Department of Veterans Affairs
Birmingham VA Medical Center

Human Research Protection Program SOP #18 Revised September 17, 2015

COMPLAINTS, ALLEGATIONS, FINDINGS OF NON-COMPLIANCE and REPORTING REQUIREMENTS

1. POLICY

The Birmingham VA Medical Center (BVAMC) Human Research Protection Program (HRPP) is committed to protecting the safety and welfare of veterans participating in VA research and ensuring the integrity of the HRPP by requiring investigators to comply with HRPP policies and procedures. It is the policy of the BVAMC to address complaints, allegations or findings of noncompliance by investigators or staff. This standard operating procedure (SOP) delineates the procedures to address complaints, allegations or findings of non-compliance, serious adverse events and what, how to report such items. The over-arching goal of HRPP is to ensure compliance with HRPP SOPs and applicable federal, state, and local laws.

2. RESPONSIBILITIES

The BVAMC Director has ultimate responsibility for ensuring that the BVAMC HRPP has a system to address complaints, serious adverse events, allegations or findings of noncompliance with federal, state, and local regulations regarding the safe and ethical conduct of research.

Chief of Staff (COS) is responsible to the Director for oversight of the BVAMC Research program including the HRPP. The COS is responsible for determining (with the assistance of the IRB Chair) necessary actions to protect subjects if a study has been closed/expired/terminated or suspended.

Associate Chief of Staff, Research and Development (ACOS/R&D) is responsible for oversight of the procedures of handling complaints, allegations or findings of non-compliance and serious adverse events. The ACOS/R&D is responsible for investigating complaints or allegations of non-compliance of the Research Compliance Officer (RCO) or HRPP office staff.

BVAMC Institutional Review Board (IRB) Chair or Vice Chair is responsible for receiving and evaluating complaints or reports of allegations or findings of non-compliance by investigators, their research team or the RCO. If subjects are at risk due to a suspended/expired/terminated or closed study, the IRB Chair is responsible for notifying the COS and working together to determine what is necessary to protect the subjects. Additionally, the IRB Chair evaluates all adverse events reported to the IRB to determine the seriousness of the event and whether or not it meets the criteria for reporting to the BVAMC Director and ORO as outlined in VHA Handbook 1058.01 Research Compliance Reporting Requirements.
BVAMC Research Integrity Officer (RIO) is responsible for conducting the investigation of the allegations of non-compliance, described in this HRPP SOP and Medical Center Memorandum (MCM) 151-06 Research Misconduct, regarding complaints, allegations or findings of non-compliance in conjunction with the Research Compliance Officer (RCO).

BVAMC IRB is responsible for determining the appropriate actions for findings of serious or continuing non-compliance in human subject research.

Investigators and Anyone Involved in Research must comply with the state and federal statutes, VA and BVAMC HRPP SOPs. Investigators have 60 days to respond to any IRB request. After 60 days the IRB or the ACOS/R&D may suspend the research study for noncompliance.

3. DEFINITIONS

See HRPP SOP #24 HRPP Definitions

Examples of Apparent Serious Noncompliance. Examples of apparent serious noncompliance that must be reported to the IRB within 5 business days include, but are not limited to: A finding of noncompliance with human research requirements by any VA office (other than ORO) or any other Federal or state entity (e.g., FDA). Subsequent reports to ORO based on findings made by entities external to the facility must include a copy of the official findings. The initiation of VA human subject research, regardless of level of risk or number of subjects, without written notification from the ACOS for Research that the project may begin and without IRB approval. Initiation of research interactions or interventions with one or more subjects prior to obtaining required informed consent (that has IRB approval) and required, signed Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule authorization. Failure to report one or more unanticipated SAEs or unanticipated serious problems involving risks to subjects or others as required. For a complete list of apparent non-compliance items see VHA Handbook 1058.01 Research Compliance Reporting Requirements.

An initial report of apparent serious or continuing non-compliance based on a research compliance officer consent document audit, research compliance officer regulatory audit, or other systematic research compliance officer audit is required regardless of whether disposition of the matter has been resolved at the time of the report.

