OFFICE OF RESEARCH OVERSIGHT (ORO)

Examples of Noncompliance in VA Human Subjects Research that ORO Typically Considers to Meet the Definition of Serious or Continuing Noncompliance under VHA Directive 1058.01

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VHA Directive 1058.01, "Research Compliance Reporting Requirements," sets forth requirements for the reporting of serious or continuing noncompliance and other events involving VA research. The Directive covers reporting requirements for the various types of research conducted by VA investigators, including research involving the participation of human subjects, research involving the use of laboratory animals, and basic benchtop research conducted in laboratories. With regard to VA human subjects research, and more specifically, VA human subjects research to which the requirements of the Federal Policy for the Protection of Human Subjects apply (i.e., non-exempt human subjects research) or that is otherwise under the oversight of an Institutional Review Board (IRB), VHA Directive 1058.01 requires VA personnel to report to the appropriate IRB any apparent serious or continuing noncompliance involving such research.[1] It is the role and responsibility of the IRB to determine whether such apparent serious or continuing noncompliance constitutes actual serious or continuing noncompliance, and, thus, is reportable to ORO. Examples are provided in this guidance document to assist in identifying noncompliance that ORO would typically consider to constitute serious or continuing noncompliance under VHA Directive 1058.01.[2] This guidance in *not* intended to provide an exhaustive list of examples of serious or continuing noncompliance. IRBs must clearly document case-specific determinations and justifications related to their evaluations of apparent serious or continuing noncompliance.

Pertinent Definitions in VHA Directive 1058.01:

§3.c. Continuing Noncompliance. *Continuing noncompliance means repeated instances of noncompliance with applicable laws, regulations, policies, agreements, or determinations of a research review committee, or the prolonged persistence of noncompliance occurring after its identification or awareness, or implementation of a corrective action intended to effectively resolve the noncompliance.*

§3.g. Noncompliance. *Noncompliance is any failure to adhere to applicable requirements for overseeing, reviewing, approving, or conducting VA research set forth in law, regulation, policy, or study agreements (such as reliance agreements, memoranda of understanding, data use agreements), including any failure to conduct research in accordance with a VA study protocol approved by a research review committee.*

§3.o. Serious Noncompliance. *Serious noncompliance is any failure to adhere to requirements for conducting human research that may reasonably be regarded as:*

(1) Presenting a genuine risk of substantive harm to the safety, rights, or welfare of human

[1] With regard to other types of research (exempt human subjects research, laboratory animal research, basic laboratory benchtop research, etc.) under the oversight of a committee other than an IRB (such as a Research & Development Committee, Institutional Animal Care and Use Committee, or Subcommittee on Research Safety), Directive 1058.01 also addresses reporting requirements for such research.

[2] Although the focus of this guidance document is on events involving human subjects research under the purview of an IRB, the examples provided in this document of events typically constituting serious or continuing noncompliance involving such research may have parallels with events that occur in other types of research (exempt human subjects research, laboratory animal research, basic laboratory benchtop research, etc.) and that would be similarly reportable to ORO.

research subjects, research personnel, or others, including their rights to privacy and confidentiality of identifiable private information;

(2) Presenting a genuine risk of substantive harm to the safety, rights, or welfare of research personnel who conduct research;

(3) Presenting a genuine risk of substantive harm to the health or welfare of animals used in research;

(4) Presenting a genuine risk of substantive reputational harm to VA; or

(5) Substantively compromising a VA medical facility's Animal Care and Use Program (ACUP), Human Research Protection Program (HRPP), Research Safety and Security Program (RSSP), or research information security processes.

A. Some Examples of Noncompliance in Human Subjects Research that ORO Typically Considers to Constitute Serious Noncompliance under VHA Directive 1058.01:

(1) Initiation of human research without required IRB approval.
(2) Initiation of human research without required Research and Development (R&D) Committee approval.
(3) Failure to obtain required informed consent for one or more subjects.
(4) Failure to obtain required documentation of informed consent.
(5) Failure to obtain required Health Insurance Portability and Accountability Act (HIPAA) authorization for one or more subjects.
(6) Other substantive informed consent or HIPAA authorization deficiencies, including HIPAA authorization deficiencies that have led to use and disclosure of protected health information (PHI) without proper legal authority.
(7) Substantive unapproved deviations from IRB-approved protocols (except to eliminate apparent immediate hazards to subjects), including substantive violations of inclusion or exclusion criteria.
(8) Failure to implement any protocol or informed consent modifications, or other changes as required by the IRB.
(9) Failure to notify the IRB of apparent unanticipated problems in human subjects research involving risks to subjects or others (UPIRTSO), including serious adverse events that are unanticipated and related or possibly related to participation in VA research.
(10) Unfounded determination of a UPIRTSO as "anticipated" or "not related" to the research.
(11) Conduct of research without required credentialing, privileging, or initial training of research staff.
(12) Conduct of research involving women known to be pregnant, prisoners, or children, or of international research, without required approvals from the Facility Director or Chief Research and Development Officer, as applicable.
(13) Continuation of human research beyond the specified IRB approval period.
(14) Noncompliance that substantively compromises the HRPP (e.g., violation of IRB quorum requirements; improper approval or documentation of exemptions or waivers; failure to ensure review of proposed research sufficient to identify and address privacy or data security concerns).

NOTE: Apparent serious or continuing noncompliance on the part of the IRB must be reported to the facility R&D Committee.

(15) Any combination of noncompliant actions that collectively present a genuine risk of substantive harm to the safety, rights, or welfare of human research subjects (including their rights to privacy and confidentiality of identifiable private information), research personnel, or others, or substantively compromise a facility's HRPP.

B. Some Examples of Noncompliance in Human Subjects Research that ORO Typically Considers to Constitute Continuing Noncompliance under VHA Directive 1058.01:

(1) Repeated failure by the relevant investigator(s) to ensure timely remediation of any noncompliance, identified by or made known to the investigator(s), with requirements for the conduct of human research.

(2) Repeated failure by the responsible official(s) to ensure timely remediation of any programmatic noncompliance, identified by or made known to the official(s), with requirements for the conduct or oversight of human research.

(3) Any noncompliance that, due to its persistence over time, results in a genuine risk of substantive harm to the safety, rights, or welfare of human research subjects, research personnel, or others, or substantively compromises a facility's HRPP.

(4) Persistence of noncompliance occurring after the implementation of a corrective action intended to effectively resolve the noncompliance.