



Making Cancer History®

MD Anderson IRB Policy on Obtaining Informed Consent for Participation and Authorization for Use and Disclosure of Protected Health Information for Clinical or Health Services Research Protocols

PURPOSE

The purpose of this policy is to protect human subjects' safety by assuring that protocol subjects receive adequate information in the appropriate manner, timing and setting regarding their participation in the research protocol. The MD Anderson IRB serves as the privacy board for research. As such, the MD Anderson IRB has the authority to review issues related to authorization for use and disclosure of protected health information for research. The Principal Investigator remains responsible for assuring that information contained in the protocol that may affect the participant's decision to enroll or continue in a study is reflected in the informed consent document.

This policy applies to all human subjects research at (or conducted with) MD Anderson that falls under the regulatory oversight of the MD Anderson IRB System.

PROCEDURE

The informed consent process begins when a potential research participant is contacted by the investigator or his staff regarding participating in a protocol or receives recruitment material regarding participating in a protocol. Participants should not be approached about their potential participation prior to the protocol being approved and activated by the IRB.

The Principal Investigator must describe consenting procedures in the protocol or in a delegation log those individuals on the research staff who have the authority to obtain informed consent for research participants.

The Principal Investigator or authorized designee shall be responsible for ensuring that the informed consent process is documented by the use of a written consent form approved by the IRB and signed by the participant or participant's legally authorized representative (unless this requirement is specifically waived by the IRB).

Upon protocol activation, each page of the informed consent document (ICD) is imprinted with "IRB Approved Consent" and the IRB approval date and distributed to the Principal Investigator. Principal Investigators are responsible for distributing the IRB approved ICD to study collaborators and research staff. ICDs that are submitted electronically in the

Protocol Document On-Line System or other electronic system will be available on-line following activation.

Only the most recent version of the IRB-approved ICD should be used when consenting new participants. The date imprinted on the informed consent document should correspond with the informed consent date in the institutional research database during the registration process and, thus verifies that the correct version of the document has been signed.

Informed consent must be obtained prior to the initiation of any protocol-specific procedures. (See HRPP Manual, Chapter 12.7 Determining What Qualifies as a Protocol- Specific Procedure).

The informed consent document should be presented in language that is understandable to the participant. For languages other than English, see section on Procedures for Consenting Non-English Speaking Participants of this policy.

Informed consent will be obtained under circumstances that provide the participant or the participant's legally authorized representative sufficient opportunity to ask questions and consider whether to participate. It must be clear that the participant has a right to withdraw from the protocol at any time.

Use of Electronic Consent (iConsent)

The iConsent application currently is part MD Anderson's electronic health record environment. iConsent refers to the informed consent and authorization document that is housed within the iConsent application and that is signed electronically by research participants, research staff, and other applicable parties. A multidisciplinary workgroup consisting of the Institutional Review Board, the Office of Clinical Research Administration, Information Security, and Institutional Compliance reviewed the application for data security and integrity controls, including those controls outlined in FDA 21 C.F.R. sec. 11.1 et seq. MD Anderson's Institutional Review Board received the workgroup's findings regarding the controls and has approved the use of electronic signatures for consenting individuals to participate in research at MD Anderson. A sustainable plan is in place to ensure continued employment of the controls and protection of research participant data gathered and integrated into the iConsent application.

Use of iConsent should follow approximately the same process as obtaining consent using a hardcopy document. Patients should be given a printout of the consent document for reference during the consenting process if they wish and be allowed to take it home if they need more time to consider their decision. As referenced above, the iConsent should be completed and all signatures applied prior to the initiation of any protocol-specific procedures. The executive board IRB3 has approved and documented some minor differences in the text between the iConsent-generated informed consent and authorization document and the informed consent and authorization document initially approved by the IRB. These minor changes are related to programming requirements and do not represent an alteration to the meaning or intent of the IRB-approved informed consent and authorization document.

