HISTORY

• 1847 AMA’s first Code of Ethics urged patients to obey their physicians and ignore their own “crude opinions”

• 1914 US Supreme Court legal doctrine of is based on the principle that people have right to make the decisions about their own medical treatment
LACK OF INFORMED CONSENT

• Medical Malpractice – State Law
• Intentional tort of battery OR negligence
• Plaintiff must prove four elements:
  – Duty
  – Breach of duty
  – Causation
  – Damages
STANDARD PRACTICE

- Risks
- Benefits
- Alternative treatments
- Level of experience
- Mortality and morbidity rate
- Disability example drug addiction and HIV/AIDS
- Financial or other interest
LAWS REGARDING HUMAN RESEARCH

• USA:
  – “Common Rule”
  – HIPAA privacy rule
  – US FDA
  – Federal funding agencies example NIH

• Canada: Personal Information Protection and Electronic Documents Act (PIPEDA)

• Europe: EU Data Protection Directive
Regulatory Requirements

- Federal Policy for the Protection of Human Subjects (56 FR 2008)
- DHHS Protection of Human Subjects (45 CFR Part 46)
Informed Consent

- 45 CFR Part 46.116 General requirements for informed consent.

  “Except as provided elsewhere by this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the **legally effective informed consent of the subject or the subject’s legally authorized representative.**”
Informed Consent
[45 CFR Part 46]

• “An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence.”
Informed Consent

[45 CFR Part 46]

• “The information that is given to the subject or the representative shall be in language understandable to the subject or the representative.”
Informed Consent
[45 CFR Part 46]

• “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.”
Eight Required Elements
[45 CFR 46.116(a) & 21 CFR 50.25]

1. Statement that study is research and information on purposes / duration / procedures / experimental procedures
2. Reasonably foreseeable risks or discomforts
3. Reasonably expected benefits
4. Alternative procedures
5. How confidentiality will be maintained
Eight Required Elements
[45 CFR 46.116(a) & 21 CFR 50.25]

6. Information on compensation for injuries (unless minimal risk)
7. Contact persons for information on research, injury, subject’s rights
8. Voluntary participation, no penalty or loss of benefits for refusal or withdrawal
Six Additional Elements

1. Statement that there may be risks which are unforeseeable
2. Under what circumstances investigator could terminate subject’s participation
3. Additional costs to subjects
4. Consequences of subject’s withdrawal from research
5. Statement that will be told of new findings
6. Approximate number of subjects in study
DHHS (45 CFR 46) special protections for vulnerable population

- Fetuses, Pregnant Women, and Human *In Vitro* Fertilization
- Prisoners
- Children
- Elderly
- Cognitively Impaired
- Minorities
- Others
The process

- Not just the piece of paper
- Document the process
- Provide the paper copy to subject
- Discussion/questions
- Time to consider participation and Read the consent
- Signing of consent
- Provide a copy for the subject
- May need to discuss again throughout study
TWO WAY CONVERSATION

- Establish a relationship with the subject
- Provide privacy
- Assess views on research vs. standard of care
- Keep the subject in the center of the process
- Be an active listener
- Ask open-ended questions
- Be aware of non-verbal messages
- Empathize with the subject’s concerns
- Be a teacher by educating the subject and verifying his understanding of the research study
- Assure withdrawal is possible at ANY time
- Inform other options are available
- Be available anytime for any question
- Do not rush the process or the subject
Who can obtain Consent

• Significant risk, medical treatment studies require a licensed physician be involved in the consent process (medical or surgical intervention, investigational or prescription drugs) (INVESTIGATOR)

• Significant risk, non-treatment medical studies, consent may be obtained non-physician PI or other qualified, active member of the study personnel (INVESTIGATOR)

• Minimal risk studies, consent must be obtained by a qualified, active member of the study personnel. (DESIGNEE)

• Consenting personnel must be on the study (CONSENT FORM)
Are all the rules the same?