4. PROCEDURES

a) Reporting Suspected or Confirmed Allegations of Non-compliance: Any person (staff, patient, research subject, family member, research sponsor monitor, community member, investigator, and research assistant) can initiate the complaint and report noncompliance with HRPP or IRB policies to the facility where the event took place. The person making the complaint or allegation of non-compliance involving human subjects enrolled in research should be directed to the IRB Chair, the ACOS/R&D, Research Compliance Officer (RCO) or the RIO. If the complaint involves non-human research
activities the person will be referred and interviewed by the RIO/RCO and requested to file the complaint or allegation in written form. Particular attention is paid to patient and employee safety including risk to research subjects. Within 5 days after a report of a serious unanticipated problem involving risks to subjects or others, or of a local unanticipated serious adverse event, the convened IRB or the IRB Chair (or designee) must determine and document whether the reported incident was serious, and unanticipated and related to the research. Related means the event or problem may reasonably be regarded as caused by, or probably caused by, the research. The IRB Chair will determine what actions are necessary to protect patients and will notify the Director, ACOS R&D and the COS if patients are at risk. If after a thorough investigation the complaint or allegation is found to be serious non-compliance the IRB Chair alone or in consultation with the IRB members, at a convened meeting, may suspend the named research protocol and must report this to the Director of the hospital within 5 days. The Director will then have 5 days to report this to the Regional ORO office, and others as determined by VA regulations. The IRB Chair in consultation with the Chief of Staff, will consider the actions needed to protect the rights and welfare of currently enrolled participants, including informing current participants of the termination or suspension and having any adverse events or outcomes caused by the termination or suspension reported to the IRB if studies are suspended or terminated. If research misconduct is suspected with no human subject involvement than an official investigation is initiated following Medical Center Memorandum 151-06 Research Misconduct procedures.

b) Apparent serious or continuing noncompliance based on RCO audit

1) Within 5 business days of identifying apparent serious or continuing noncompliance based on an informed consent audit, regulatory audit, or other systematic audit of VA research, an RCO must report the apparent noncompliance directly (without intermediaries) to the facility Director.

2) After notification to the Director, the RCO will notify the IRB (if humans are involved) and the ACOS/R&D.

3) If the non-compliance issue involves studies conducted at BVAMC but approved by the Central IRB, the RCO will inform Central IRB, and involve them as appropriate in any and all necessary actions as outlined in VHA Handbook 1058.01 Research Compliance Reporting Requirements. The local R&D Committee will also be notified.

c) IRB Review of Apparent Serious or Continuing Noncompliance: The IRB must review any report of apparent serious or continuing noncompliance. The IRB must reach a determination that serious or continuing non-compliance did (or did not) occur within 30-45 days after receiving a report of apparent non-compliance.

1) If the IRB determines that the reported incident constitutes serious noncompliance or continuing noncompliance, the IRB chair, or designee must report the determination directly (without intermediaries) to the facility Director within 5 business days after the determination.
2) The IRB Chair’s report must be made in writing, with a simultaneous copy to the ACOS/R&D, the R&D Committee, and any other relevant research review committee.

3) The facility Director must report the determination to the appropriate ORO RO, with a simultaneous copy to the VISN Director and the ORD, within 5 business days after receiving such notification, unless the noncompliance has already been reported in accordance with VHA Handbook 1058.01 subparagraph 7h(2).

4) An initial report of an IRB determination that serious noncompliance or continuing noncompliance occurred is required, even where the determination is preliminary or disposition of the matter has not been resolved at the time of the report.

d) Investigating Reports of Suspected or Confirmed Non-compliance and/or Complaints: For reports of complaints or non-compliance (with human use) involving the investigator or his/her research staff, the RCO will perform an initial evaluation to determine whether the report is acceptable or if further information must be obtained to determine whether the allegation is true. The report of a finding or allegation of complaint or non-compliance must contain the following information:

   (1) The nature of the event;
   (2) Individuals and parties involved;
   (3) When and where the event occurred; and
   (4) A corrective action plan, when applicable.