Authority to Obtain Informed Consent

The Principal Investigator may delegate authority to individuals **who are licensed as physicians in the state of Texas** to obtain legally effective informed consent of the participant for any protocol that involves administration of drugs, radiotherapy, use of surgery, invasive procedures, or investigational devices.

The Principal Investigator may delegate authority to obtain informed consent to an **individual who is not a physician** in limited circumstances, and only when protocols have no more than minimal risk and do not involve administration of drugs, radiotherapy, use of surgery, invasive procedures or investigational devices. The Principal Investigator should assure that the delegated individual is qualified by education, training and experience and has an understanding of the scientific content of the protocol.

The Principal Investigator is responsible for providing adequate supervision of those to whom tasks are delegated and is accountable for regulatory violations resulting from failure to adequately supervise the conduct of the protocol (see HRPP Manual, Chapter 14.6 for Supervisory Responsibilities of Investigators).

Completing the Informed Consent Process

Subjects should not be asked to sign a consent form that is not presented in their preferred language. Subjects who cannot speak or write, but can understand their preferred language can sign with an "X" mark, but their consent must be witnessed by a third party.

The investigator or authorized designee should review the protocol and informed consent document to ensure that the participant understands the protocol procedures and/or treatments. If the participant appears to have a lack of understanding, the authorized designee should notify the investigator of the participant's concerns and/or lack of knowledge.

Once all participant's questions and concerns are addressed the investigator or authorized designee should obtain the actual signatures on the informed consent document. The participant or their authorized designee must sign and date one original informed consent document. The investigator or authorized designee obtaining consent must sign his or her name on the informed consent document in the "Signature of Study Chair or Person Authorized to Obtain Consent" section. By signing the document, the person obtaining consent certifies that he/she has fully discussed the research protocol with the participant and that all requirements for obtaining informed consent have been followed.

An original signed informed consent document should be placed in the participant's medical record and a copy should be given to the participant. A copy of the informed consent document must be maintained in the investigator's file until it has been confirmed that the document exists in the medical record. It is the investigator's

responsibility to assure that a copy of the ICD is available for review for auditing or monitoring purposes.

Witness Requirements

The signature of a witness to the consenting process is needed when consenting participants in a vulnerable population as defined by 21 CFR or 45 CFR. A vulnerable population includes children, non-English speaking participants, prisoners, pregnant women, mentally disabled persons and persons that are illiterate or others that have limited capacity and may have difficulty understanding their part in the research protocol. This could be due to literacy or language issues, or physical impairments.

For those studies that enroll participants from a site where the majority of the population is economically or educationally disadvantaged, the investigator may be required to utilize a witness for the consent process. The IRB will provide specific information for these situations during the review process. (See HRPP Manual, Chapter 10.1 Determining the Socioeconomic Status for a Research Participant).

The witness should not be a member of the research team, but may be a family member. In the case of pediatric participants, the witness may not be a parent or legal guardian.

Documenting the Informed Consent Process for MD Anderson Participants

The informed consent process must be documented in the progress notes of the medical record by the investigator. The encounter can be documented via hardcopy or using the Notes function in the electronic consenting system in EPIC, which electronically files notes in the participant's medical record. The documentation should summarize the communication between the investigator and the participant, and should include a statement that the participant agreed to participate and signed the consent document as well as details describing when the protocol procedures are scheduled to begin. The note may also include that the participant was given a copy of the consent document. If an authorized designee was utilized to conduct the consent process, the Principal Investigator remains responsible for assuring that the documentation has been placed in the medical record.

If the participant returns on a later date to sign the consent form a note should be placed in the chart on that day describing the subsequent interaction. Protocol-related procedures cannot commence until the informed consent has been signed by the participant and the participant has been registered in the electronic research database.

Consenting Non-MD Anderson Participants

The MD Anderson electronic research databases are used as a registration tool to assist Principal Investigators to track and manage data for participants that are enrolled in research protocols. The use of the electronic research database is required for certain studies. For those studies where registration in the database is not required, the investigator may also validate that the consent process was performed by maintaining

appropriate documentation in their regulatory file.