**FDA Mandates**

- FDA has no regulations concerning delegation of consenting although it is discussed in the FDA Information Sheets
- FDA only requires that a copy of consent be provided to subject
- If consent is obtained the same day that the subject's involvement in the study begins, the subject's medical records/case report form should document that consent was obtained prior to participation in the study.

**ICH/GCP 4.8 suggests**

- ICH allows the delegation of the informed consent process to a designee
- ICH recommends the person conducting the informed consent process sign and date the consent form
- ICH recommends that the subject receive a signed and dated copy of the consent form
More difference in FDA vs ICH-GCP

FDA and ICH BOTH require the IRB to review
- The informed consent,
- process,
- protocol,
- advertisements, and
- the Investigator's Brochure

ICH/GCP 3.1 also recommends IRB submission of:
- Subject recruitment procedures
- Written information provided to subjects
- Information about subject compensation
- Investigator's current CV and/or other documents evidencing qualifications
How do we know what rules to follow?

Depending on funding
Conflicting Roles

• Physician
  – Decision based on best interest of patient
  – Risks offset by anticipated benefit

• Researcher
  – Decision based on scientific needs
  – May have no benefit to individual
Faxing consent

• Part of the complete consent process.
• The written consent document may be faxed to the potential participant for review.
• The participant must be contacted by telephone to allow the opportunity for questions.
• Once all information has been obtained to the satisfaction of the participant, the participant signed and dated consent form may be returned via fax.
Telephone Consent

• Written consent: the consent document must be sent (certified mail or fax) to the potential participant and then the consent process is conducted over the telephone with both parties reviewing the written documentation. The consent signed by the participant or participant’s LAR must be received by the study before enrollment proceeds.

• Waiver of documentation of consent: The information may be verbally presented to the potential participant over the telephone.
PRACTICAL ASPECTS OF INFORMED CONSENT

- Selection criteria
- Competency of those obtaining consent
- Competency of study subject
- Legally authorized representative
- Time required in consenting
- Enhanced consent form
- Multimedia in consent process
- Telemedicine
- Web-based consent
COMPETENCY OF THOSE OBTAINING CONSENT

• Degree: MD, PhD RN, PA, LPN, MPH, MS, BS, BA
• Training: CITI training, GCP training
• Role in study: Investigator, coordinator, RA
• Conflict of interest: financial or others
• Experience in obtaining consent
• Cultural sensitivity
• Proficiency in language: Spanish
COMPETENCY OF STUDY SUBJECT

- Health literacy
- Neurological limitation
- Psychiatric limitation
- Disease severity
- Physical limitations
- Language barrier
- Age

Older Adults

• **Visual acuity**
  – Increase light, glasses
  – Large print, pictures, graphics
  – Extra time

• **Auditory acuity**
  – Face to face, eliminate background noise
  – Visual aid and assistive listening
  – Allow time to respond

• **Cognitive status**
  – Awareness
  – MMSE or SPMSQ
TOOLS TO ASSESS COMPETENCY

LEGALLY AUTHORIZED REPRESENTATIVE

- Documentation
- Medical directive
- Multiple next-of-kin
- Competency
- Re-consent
- Difficulty in risk assessment
- Impartial witness
TIME REQUIRED TO CONSENT

• Timing and location
• Explain study, risk and benefit
• Pause – see body language
• Allow time to think
• Allow time to ask questions
• Engage family members if possible
• Engage primary care provider if possible
SHORT CONSENT FORM

- Evidence-based
- FDA approved
- Comprehensible
- Video capsule (optional)
- Appendix of detailed information
- Followed by long consent form
- Practical for acute/emergency studies

Documentation of Informed Consent (short form)

- Short form written consent document requires:
  - Oral presentation
  - Witness to oral presentation
  - An IRB approved written summary
    - Given to subject
    - Signed by witness
    - Signed by person obtaining consent
  - Short form documenting oral presentation
    - Signed by subject or LAR
    - Signed by witness
Waiver of Informed Consent
(not permitted in FDA-regulated studies)

- IRB must find and document that four (4) criteria have been satisfied:
  - Minimal risk research
  - Waiver or alteration will not adversely affect the rights and welfare of the subjects
  - Research could not practicably be carried out without the waiver or alteration
  - Subjects will be provided with additional pertinent information
COMMON ERRORS

Personnel Authorized to Obtain Consent
Making sure those who get consent and sign the form are IRB approved to do so...

