

Department: UAMS Institutional Review Board
Policy Number: 15.1
Section: Consent
Subject: Elements of Informed Consent
Effective Date: July 31, 2002
Revision Dates: September 22, 2005; June 1, 2005; August 25, 2004; April 5, 2007; May 13, 2008; July 28, 2008; January 29, 2010

I. Purpose

The purpose of this policy is to outline the required elements for the informed consent process. 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. The required elements for the assent process, when children are involved, are referenced in IRB policy 17.1, Children in Research.

II. Definitions

- A. **Coercion** occurs when an overt threat of harm is intentionally presented by one person to another to obtain compliance.
- B. **Exculpatory language** is language that waives or appears to waive any legal rights of the subject or that releases or appears to release the Institution, Sponsor or Investigator from liability.
- C. **Human subject (subject and participant used interchangeably):**
1. An Individual who is or becomes a participant in research either as a recipient of a test article, as a control, or an individual on whose specimen an investigational article is used; OR
 2. A living individual about whom an investigator (whether professional or student) conducting research obtains:
 - a) Data, of any kind, through intervention or interaction with the individual;
OR
 - b) Identifiable private information even in the absence of intervention or interaction.
- D. **Identifiable** means that the identity of the individual is or may be readily ascertained by the investigator or associated with the information.
- E. **Informed consent process** assures that prospective human subjects will understand the nature of the research and can knowledgeably and voluntarily decide whether or not to participate in the research. Informed consent is an ongoing process. The informed consent document is not consent in and of itself; it serves as written documentation of what has been communicated.
- F. **Legally Authorized Representative (LAR)** means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in research (45 CFR 46.102©) See UAMS IRB

Policy 17.13 Legally Authorized Representatives and 17.1 Research in Children for further information.

- G. **Mandated Reporter** is anyone required to report suspected abuse. You are a mandated reporter if you are a: child care worker or foster care worker; coroner; day care center worker; dentist; dental hygienist; domestic abuse advocate; domestic violence shelter employee; domestic violence shelter volunteer; employee of DHHS; employee working under contract for DYS; foster parent; judge; law enforcement official; licensed nurse; any medical personnel who may be engaged in admission, examination or treatment; mental health professional; osteopath; peace officer; physician; prosecuting attorney; resident intern; school counselor; school official; social worker; surgeon; teacher; court appointed special advocate - staff member or volunteer; juvenile intake or probation officer; child advocacy center employee; clergyman.
- H. **Private Information** is information that an individual can reasonably expect will not be made public, and information about behavior that an individual can reasonably expect will not be observed or recorded.
- I. **Undue influence** occurs through an offer of an excessive, unwarranted, inappropriate or improper reward or other overture in order to obtain compliance.

III. Policy

A. The Consent Process

1. Informed consent must be legally effective. If a subject is not able to consent on his/her own behalf due to age or cognitive ability, refer to UAMS IRB Policy 17.13, Legally Authorized Representatives, to ensure permission is obtained from a legally authorized representative. Refer to UAMS Policy 17.1, Children in Research, for information on the process for obtaining consent and assent in children.
2. Informed consent must be sought only under conditions that a) provide the prospective subject or representative sufficient opportunity to consider whether or not to participate and b) minimize the possibility of coercion or undue influence.
3. Informed consent must be in a language understandable to the subject or legally authorized representative (LAR) and at a level understandable to all subjects. No complex scientific or technical language should be used without an explanation in lay or common terms. The consent document should be written in language that is at or below an eighth grade level. Refer to UAMS IRB Policy 15.4, Non-English Speaking Research Subjects, for information regarding how to consent non-English speaking subjects.
4. Informed consent may not include any exculpatory language that waives or appears to waive any legal rights of the subject or releasing the Institution, Sponsor or Investigator from liability. Avoid phrases like “you give up all rights”, “you will not be compensated” or “I authorize the use” in the consent process.
5. Informed consent must be prospectively obtained and documented unless

requirements outlined in UAMS IRB Policy 15.3, Waivers of Signed Informed Consent Documents and Waivers of Informed Consent Elements, apply.

