 46.116
- 45 CFR 46.117
- 45 CFR 46.204
- 45 CFR 46.305

45 CFR 46.404–407

45 CFR 46.408

OHRP Guidance on Exculpatory Language in Informed Consent

FDA Information Sheets: FAQ Informed Consent Process

FDA Information Sheets: A Guide to Informed Consent & FAQ: Informed Consent Document Content

RCW 70.02.030 Authorization to Access Health Care Information

RCW 42.48 Statute prescribing rules for research by state agencies, including the University of Washington and the Washington State Department of Health

RCW 7.70.065 Description of individuals authorized to consent for others not competent to consent for themselves

RCW 11.88.010 Definition of “incompetency” to provide informed consent

RCW 13.64 Emancipation of minors

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## **PRINCIPLES/OVERVIEW**

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In its human subjects research, the FHCRC obtains informed consent from research participants, writes consent forms that enable understanding and voluntary decisions, retains proper documentation, alters or waives the consent process when appropriate, protects vulnerable populations (including seeking assent from those who cannot give consent), makes exceptions in emergencies, and conducts observation of the consent process when necessary.

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## **INDIVIDUALS AFFECTED BY THIS POLICY**

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The contents of this policy apply to Institutional Review Office (IRO) staff, IRB members, employees of FHCRC and investigators from other institutions who submit research studies to the FHCRC IRB for review and approval.

The informed consent requirements in this policy 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.

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## **PROCEDURES**

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For all research it considers, the IRB reviews the informed consent process and documentation.

### **1. Informed Consent Process**

Informed consent is a process, not just a form. During a study, all communication (oral or written) with research participants is part of the process of informed consent. The IRB must approve not only all written documents shared with research participants, but also the plans for approach, recruitment, and other interactions during the study.

The principal investigator (PI) must state who will obtain consent from research participants. This may be limited to physicians or physician’s assistants, or may include other research staff. Consent must be obtained by a physician or physician’s assistant if medical judgment is needed in order to explain adequately the risks and benefits of the study.

Consent forms include the elements of consent described in 45 CFR 46.116, and in 21 CFR 50.25 if applicable.

Consent forms should be written in “language understandable to the research participant or the representative.” 45 CFR 46.116; 21 CFR 50.20. Consent authors are encouraged to keep scientific and medical terminology to a minimum, and to write in “plain language” at about an 8th-grade reading level. Several consent form templates (aka model consents) are available to help investigators and research staff write plain-language forms.

The substance of the templates is approved by the IRB and they are posted to the IRO website. Sample language in all templates is targeted to be at or below an 8th-grade reading level.

The templates are intended as guides only. Where sample language does not suit a particular study, it may be departed from, provided the resulting form meets all requirements for content and is approved by the IRB.

## 2. Review

The IRB must approve the consent process described in the application, as well as the content and language of all research consent forms to be used in the study. The purpose of review is to ensure that legally effective consent is obtained. "Legally effective consent" refers to consent whose documentation contain the legally required elements; and the process of which provides sufficient opportunity to consider whether to participate, and minimizes the possibility of coercion or undue influence; the consent discussion is (i) understandable to the participant or the participant's legally authorized representative, and (ii) free of exculpatory language. 45 CFR 46.116; 21 CFR 50.20. To this end the IRB review includes, but is not limited to, the considerations described below.

### a. Review of Consent Process

The IRB reviews the consent process in the light of information provided in the application:

- Where will consent be obtained, and by whom?
- When will consent be obtained (relative to study procedures; the underlying question is whether participants have enough time to think about the study before consenting to join it)?
- How is the consent process documented (eg, chart note)?
- How will the research participant's understanding of the research be confirmed?
- How will the consent process, in particular the approach, protect the privacy of research participants?
- What is the nature of the involvement of research participants under 18 years of age, if any?
- Has a request for waiver of consent been made?

### b. Review of Consent Forms

IRB review of consent forms includes all applicable content described in 45 CFR 46.116(a)-(b), 21 CFR 50.25), and the *IRB Member Consent Process and Documentation Checklist*. Depending on the nature of the study (eg, minimal risk), the IRB may decide that not all items are needed (see "Waivers").