For studies where the consent process is performed at an external site and the data collected at that site will be analyzed by the MD Anderson investigator, participants must be registered in the MD Anderson research database. Participants may be assigned a unique identification number for registration purposes.

If MD Anderson is participating in a protocol as the Lead Site, the Principal Investigator retains the authority to request a signed copy of the consent document in addition to inspecting the records to validate that the consent process was performed at the participating site.

For studies that enroll participants anonymously or behavioral science studies performed in the community, participants may be assigned a unique identification number which can be used for registration purposes.

Alterations to the Informed Consent Process

For certain minimal risk protocols (e.g., psychosocial, behavioral and epidemiology studies) or minimal risk procedures, the IRB may grant approval for the Principal Investigator to alter or waive the informed consent process provided the IRB finds and documents that:

- 1) the research involves no more than minimal risks to the participants;
- 2) the waiver or alteration will not adversely affect the rights and welfare of the participants;
- 3) the research could not practicably be carried out without the waiver or alteration; and
- 4) whenever appropriate, the participants will be provided with additional pertinent information regarding participation in the research.

For example, a protocol involving drug administration may require certain values for standard of care laboratory testing to determine eligibility. If the participant was located out of state or unable to travel to MD Anderson for the laboratory testing, the Principal Investigator could request that the IRB allow verbal consent of the participant so that the testing could be performed at an outside laboratory. Although the protocol would be considered high risk by the IRB, the standard of care laboratory testing may be considered a minimal risk procedure. If the testing confirmed that the participant was eligible for the study, the participant would need to be reconsented prior to receiving additional protocol treatment.

Any request for alteration of the informed consent process must be submitted to the IRB in writing.

Such alterations may include allowing the Principal Investigator to utilize any of the following methods during the course of the study:

- **Verbal Script**

Verbal informed consent is a process in which the prospective participant is read a script. Typically, this process is utilized when the participant is unable to commute to MD Anderson. The script must include all the basic and additional elements of consent and authorization as required by the Code of Federal Regulations.

Principal Investigators are required to keep a log of participants who have been verbally consented to ensure that they do not exceed the accrual limit.

- **Obtaining Consent Using a Questionnaire/Survey**

Protocols which utilize questionnaires or surveys must have the IC/A Statement for Questionnaires attached. This statement can be modified, as needed, so that it conforms to the needs of each individual research project. Completion of the questionnaire/survey implies consent. (See HRPP Manual, Chapter 12.5.2 on Utilizing the Questionnaire Statement in Research Protocols).

- **Waiving the Requirement for Documentation of Consent**

When the research is of a sensitive subject matter, and exposure of participation in the research could be potentially harmful to the participant, the IRB may waive the requirement for documenting the informed consent process to protect the participant. The IRB will require that participants be identified by a unique code.

- **Waiving the Requirement for Obtaining Informed Consent and Authorization**

This process is typically utilized for retrospective data or laboratory protocols where the only potential harm to participating in the research is the potential loss of confidentiality. It is not always practical to contact the participant to obtain written informed consent for this process in these circumstances. The protocol must include a plan to safeguard the confidentiality of the participants (See HRPP Manual, Chapter 12.5.2 Completing the Waiver of Informed Consent and Authorization). The research must pose no more than minimal risk of harm to subjects and must not involve procedures for which written consent is normally required outside the research context.

Procedures for Re-Consenting Participants

It is the responsibility of the Principal Investigator and the research staff to ensure that participants are informed of any changes or new information that may influence their decision to continue to participate in a research protocol. The participant's medical record must reflect the oral and/or written re-consent process including protocol number and title of protocol, the date the participant was notified of the change, and if applicable the date the new ICD was signed.