6. Informed consent should be consistently written in the second person when referring to the subject or representative, with the exception of the final paragraph. Using terms such as “you” or “your” rather than “I” or “me” helps convey the voluntary nature of the process.
 7. Informed consent for research studies should use terms like “participant” or “subject” and “research procedures” rather than “patient” and “treatment”.
- B. Elements of Informed Consent (unless specifically waived by the IRB, the following elements must be addressed in the informed consent process and included in the written informed consent document)
1. Informed consent will include a statement that the study involves research.
 2. Informed consent will include an explanation of the purpose of the research.
 3. Informed consent will include the expected duration of the subject’s participation in the research.
 4. Informed consent will include a description of the procedures to be followed.
 5. Informed consent will include identification of any experimental procedures.
 6. Informed consent will include the number of subjects involved in the study.
 7. Informed consent will include an age range for subjects to be studied.
 8. Informed consent will include a description of any reasonable foreseeable risks or discomforts to the subject.
 9. Informed consent will include a description of benefits, if any, to the subject or to others that may reasonably be expected from the research. Benefits refer to health or well-being, not payment for participation.
 10. Informed consent will include a disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.
 11. Informed consent will include a statement that significant new findings developed during the course of research, which may relate to the subject’s willingness to continue, will be provided to the subject. NOTE: During the subject’s participation in the study, the subject or the subject’s legally authorized representative may be required to receive a copy of any amendments to the written information provided to the subjects in accordance with UAMS IRB Policy 8.1, Changing Study Protocol/Modifications to Previously Approved Research. In some instances, the IRB or Study Sponsor may request that the subject or the subject’s legally authorized representative undergo a new consent process and receive an updated consent.
 12. Informed consent will include a statement describing the extent, if any, to which

confidentiality of records and Protected Health Information (PHI) identifying the subject will be maintained, noting as applicable that certain entities, as outlined below in section B(16), may inspect the records (See UAMS policy 13.3, HIPAA Privacy Rule).

13. Informed consent will include contact information for both the research team as well as the IRB. The purpose of this contact information is for the research subject to have the opportunity to ask questions regarding the research, their rights as a research subject, voice concerns, file a complaint, or notify the research team in the event of a research related injury (see section IV(B)(1) of this policy for a suggested clause).
14. Informed consent will include a statement that the participation is voluntary; that refusal to participate involves no penalty or loss of benefits to which the subject is otherwise entitled; that no rights have been waived; and that the subject may discontinue participation at any time without penalty or loss of benefit to which the subject is otherwise entitled (see section IV(B)(5) of this policy for a suggested clause).
15. The subject or subject's legally authorized representative should receive a **signed and dated** copy of the written informed consent document and any other written information provided to the subjects **prior to participation**.
16. Informed consent will include that the following entities may review records where applicable:
 - a) The UAMS Institutional Review Board (IRB);
 - b) Other Institutional oversight offices;
 - c) The Office for Human Research Protections (OHRP) a Federal agency;
 - d) Any funding source or sponsor that may access the records should be listed;
 - e) If the study is subject to FDA oversight, the Food and Drug Administration must be listed;
 - f) If any member of the study team is a mandated reporter, an explanation of this limit to confidentiality must be present in the informed consent document (see section IV(B)(4) of this policy for a suggested clause).
 - g) In studies where subject will be tested for HIV or other communicable diseases, a statement must be included that describes how the subject and Department of Health will be notified of a positive test result and that subject will be given information about counseling options if HIV positive or have any other communicable disease.

C. Additional Elements of Informed Consent When Applicable

1. All drug or device studies will include in the informed consent a statement that the particular treatment or procedure may involve risks, which are currently

unforeseeable, to the subject, embryo or fetus if the subject is or may become pregnant.

2. If the study is greater than minimal risk, there must be an explanation as to whether or not any compensation and/or medical treatment is available for injury (see section IV(B)(1) of this policy for a suggested clause).
3. If Protected Health Information (PHI) is being collected, unless specifically waived by the IRB, a HIPAA Disclosure Authorization is required as part of the informed consent document or as a separate document (see UAMS policy 13.3, HIPAA Privacy Rule).
4. If the Investigator anticipates the subject may be terminated from the study without regard to the subjects consent, the informed consent will include the specific anticipated circumstances under which the subject's participation may be terminated by the Investigator.
5. When there are anticipated consequences to withdrawing from a study that may put the subject at greater risk, the informed consent will include the specific consequences of the subject's decision to withdraw from the research and procedures for the orderly termination of participation by the subject.
6. When additional costs to the subject are anticipated as a result from participation in the research, the informed consent will describe these additional costs.
7. If the study is being conducted at multiple sites, the informed consent will include the approximate number of subjects involved in the study locally and nationally.
8. If the study involves the use of a placebo, the informed consent will include a statement describing the use of a placebo and the probability of being assigned to the placebo arm.
9. When test articles (i.e., drugs, devices) are being used in the project, include a statement as to status of the article (i.e., FDA approved for use in cardiology patients aged 16 years and older), and whether or not the study is testing the safety or effectiveness of the test article. If the study is testing the safety or effectiveness of the test article, the consent form cannot make any claims that the test article is safe or effective.
10. If any information will be collected after the subject's active involvement, the informed consent document must state the duration of the collection.
11. If subjects are to be contacted for future research, the IRB requires that the informed consent document include a yes/no option to being contacted in a separate section of the consent form that allows the subject to consent to the primary study but decline to be re-contacted for future studies.
12. If data or specimens will be stored for future research, the protocol and consent must describe:

- a) How the data or specimens are to be stored,
 - b) Why the information is being collected,
 - c) The protocol must describe in detail the types of future research that are anticipated,
 - d) How long the data or specimens will be stored,
 - e) A description of how subjects may request to withdraw data or specimens.
13. If data or specimens are stored for future research, the IRB requires that a yes/no option be provided in a separate section of the informed consent document or in a separate document. The option should provide for future use of data or specimens in a way that allows a subject to consent to the primary study but decline to allow the storage of samples if s/he desires (see UAMS IRB Policy 17.11, Stored Data or Tissues).
 14. In studies where ionizing radiation is used, include in lay terms the increase of radiation exposure over the current standard of care.
 15. In studies where there is potential for gene linkage, an explanation of risks including social and financial will be included (See UAMS IRB Policy 19.1, Human Genetics).

D. Format Requirements for Consent Form

1. All informed consent document pages must include the protocol title; or if the protocol title is more than two lines long, the full title is to appear on the first page and an appropriate protocol identifier, such as the IRB protocol number, may be used on all subsequent pages.
2. All informed consent document pages must include the name of the sponsor.
3. All informed consent document pages must include the institutions where the research is being conducted.
4. All informed consent document pages must include page numbers, date and version number.
5. The informed consent document must include lines for the signature and date of consent for:
 - a) Subject; and/or
 - b) Parent or LAR signature for studies enrolling children or individuals that are cognitively impaired (see UAMS IRB Policies 17.1, Research in Children; 17.2, Cognitively Impaired Persons; and 17.13, Legally Authorized Representatives). NOTE: Both Parent signatures are mandated by regulation for pediatric categories 3 and 4; and
 - c) Person obtaining consent (POC).

6. The last paragraph will address the voluntary nature of the study and that time has been given to ask questions and express concerns (see section IV(B)(5) of this policy for a suggested clause).

IV. Procedures

A. Submission Process

1. At the time of initial submission, upload all informed consent documents (including assent documents or scripts as applicable) to be used. The form should include all of the elements required by the UAMS IRB and Federal regulations and each of the other elements as is appropriate to the type and nature of the study.
2. Investigators will describe the entire proposed consent process in the original submission (see UAMS IRB Policy 15.5, The Informed Consent Process).
3. The IRB may require that information, in addition to that required in Federal Regulations (DHHS 45 CFR Part 46; FDA 21 Part 50), be given to research subjects when, in its judgment, the information would meaningfully add to the protection of the rights and welfare of subjects.
4. In response to contingencies or after approval, submit any proposed changes to the informed consent document with changes highlighted and/or tracked along with a clean version of the informed consent document as a “modification”. The IRB will administratively reject any modifications to documents that are submitted without an accompanying tracked change version.
5. Investigators must not use any consent form version prior to its approval by the IRB.
6. Each time the informed consent document is modified, the date and version number must be updated. Revised documents should replace previous version numbers and dates in ARIA with the next consecutive number and date of submission or revision. The version number and date entered into ARIA during the upload of the document during the submission process is the number that will be displayed on the approval letter from the IRB. Therefore, the version number and date entered into ARIA should be the same as those appearing on the consent form.
7. When the IRB approves amendments to a previously approved consent form, the previous version must be retired and can no longer be used to consent subjects. The IRB is to provide guidance regarding the possible need to re-consent current subjects using the new form in accordance with UAMS IRB Policy 8.1, Changing Study Protocol.
8. The IRB does not generally stamp consent forms; but, if the Sponsor requires a stamped consent, the Investigator should contact the IRB office to obtain a stamped copy of the approved consent form.