Basic elements of informed consent:

- 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 discomforts to the subject;
- A description of any benefits to the subject or to others which may reasonably be expected from the research;
- A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

- A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;
- 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; and
- 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.

Additional elements of informed consent. When appropriate, one or more of the following elements of information shall 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) which 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;
- The consequences of a subject's decision to withdraw from the research and procedures for orderly termination 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; and
- The approximate number of subjects involved in the study.

The additional elements must be disclosed whenever they apply to the research in question, but may be omitted when they do not.

(Note: the elements reproduced above are taken from 45 CFR 46.116(a)-(b). For FDA-regulated studies the elements of consent appear in 21 CFR 50.25 and are the same in substance, with an additional requirement that participants be informed that the FDA may have access to research records.)

Consent forms also include the following content (unless the IRB determines it is not needed), specified in the *IRB Member Consent Process and Documentation Checklist*:

- Heading names FHCRC
- Name, affiliation and telephone number of the principal investigator (if other investigators or research staff are listed, their affiliations and telephone numbers must also be included).
- Statement that the FHCRC IRB has access to research participants' records
- Statement of any costs the research participant or sponsor is responsible for.
- Affirmation in Medical Staff Statement that risks have been discussed with the research participant

- A model consent form is included for all Cooperative Oncology Group studies; risks and alternatives duplicated in the FHCRC consent form (absent written justification from investigator for the omission of risks or alternatives)

The following content, specified in the *IRB Member Consent Process and Documentation Checklist*, is included if applicable:

- Emergency telephone number
- Financial contact number
- Risks of radioactive material
- Cooperative group (eg, Children's Cancer Group) listed in the confidentiality of records' section

The following content, specified in the *IRB Member Consent Process and Documentation Checklist*, is included in consent forms for UW Consortium investigator studies:

- Heading names University of Washington
- One of the following passages included: (i) "If you have a physical injury as a direct result of being in this study, we will treat you or refer you for treatment. This treatment will be provided at no cost to you." (ii) "If you have a physical injury as a direct result of being in this study, we will treat you or refer you for treatment. Company C, the sponsor of this study, will pay for this treatment."
- UW HIPAA form used (if applicable)

If the study may involve non-English speaking participants, the IRB recommends that the consent form refer to "study doctors" or "researchers," not "investigators". Non-English speakers may identify the word "investigators" with the police or military personnel.

### 3. Documentation

Informed consent is documented in a written consent form, properly signed and dated. A copy of the form is given to the subject or the subject's legally authorized representative. 45 CFR 46.117(a); 21 CFR 50.27(a).

Most of the time, the written consent form is a document containing the elements of consent and the required content listed in the *IRB Member Consent Process and Documentation Checklist* (see "Review of consent forms," above). Sometimes a "short form" is also used. The short form is a document stating that the required elements of informed consent have been presented orally to the research participant or the research participant's legally authorized representative. For FHCRC and UW Cancer Consortium studies, the short form is used when a study unexpectedly enrolls a research participant who cannot read English. Use of the short form is described in *IRB Policy 2.13 Use of Interpreter Services and Translated Documents*.

#### a. Signatures

Consent forms are signed and dated by the research participant or legally authorized representative (see IRB Policy 2.25 Policy on Identification and Use of Legally Authorized Representatives), a witness (if applicable). A signature by the person conducting the consent discussion is required only if the research needs to comply with International Conference on Harmonization (ICH) guidelines. Unless the research needs to comply with ICH, a separate researcher statement and signature line for the person conducting the consent discussion is not required. A pre-signed consent form is not acceptable.

If the research study requires a signature by the principal investigator or study staff, there are several options:

- Include a statement that the principal investigator acknowledges that a member of the study staff consented the research participant.
- Same as above, but with a line for the study staff member's signature.
- Use only check boxes.
- Use check boxes as well as a signature line.

Children aged 7-13 sign an assent form when appropriate (the parents or legal guardian sign the consent form). Children aged 14 through 17 sign the consent form, as do their parents or legal guardian. For detail about the involvement of children in the consent process, see "Vulnerable Individuals" below.