The IRB will notify the Principal Investigator when it is necessary to re-consent participants. The IRB will include with the notification an expected timeframe in which the re-consent process should be completed and how re-consent shall be obtained (e.g.,

in the form of a letter, a phone call, a revised informed consent document, or an information sheet). The IRB must approve the process of reconsenting participants prior to implementation.

In addition, regulatory agencies (e.g., the Office of Human Research Protections and the Food and Drug Administration) or industry sponsors may require that research participants be reconsented. If industry sponsors communicate this information directly to the Principal Investigator, it is the investigator's responsibility to notify the IRB should the sponsor communication contain information that would affect the participant's decision to continue in the protocol.

Examples:

- An incorrect version of the ICD was used to consent participant where serious side effects were omitted.
- Increase in participant's time commitment to participate on protocol, such as addition of protocol procedures/evaluations
- New development of serious, unanticipated events
- Error in performing protocol related-procedures or error in the dosage or schedule of drug administration
- The need to use additional barrier method of birth control.
- Risk regarding potential birth defects possibly linked to protocol participation
- Significant changes in randomization procedures

Procedures for Consenting Non-English Speaking Participants

For those studies in which the target population is expected to include non-English speaking participants the ICD must be translated into a language understandable to the non-English speaking participants expected to enroll in such studies. Investigators may use the services of MD Anderson Language Assistance department or another certified translation service to prepare the requisite translation of the English ICD. When the translation is not provided by the MD Anderson Language Assistance department, the investigator must provide the IRB with documentation to show that the translated consent document has been certified as an accurate and complete translation of the English ICD.

Principal Investigators will indicate during the initial IRB review if it is expected that non-English speaking participants will be enrolled in the protocol. Principal Investigators and the IRB will consider the size of the protocol when determining if a written translation of the informed consent should be developed.

For those studies in which non-English speaking participants are unexpectedly encountered, the participants will be given a Verbal Translation Preparative Sheet (VTPS). An unexpected encounter includes the utilization of the VTPS on no more than two occurrences for a single protocol. Following the second occurrence, the Principal Investigator should have the consent document translated.

Investigators will indicate whether or not a participant is non-English speaking during the participant protocol registration process (e.g., registration in the institutional research database). The enrollment of non-English speaking participants on research studies will be monitored by the IRB during the continuing review process (See HRPP Manual, Chapter 12.1.4 Consenting Non-English Speaking Participants and Chapter 12.1.4 Using the IRB Multiple Language Verbal Translation Preparative Forms and Process).

Procedures for Consenting Children to Research

The IRB and the Principal Investigator are responsible for assuring that adequate provisions exist for consenting children to participate in research. When the intellectual age of the child is at least seven and up to eighteen years, the assent of the child should be solicited prior to including the child in the research.

The IRB may waive the requirement for assent in certain circumstances when it determines that the capability of some or all of the children is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the child and is available only in the context of the research.

In addition to assent, informed consent for participation in the research shall be sought from the child's parent or legal guardian. If both parents are present, both should be given an opportunity to sign the permission for their child to participate. The IRB may determine that only one parent's signature is required or both. Both parents' signature may be required when there is increased risk to the child without benefit [46.406(21CFR50.53) and 46.407 (21CFR50.54)]. The IRB will communicate, in writing, to the Principal Investigator which signatures are required during the review process.

It is important to note, that in addition to the experimental treatment, there are often monitoring procedures (e.g., biopsies and MRIs) that can cause stress, discomfort or pain to a pediatric participant. When these procedures are addressing research questions, but with no benefit to the child participant as is the case with most optional procedures, there must always be an "opt out" provision and a reasonable attempt should be made to obtain both parents' signature to provide the additional level of protection required for this population.

Even where the IRB determines that the subjects are capable of assenting, the IRB may still waive the assent requirement under circumstances in which consent may be waived in accord with §46.116 of Subpart A (see HRPP Manual, [Chapter 12 Informed Consent and Assent](#)).

Procedures for Consenting Relatives of Index Participants

Certain types of research conducted at MD Anderson may present the opportunity to recruit additional protocol participants based on information provided by the index case.