B. Suggested Clauses (the following are suggested examples of language that may be

considered acceptable. These clauses should not be considered required or standard clauses. Any statement used must be consistent with any sponsor or funding agreement and must further contain the elements described in the required elements sections of this policy):

1. Injury Clauses

- a) For studies that do not have an Industry Sponsor: “In the event you are hurt by being in this research, treatment will be available. This treatment may include: first aid, emergency treatment and/or follow-up care. This treatment may be billed to you or your insurance company in the normal manner. Normally, no other form of compensation is available. If you think you have been hurt by this research, let the study Investigator know right away by calling <<<insert PI name and contact number>>> or <<<24 hour number when applicable>>>”.
- b) For studies that have an Industry sponsor who has agreed to pay for some injuries: “In the event you are hurt by being in this research, treatment will be available. This treatment may include: first aid, emergency treatment and/or follow-up care. The Sponsor agrees to pay for all reasonable and customary diagnosis, care, treatment, or hospitalization costs to address any injury or illness you may sustain as a result of your participation in the Study. Normally, no other form of compensation is available. If you think you have been hurt by this research, let the Study Investigator know right away by calling <<<insert PI name and contact number>>> or <<<24 hour number when applicable>>>. <<<Research Support Center will insert any additional negotiated language>>>. This language needs to match the Sponsor agreement and must be consistent with any other language in the consent form.

2. Contact Clause

“If you have questions during the study about the research, you should contact <<<PI name and contact number>>> or <<<24 hour number when applicable>>>. You may call the Institutional Review Board (IRB) at 501-526-7134 regarding a research-related injury, with questions about your rights as a research subject or to discuss any problems or concerns about the research. Also, you may call this number if you are unable to reach the Investigator or you wish to speak to someone not directly related to this study”

3. Additional Cost Clauses

- a) “The study may include tests and procedures that are conducted solely for the research study. These tests and procedures will be paid for by the study Sponsor. There may be some tests and procedures which the Principal Investigator considers standard of care (meaning you would receive this care whether or not you are in the research study) and these tests and procedures are billable to you and your insurance company. Your insurance company may or may not agree with this determination. If your insurance company feels that the charges are for tests and procedures related to the

research study they may deny payment, making you responsible for any charges that are not paid for by the study Sponsor. There is never any guarantee with any service that you will not incur some financial liability.”

- b) “The Principal Investigator or his/her representative will discuss with you any additional tests and/or procedures that may be required due to changes in your condition during your study participation. You have the right to refuse to have any additional tests or procedures. If you feel that you have been billed in error, please contact the Principal Investigator or his/her representative whose name and telephone number is included on this consent form.”
- c) “A summary (insert a narrative or table-formatted description with headings of “Covered by the Study” and “Payable by You or Your Insurance”) of the standard and investigational study-related procedures is included below together with an indication of those items that will, or may, be your financial responsibility.”

4. Mandated Reporter

- a) “By law, the study team must release certain information to the appropriate authorities if at any time during the study there is concern that child abuse or elder abuse has possibly occurred or you disclose a desire to harm yourself or others.”

5. Voluntary Participation

- a) “The purpose and voluntary nature of this study, as well as the potential benefits and risks that are involved have been explained to me. I have been able to ask questions and express concerns, which have been satisfactorily responded to by the study team. I have been told I will be given a copy of the informed consent document.”

C. IRB Responsibility

1. Review consent form document

- a) Ensure all required UAMS and Federal elements are addressed as applicable.
- b) Ensure consistency with all other submitted forms such as protocol, advertisement, or investigator’s brochure.

2. Review consent process

- a) Ensure process allows sufficient opportunity to consider participation and the possibility of coercion or undue influence is minimized.
- b) Ensure process includes all elements necessary to protect the safety and welfare of the subjects participating in the study.

- c) Ensure the review is documented sufficiently by referring to the consent form review checklist in the presentation of the protocol review during the IRB meeting.
3. Request revisions as necessary to ensure that proposed activities are clear and the intended subjects can make a fully informed decision.

V. References:

National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. *The Belmont Report*. Washington, DC: US Government Printing Office, 1979.

UAMS IRB Policy 8.1, Changing Study Protocol/Modifications to Previously Approved Research 13.1

UAMS IRB Policy 15.3, Waivers of Signed Informed Consent Documents and Waivers of Informed

UAMS IRB Policy 15.4, Short Form Written and Oral Informed Consent

UAMS IRB Policy 15.5, The Informed Consent Process

UAMS IRB Policy 17.1, Children in Research

UAMS IRB Policy 17.2, Cognitively Impaired Persons

UAMS IRB Policy 17.11, Stored Data or Tissues

UAMS IRB Policy 17.13, Legally Authorized Representatives

UAMS IRB Policy 19.1, Human Genetics

DHHS 45 CFR Part 46; FDA 21 Part 50