#### b. Witnesses

Witnesses are usually not required. In general, witnesses are used only if the research participant is incapacitated or cannot speak or read English.

A witness signature, if needed, may appear on the consent form itself, or on an attestation form attached to the consent form.

A witness signature does not vouch for the validity or contents of the document(s) signed by the research participant, only for the fact that the research participant is the person he or she claims to be and the signature is voluntary.

A witness is needed for a "short form" or for a consent form translated into a language other than English. See *IRB Policy 2.13 Use of Interpreter Services and Translated Documents* for details.

#### c. Approval Dates

The IRO stamps approved documents with "consent released" and "consent expiration" dates. The "consent expiration" date indicates the last day when a consent form can be used. For example, if a consent form is stamped 10/2/07 to 10/1/08, the study may use the consent form until midnight on 10/1/08. The principal investigator is responsible for making sure these dates appear on all documents that will be used in obtaining consent. The IRB notifies the principal investigator of this responsibility in the "*Dear PI Responsibility Memo*" that accompanies each approved new application.

### 4. **Waivers**

Under 45 CFR 46.116, the IRB may alter or waive the requirement to obtain informed consent or documentation of informed consent.

FDA regulations do not provide for a waiver or alteration of the consent process, except in emergency research (see below).

#### a. Waiver of Consent

To obtain IRB approval of a waiver or alteration of consent for research not subject to FDA regulations, the principal investigator must demonstrate that:

- 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. 45 CFR 46.116(d).

Reminders of these criteria are included in the *IRB Member Consent Process and Documentation Checklist*. IRB approval of the waiver or alteration is documented (with rationale) in the meeting minutes.

#### b. Waiver of Documentation of Consent

To obtain IRB approval of a waiver or alteration of the documentation of consent, the principal investigator must demonstrate:

- 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. 45 CFR 46.117(c).

For FDA-regulated studies, only the latter criterion is permitted as a reason to waive or alter the documentation of consent. 21 CFR 56.109(c)(1).

Reminders of these criteria are included in the *IRB Member Consent Process and Documentation Checklist*. IRB approval of the waiver or alteration is documented (with rationale) in the meeting minutes.

### 5. **Vulnerable Populations**

The applicant informs the IRB of any vulnerable populations planned to be included in the research. IRB approval of the process and documentation of obtaining informed consent for such populations is documented (with rationale) in the meeting minutes. For information about the inclusion of vulnerable populations in research, see *IRB Policy 2.15 Research Involving Vulnerable Populations*.

#### a. Pregnant Women

The model consent for research includes sample language informing the research participant about unforeseeable risks to an embryo or fetus if the research participant becomes pregnant. Also included is language regarding the reasonably foreseeable impact of the research on the fetus or neonate. The *IRB Member Consent Process and Documentation Checklist* reminds the IRB of this criterion for consent.

#### b. Prisoners

The IRB approves research involving prisoners as research participants only if it finds that the information is presented in language which is understandable to the research participant population. 45 CFR 46.305. Prisoners may not be involved in FDA-regulated research.

The applicant attests to understandability on the *IRB Prisoner Certification Checklist For Investigator*, and IRB approval is documented in the meeting minutes.

#### c. Children

In most states, including Washington State, children aged less than 18 years cannot consent to research. Under certain circumstances, however, they may give assent. A principal investigator wishing to include children in research informs the IRB of the age range of the children and the category of research involving them, and explains the assent process in the application.

In general, the form of assent depends on the age of the child:

- Children aged 7–13: they assent by signing an assent form (and the parents or legal guardian sign the consent form).
- Children aged 14–17: they assent by signing the consent form (as do the parents or legal guardian).

Specific requirements for assent vary according to the category of research in which the child is to be involved:

- Minimal risk: Children aged 7 and older are required to provide written assent unless the child is incapable of providing assent, or
  - The children are not capable of providing assent based on their age, maturity, or psychological state.
  - The capability of the children is so limited that they could not reasonably be consulted about the intervention.
  - The research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research.
  - Assent can be waived using the criteria for waiver of the consent process.