Responsibilities Delegation Log

<table>
<thead>
<tr>
<th>Staff Name/Role</th>
<th>Responsibilities</th>
<th>Signature</th>
<th>IRB Appr Date</th>
<th>PI Initials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marcus Welby, M.D.</td>
<td>1, 2, 3, 4, 6, 7, 8, 9</td>
<td>Mr. Welby</td>
<td>6/1/2007</td>
<td></td>
</tr>
<tr>
<td>Principal Investigator</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stella Artois, CRA,</td>
<td>2, 3, 4, 5, 9</td>
<td>Stella</td>
<td>6/1/2007</td>
<td></td>
</tr>
<tr>
<td>Study Coordinator</td>
<td></td>
<td>Artois</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bud Weiser, M.D. Co-</td>
<td>1, 2, 7, 8</td>
<td>Bud</td>
<td>6/1/2007</td>
<td></td>
</tr>
<tr>
<td>Investigator</td>
<td></td>
<td>Weiser</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

RESPONSIBILITY KEY
1. Obtains Consent
2. Evaluates Subject Inclusion/Exclusion criteria
3. Maintains Source Documents
4. Completes Case Report Forms
5. Dispenses Study Drug
6. Administrative
7. Obtains Laboratory Values (sample collection)
8. Interprets Medical Reports and Laboratory Results (i.e. ECGs, MRIs, etc.)
9. Adverse Event Documenting and Reporting

eIRB Study Team List

9.0 Study Team members

Click Add to add Study Team members or Edit to update Study Team member information:

<table>
<thead>
<tr>
<th>Last</th>
<th>First</th>
<th>Degree</th>
<th>Primary Dept</th>
<th>Role</th>
<th>Consenting Hopkins participants</th>
<th>Agree to participate</th>
</tr>
</thead>
<tbody>
<tr>
<td>[View] Weiser Bud</td>
<td>Ph.D.</td>
<td>SOM</td>
<td>Co-Investigator</td>
<td>No</td>
<td>yes</td>
<td></td>
</tr>
<tr>
<td>[View] Artois Stella</td>
<td>r/a</td>
<td>SOM</td>
<td>Consent Designs</td>
<td>yes</td>
<td>yes</td>
<td></td>
</tr>
<tr>
<td>[View] Adams Samuel MA</td>
<td>SOM</td>
<td>Other Staff</td>
<td>Other Staff</td>
<td>no</td>
<td>yes</td>
<td></td>
</tr>
</tbody>
</table>
13. What does your signature on this consent form mean?
By signing this consent form, you are not giving up any legal rights. Your signature means that you understand the information given to you in this form, you accept the provisions in this form, and you agree to join the study.

WE WILL GIVE YOU A COPY OF THIS SIGNED AND DATED CONSENT FORM

[Stamp: APPROVED SEP 29 2005]

Do not sign after the expiration date of 09/28/2006.

15. What does your signature on this consent form mean?
Your signature on this form means that:
- you understand the information given to you in this form
- you accept the provisions in this form
- you agree to join the study

You will not give up any legal rights by signing this consent form.

WE WILL GIVE YOU A COPY OF THIS SIGNED AND DATED CONSENT FORM

This consent form is approved from 09/27/2005 to 09/26/2006.

Do not sign after the expiration date of 09/26/2006.