Most often these other individuals of interest would be relatives of the index case that might be of interest to the investigator. Since the research participant is not considered a covered entity under the HIPAA privacy regulation, there is no regulation barring the participant from disclosing the names and contact information of his or her relatives (See HRPP Manual, Chapter 12.5 Contacting Relatives of Index Patients).

Procedures for Utilizing Surrogate/Substitute Decision Makers

If an adult participant lacks decisional capacity but was previously capacitated and is mentally or physically incapable of communication and **has completed an Advance Directive when capacitated**, then the designated agent may make health care decisions for the participant.

If the participant lacks capacity or is otherwise mentally or physically incapable of communication, **has not completed an Advance Directive**, at a time when capacitated and does not have a legal guardian, then the attending physician and one person, if available, from one of the following categories, in the following priority, may make health care decisions for the participant:

- the spouse;
- the reasonably available adult children;
- the parents; or
- the participant's nearest living relative.

When a surrogate or substitute decision maker is utilized, a witness to the consent process must sign and date the informed consent document. The witness should be someone who has no interest in the protocol. The participant's spouse, family member or friend would be the ideal witness. In the event that the participant's surrogate or substituted decision maker is alone during the informed consent process, a suitable witness should be utilized. This witness should not be staff associated with the conduct of the research study. This information should be clearly documented in the medical record.

Withdrawal and Partial Withdrawal of Informed Consent by Study Participants

Participants have the right to withdraw from research at any time (45 CFR 46.116(a)(8)). If a participant decides to withdraw from all components of a research study, the PI must discontinue all of the following research activities involving that participant's participation in that study (45 CFR 46.116(a)(8)):

- Interacting or intervening with the participant in order to obtain data about him or her for the research study;
- Obtaining additional identifiable private information about the participant for the research study by collecting or receiving such information from any source; and
- Obtaining additional identifiable private information about the participant for the research study by observing or recording private behavior without

interacting or intervening with the participant.

Withdrawal

When a participant chooses to withdraw from an ongoing research study, or when an investigator terminates an individual's participation in such a research study without regard to the participant's consent, the withdrawal does not extend to the data already obtained during the time the participant was enrolled. The investigator may retain and analyze already collected data relating to that participant. At no time will MD Anderson destroy any data that was collected prior to a participant's consent withdrawal/revocation of authorization.

However, if the PI of a study intends to retain and analyze already collected data about the participant after withdraw from the research, the investigator should inform the participant that analysis of that PHI will continue only to the extent necessary to protect the integrity of the research study (e.g. - as part of a marketing application submitted to the FDA, to conduct investigations of scientific misconduct, or to report adverse events).

Partial Withdrawal

Sometimes, a participant wants to withdraw from the primary interventional component of a study, but is willing to allow the investigator to continue other research activities such as: (1) obtaining data about the participant through interaction with the participant (e.g., through follow-up interviews, physical exams, blood tests, or radiographic imaging); or (2) obtaining identifiable private information from the participant's medical, educational, or social services agency records or from the participant's healthcare providers, teachers, or social worker. When a participant's withdrawal request is limited to discontinuation of the primary interventional component of a research study, research activities involving other types of participation for which the participant previously gave consent may continue.

When a participant decides to withdraw from a clinical trial, the investigator conducting the clinical trial should ask the participant to clarify whether the participant wishes to withdraw from all components of the trial or only from the primary interventional component of the trial. The investigator should explain to the participant who wishes to withdraw the importance of obtaining follow-up safety data about the participant.

Investigators should plan for the possibility that participants will withdraw from research and be prepared to have a discussion of what withdrawal will mean and how it will be handled. Whenever an investigator terminates a participant's participation in research, the investigator should explain to the participant the reasons for this action and, as appropriate, other treatment options.