The permission of both parents is required if both parents are alive, known, competent, reasonably available, and have legal responsibility for the care and custody of the child. Otherwise the permission of one parent is required. The IRB may determine that permission from one parent is sufficient, even if the other parent is alive, known, competent, reasonably available, and shares legal responsibility for the care and custody of the child. However, the IRB must explicitly make this determination.

- Greater than minimal risk, but with prospect of direct benefit to individual subjects: Assent is not required if the intervention is available only in the context of the research. The IRB will request that assent be obtained and that the assent be documented in writing from children 14 and older unless:
  - The children are not capable of providing assent based on their age, maturity, or psychological state.
  - The capability of the children is so limited that they could not reasonably be consulted about the intervention.
  - The research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research.
  - Assent can be waived using the criteria for waiver of the consent process.

Permission of at least 1 parent is sufficient. Note: If the child is a “donor” or “volunteer,” the benefit(s) to the child must be a discussion point.

- Greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject’s disorder or condition: Children aged 7 and older are required to provide written documentation of assent. Permission from both parents is required if both parents are alive, known, competent, reasonably available, and have legal responsibility for the care and custody of the child. Otherwise, the permission of one parent is required.
- Not otherwise approvable, but represents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children. 45 CFR 46.404-407; 21 CFR 50.51-54.

The IRB reviews the proposed assent process in the light of the above requirements.

The IRB will then determine if:

- An assent is required
  - i. If required, determine if the assent should be documented, and if so, the process to document the assent , or
- An assent is not required

The IRB determination and approval is documented (with rationale) in the meeting minutes. An emancipated minor is legally capable of providing informed consent.

d. The Decisionally Impaired

For information about obtaining informed consent on behalf of the decisionally impaired, see *IRB Policy 2.15 Research Involving Vulnerable Populations*.

**6. Consent of children who reach the age of majority or become emancipated:**

When a child participant reaches the age where they can provide consent for procedures involved in the research, informed consent must be obtained. A waiver of consent may be approved by the IRB as described in section 4 of this policy.

**7. Emergency**

a. Emergency Use of Test Article

If emergency treatment with a procedure, drug or device not IRB approved will be used to save a patient's life, prospective consent is still required. Emergency treatment and related processes of IRB acknowledgment are described in *IRB Policy 2.4 Emergency Treatment*.

b. Planned Emergency Research

FHCRC does not conduct, or plan to conduct, planned emergency research as described in 21 CFR 50.24.

**8. Observation**

As part of continuing review, the IRB may observe the consent process of an ongoing study. 45 CFR 46.109(e); 21 CFR 56.109(f). The result letter will inform the investigator that the IRB recommends the consent process of his/her study will be observed. Observation of the consent process may be delegated to appropriate FHCRC staff. The FHCRC staff will inform the investigator that the next informed consent consultation will be observed. At the time of observing the consent process, the FHCRC staff will work with the investigator so that the investigator may inform the research participant that the consent process will be observed.

The FHCRC Clinical Trials Support Office (CTSO) selectively monitors consent documents and consent conference notes for selected research participants, and comments on the documentation of the process.

**9. HIV Testing**

If HIV antibody blood testing is conducted either as part of the study or as an eligibility screening procedure, a separate consent may be required or recommended. State laws and regulations in the state in which the study participant resides may mandate specific consent provisions.

## 10. Training

Training in human subject's protection is mandatory for FHCRC faculty and staff involved in the design, conduct, or reporting of human-subjects research, effective January 01, 2007. All materials approved for such training include a component explaining the ethics, regulations, and institutional policies of informed consent. For details about training and the documentation of training, see *IRB Policy 2.20 Training*.

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### **SUPPORTING DOCUMENTS**

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IRB Policy 2.4 Emergency Treatment

IRB Policy 2.13 Use of Interpreter Services and Translated Documents

IRB Policy 2.15 Research Involving Vulnerable Populations

IRB Policy 2.20 Training

IRB Policy 2.25 Identification and Use of Legally Authorized Representatives

Principal Investigator Responsibilities Memorandum

IRB Member Consent Process and Documentation Checklist

Application For Review

Prisoner Certification Checklist For Investigator

SCCA Witness Attestation Form