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature] 07/26/2007

[Signature] 07/26/2007

[Signature] 07/26/2007

NOTE: A COPY OF THE SIGNED, DATED CONSENT FORM MUST BE KEPT BY THE PRINCIPAL INVESTIGATOR; A COPY MUST BE GIVEN TO EACH PARTICIPANT AND, IF APPROPRIATE, A COPY OF THE CONSENT FORM MUST BE PLACED IN THE PARTICIPANT'S MEDICAL RECORD.
Informed Consent Form Problems…
Alterations to the Form

• Changes made to the form itself reflecting exceptions or deviations to the approved protocol…

During this study, we will collect and keep information about you and how you are feeling. You will be asked questions about your health and medical history, and you will be asked to provide blood and urine samples. Your name, address, date of birth, and other personal identifiers will be kept confidential and will be used only for research purposes.

Blood and urine samples collected for research purposes are an important part of this long-term study. We will be collecting blood and urine samples to see how your body reacts with inflammation (infection) and blood clotting enzymes in your blood that might cause disease. We will collect about 2 tablespoons of blood at your first visit, and almost 4 tablespoons of blood at each monthly 5-month visit. This includes blood tests you may need as part of your routine care.

We will also collect a urine sample at the same time as the blood samples.

If children weigh less than 50 kg (110 lbs), a smaller amount of blood will be collected.

Samples for routine tests will always be collected first, and then research samples to follow Federal guidelines on blood collection.
Informed Consent Form Problems...
Forms Not IRB approved

- Site uses unstamped ICF email-version upon approval/re-approval (no stamp)
- Site uses eIRB submitted version (no logo)

WE WILL GIVE YOU A COPY OF THIS SIGNED AND DATED CONSENT FORM

Do not sign after the expiration date of: 

FOR ADULTS AND CHILDREN CAPABLE OF GIVING CONSENT:

Signature of Investigator/Investigator's Name: __________________________

Date: ______________

FOR CHILDREN NOT CAPABLE OF GIVING CONSENT:

Signature of Parent or Guardian: __________________________

Date: ______________

Name of person obtaining consent in Investigator's Name: __________________________

Date: ______________

Name of Legally Authorized Representative (Legal Guardian) for MINORS WHO CAPABLE OF GIVING CONSENT

Signature of Person obtaining Consent in Investigator's Name: __________________________

Date: ______________

Relationship of Lega Guardian to Participant (check one box on each line) (if appropriate)

Lie, 18 years old or older

Date: ______________

Name of Witness to Consent Procedure (national who is not investigator required)

Signature of Witness to Consent Procedure: __________________________

Date: ______________

16. What does your signature on this consent form mean?

Your signature on this form means that:

- you understand the information given to you in this form
- you accept the provisions of the form
- you agree to join the study

You will not gain any legal rights by signing this consent form.

WE WILL GIVE YOU A COPY OF THIS SIGNED AND DATED CONSENT FORM

This consent form is approved from ______________ to ______________

Do not sign after the expiration date of: ______________

Signature of Investigator/Investigator's Name: __________________________

Date: ______________

Name of person obtaining consent in Investigator's Name: __________________________

Date: ______________

Name of Legally Authorized Representative (Legal Guardian) for MINORS WHO ARE NOT CAPABLE OF GIVING CONSENT

Signature of Person obtaining Consent in Investigator's Name: __________________________

Date: ______________

Relationship of Lega Guardian to Participant (check one box on each line) (if appropriate)

Lie, 18 years old or older

Date: ______________

Name of Witness to Consent Procedure (national who is not investigator required)

Signature of Witness to Consent Procedure: __________________________

Date: ______________

Note: A copy of the signed, dated consent form must be kept by the principal investigator. A copy must be given to the participant and, if appropriate, a copy of the consent form must be placed in the participant's medical record.
ENHANCED CONSENT FORM

• Computer assisted instruction
• Video assisted instruction
• Improve patient comprehension
• Audio-visual – mixed evidence-role in specific pt
• Involve stakeholders


FUTURE DIRECTIONS

• Web-based consent form
• Tablet: iPad and iPhone
• Telemedicine
• Skype
QUESTIONS

informed consent