Documenting Withdrawal of Informed Consent by a Participant

If a research participant chooses to withdraw consent for participation in a protocol, the investigator or the designated research staff must document that the participant is withdrawing consent to participate in the protocol in the participant's medical record

(e.g., “participant withdrew consent from participating on protocol TEST08-0001 on June 6, 2008”).

Whenever possible, documentation of withdrawal should specify:

- Whether the withdrawal of the participant resulted from a decision by the participant or by the investigator, and the reasons for the withdrawal, if known; and
- Whether the withdrawal was from all components of the research study or just the primary interventional component.

The investigator is cautioned, however, to not attempt to coerce the participant into indicating a reason for withdrawal if the participant is unwillingly to provide this information.

Consent Monitoring

In reviewing the adequacy of informed consent procedures for proposed research, MD Anderson’s designated IRBs may determine that special monitoring of the consent process by an impartial observer (i.e., consent monitor) is required.

Such monitoring may be particularly warranted when the research is judged by the IRB to present substantial risks to participants, or if participants are likely to have difficulty understanding the information to be provided. Monitoring may also be appropriate as a corrective action when the IRB has identified problems associated with a particular investigator or a research project.

The IRB may also require that investigators include a “waiting period” with the consent process which would give participants the opportunity to consider whether or not they wish to participate in the research. Such a waiting period would require that the investigator discuss the protocol with the participant but not consent the participant at the same time; in which case the participant is given time to consider whether or not to participate in the protocol.

Possible Actions IRB May Take for Non-Compliance with this Policy

Should the IRB be alerted that there are concerns with the informed consent process for a specific research protocol, the IRB can require actions that may include but are not limited to:

- Close the protocol to new patient entry
- Revision of the protocol and the informed consent document to address the deficiencies
- Monitoring the informed consent process
- Remove consenting privileges for specific research staff
- Notification of research participants that participation in the trial may have an impact on their safety
- Assignment of the oversight of the protocol to an independent monitoring board

- (e.g., DSMB or outside entity, if appropriate).
- Request a complete audit of the protocol by the Clinical Research Support Center or an external auditor
- Request that the Principal Investigator submit a corrective action plan to address the deficiencies in the informed consent process
- Revoke the Principal Investigator's clinical research privileges, and request that a new Principal Investigator be assigned

Penalties for Non-Compliance

Failure to comply with this policy may result in temporary or permanent suspension of the research and/or an investigator's research privileges.

In accordance with 45 CFR 46.113, any suspensions or terminations of approval will be reported promptly to the Principal Investigator, to the appropriate institutional officials, and possibly the federal department or agency head responsible for oversight or funding of the research.

REFERENCES

21 CFR 50
21 CFR 56
21 CFR 312
21 CFR 812
45 CFR 46
ICH GCP 4.5
MD Anderson Informed Consent Policy – CLN0547

STRATEGIC VISION: From the following, please select the appropriate goal(s) applicable to this policy and identified in the 2005-2010 Strategic Vision:

Goal 2: Enhance the quality of existing research programs and develop priority programs for the future.

Approvals:

Committee Review

Committee: Institutional Review Board 3
Names: Ralph S. Freedman, MD,
Ph.D. Approval Date: 05/27/2009

Revisions:

Committee Review

Committee: Institutional Review Board 3
Names: Ralph S. Freedman, MD,
Ph.D. Approval Date: 01/26/2011

Committee Review

Committee: Institutional Review Board
3 Names: Jorge Cortes, MD
Approval Date: 09/30/2016

Revisions:

Updated references to HRPP Manual. Combined 2 separately-reviewed and approved versions of the policy, so that sections regarding electronic consent and partial and complete withdrawal of consent are included in the same IRB-approved Policy on Obtaining Informed Consent for Participation and Authorization for Use and Disclosure of Protected Health Information for Clinical or Health Services Research Protocols.

Committee Review

Committee: Institutional Review Board 3

Approval Date: 06/26/2019

Revisions:

Updated information in the Authority to Obtain Informed Consent section.

Committee Review

Administrative Chair Review

Approval Date: 07/09/2021