From: OC GCP Questions
To: [redacted]
[redacted]
Subject: RE: Does this consent comply with FDA disclosure requirements
Date: Friday, August 22, 2014 10:41:38 AM
Attachments:

Hi [redacted],

Thank you for your question regarding informed consent in the setting of Expanded Access to Investigational Drugs for Treatment Use (21 CFR 312 subpart I). As you know the aim of the Expanded Access program is to facilitate the availability of investigational drugs to patients with serious diseases or conditions when there is no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the patient's disease or condition. In all cases of expanded access, investigators are responsible for ensuring that the informed consent requirements found at 21 CFR part 50 are met and ensuring that IRB review is obtained in a manner consistent with the requirements of 21 CFR part 56.

The question you raise about whether the language within the provided informed consent document satisfies the requirement that the informed consent document includes "a statement that the study involves research" [21 CFR 50.25(a)] is an interesting question. The distinction between clinical research and clinical care could legitimately be considered by some to be blurred in this setting given that the aim of Expanded Access program is to facilitate access to promising treatments and not necessarily contributing to the research needed to obtain approval of the drug product. However, despite this blurring, the licensed physician who submits the Expanded Access IND is considered a "sponsor-investigator" and is responsible for the typical requirements found in the IND regulations to the extent they are applicable to the expanded access use (e.g., obtaining consent, IRB review, reporting adverse drug events). This includes a requirement to have an informed consent document that includes a statement that the study involves research as required under 21 CFR 50.25(a).

With respect to your question about compliance, the Office of Good Clinical Practice is not in a position to affirmatively state that this consent form is or is not in compliance with the regulations. Such a determination is usually established through FDA's on-site inspection program. However I did review the document and have the following things you may want to consider. As presently written, the document uses the term "research" twice and "experimental" at least six times. The term "experimental" is often used to qualify the term "treatment" throughout the document and doesn't necessarily convey the idea of this being research very well. The use of the term research can be found on the header of page 1 ("INFORMED CONSENT FORM FOR RESEARCH WITH HUMAN SUBJECTS") and on page 4 ("…your participation as a research patient…"). Both uses of the term "research" could be considered by some to reasonably convey to the reader that the activity they are being asked to participate involves research; however, it could be clearer. In my review I noted several locations in the document where "treatment" is used where it might be better to use the term "research". For example it might be better to state at the onset "You are being invited to participate in this research to treat your mycobacterial infection" rather than "You are being invited to participate in an experimental treatment for your mycobacterial infection." Likewise, under the section about being paid to participate, it might be better to state "You will not be paid for taking part in this research" rather than "You will not be paid for taking part in this treatment." This last statement seems particularly odd in that who would expect to get paid to be treated. Perhaps in context it makes more sense but it could be clearer.

Although FDA has no formal guidance on the question you asked, or has communicated it will use enforcement discretion in this setting, draft guidance on the Expanded Access program can be found at http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM351261.pdf

I hope this information is helpful to you. If further assistance is needed, please feel free to contact us once again at the official GCP mailbox, gcp.questions@fda.hhs.gov.

Thank you,

Kevin

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301-796-3707

From: [redacted]
Sent: Tuesday, August 19, 2014 2:08 PM
To: OC GCP Questions
Subject: Does this consent comply with FDA disclosure requirements

Attached is a redacted consent document for an expanded access drug. There is an issue with these consent documents that is coming up a lot, and I would like to make sure that the advice I provide is not overly stringent or too lax relative to FDA's stance.

Does FDA consider this consent document compliant with the regulatory requirement at §50.25 In seeking informed consent, the following information shall be provided to each subject: "A statement that the study involves research"?

If FDA considers this document to disclose "A statement that the study involves research", can you let me know FDA's reasoning?

If FDA does not consider this document to disclose "A statement that the study involves research", would FDA let this go under enforcement discretion because this is expanded access?

[redacted]