The IRB Chair, or designee, will consider the following options in the following order and choose which method is effective in gathering any additional information required to address the report:

   (1) Conduct the initial review alone;
   (2) Conduct the initial review in coordination with the RCO;
   (3) Delegate some of the review to an IRB member;
   (4) Delegate all of the review to the IRB member;
   (5) Empanel a reviewing subcommittee of the IRB; or
   (6) Request legal counsel provides advice and conducts the review, request assistance from others at BVAMC; ACOS/R&D, a non-involved physician, or outside consultants.

The individual(s) or subcommittee conducting the investigation process may take any of the following actions as they deem necessary to verify the veracity of any allegations and the seriousness or number of occurrences of the action:
   (1) Reviewing any written materials;
   (2) Interviewing knowledgeable sources; and/or
   (3) Collecting relevant documentation.
If the IRB Chair or designee determines that immediate action is required to eliminate apparent immediate hazards to subjects, the IRB Chair or designee may take one of the following actions, pending review at the next convened IRB meeting:

2. Suspend all study activities.
3. Report and co-ordinate with the COS the determination to continue study drugs or any other interaction/intervention necessary for the protection of research subjects actively enrolled in a suspended/expired study.

**e) Procedure when the IRB Requires a Remedial Action Plan:** In the event of findings of non-serious non-compliance with HRPP and IRB policies, the IRB will request a specific remedial action plan from the investigator(s) that is specific to the nature of the complaint or noncompliance.

1. This remedial plan must be communicated in writing to the IRB. This remedial plan may include, but is not limited to, one or more of the following:

   - Clarifications of misunderstanding or admissions/apologies by the investigator for errors sent in the form of letters or memos to the parties concerned (copies sent to IRB).
   - Preparation of a written document that demonstrates the investigators’ knowledge of the essentials of the protection of human subjects in research and Good Clinical Practices, to be submitted to the IRB.
   - Modification or restriction of investigator’s research practices and procedures
   - Remedial training on the protection of human subjects, ethics, good clinical practices, etc.
   - Notification of complaint or noncompliance forward to the supervisor, Chief of Staff, supervisors from affiliated universities (if the investigator is a student or resident) or BVAMC Director.
   - Initiation of a Continuous Quality Improvement plan to monitor, track and reduce noncompliance.
   - Further disciplinary actions as deemed necessary.
   - Further audits of the investigators’ research activities.

**NOTE:** Any corrective action plan requiring more than minor modifications to previously approved research must be referred to the convened IRB.

**f. Research Misconduct:** Any non-compliance that is suspected of meeting the definition of research misconduct will be dealt with as outlined in MCM 151-06 Research Misconduct.

**g. Evaluating Reports of Non-Compliance Referred to the Convened IRB:**
If the non-compliance was reported to or uncovered by the RCO, the RCO will prepare a written report to be submitted to the IRB (copies to the BVMAC Director and the
ACOS/R&D) and filed with other relevant portions of the study file. The information will include names of involved parties, title of study, description of the allegation or complaint of noncompliance, information or facts gathered during the investigation, and all actions taken prior to IRB review. The IRB Chair or designee will either present the report or assign someone else to present the report at the convened IRB meeting for discussion and vote as follows:

1. The IRB determines that additional information is needed and requests that the RCO or others obtain such information and present it at a future meeting.
2. The IRB determines that non-compliance did not occur or that non-compliance occurred but was neither serious nor continuing, and either takes no action or agrees with the remedial plan (see above) or recommends an additional corrective action.
3. The IRB determines that non-compliance occurred and that it was serious or continuing. The convened IRB will vote to take one or more of the following actions after this determination and after reporting this information to the Director within 5 days of this determination. This list of actions includes, but is not limited to, one or more of the following:
   - No action;
   - Modification of the research protocol;
   - Modification of the information disclosed during the consent process;
   - Additional information provided to past participants;
   - Notification of current participants (required when such information may relate to participants’ willingness to continue to take part in the research);
   - Requirement that current participants re-consent to participation
   - Modification of the continuing review schedule;
   - Remedial training on the protection of human subjects, ethics, good clinical practices, etc.
   - Requirement that the investigator receives additional supervision;
   - Monitoring of the research;
   - Monitoring of the consent;
   - Suspension of the research;
   - Termination of the research;
   - Refer to MCM 151-06, Research Misconduct and officials within facility designated to begin
   - Referral to other organizational entities (e.g., legal counsel, performance improvement etc.); and
   - Other actions deemed appropriate by the IRB.

**NOTE:** All terminations, suspensions and modifications (including those ordered by someone other than the IRB chair or convened IRB) to research taken in response to non-compliance, adverse events, or outcomes, will take into consideration whether procedures for withdrawal of enrolled participants took into account their rights, welfare and protection, to be determined by the IRB Chair in consultation with the COS.
If the IRB Chairperson or designee suspended some or all of the research activities, the IRB will vote to confirm or reverse that decision.

The IRB vote, determinations, and required action(s) will be recorded in the meeting minutes. All determinations and required action(s) will be communicated, in writing, to the relevant involved individual(s), including the principal investigator, the BVAMC Director, ACOS/R&D, Central IRB, (if approved by Central IRB), ORO, OHRP and the VISN Director within 5 working days of the convened meeting. The reports, IRB proceedings and IRB determinations will be conveyed to the R&D Committee (via copies of written reports and minutes) and will be reviewed by the R&D Committee, documented in the R&D Committee’s minutes which are reviewed and signed by the Chief of Staff and BVAMC Director.

An appeal of the IRB’s determinations may be made by the investigator within 30 days of the written notice. Appeals of suspension or termination of authorization to conduct research must be submitted to the IRB. The IRB will vote to sustain or lift suspension or termination by majority vote. Their findings will be submitted to the R&D Committee for review and approval or disapproval. The Director may choose to conduct a 3rd level review and issue approval or disapproval of the appeal decision. However, neither the R&D Committee, Director, external body, nor official can override IRB disapprovals.

b. **Evaluating Reports of Suspension and Terminations by Someone other than the IRB Chair or convened IRB:** Any and all suspensions, terminations or reports of non-compliance involving human research studies, investigators or participants at the BVAMC must be reported and evaluated by the convened IRB. This includes suspensions, or terminations that may be ordered by someone other than the IRB chair (for example ORO, or the IG) at BVAMC and/or the convened IRB. All adverse events or outcomes in human subject research that result in termination or suspension (by someone other than the IRB Chair or convened IRB) must be reported to the convened IRB and evaluated by the convened IRB. The person ordering the suspension or termination must consider informing current participants of the termination or suspension, and will discuss/consult with the convened IRB about informing participants of this information.

i. **Evaluating Reports of Non-Compliance Involving the IRB Chair, IRB Members, IRB Staff, Research Integrity Officer, or Research Compliance Officer:** The ACOS/R&D is primarily responsible for investigating and reviewing reports of findings or allegations of non-compliance involving the IRB Chair, IRB members, IRB staff, RIO or RCO (if the allegations involve the ACOS, Chief of Staff will investigate). If a fact-finding review of an allegation is necessary to assess the preponderance of the evidence, its manner and time-line will be appropriate to the situation, and could include:
   1) The ACOS/R&D acting alone;
   2) Delegating some or all of the review to an IRB member;
   3) Empanelling a review committee;
   4) Requesting that legal counsel provide advice and conduct the review; or
   5) Requesting assistance from others.
The ACOS/R&D will determine if the allegation is true and whether it might be serious or continuing non-compliance. If the ACOS/R&D determines that it might be serious or continuing non-compliance, the ACOS/R&D will refer the matter to the convened R&D Committee, Chief of Staff, and the BVAMC Director for review and possible actions include, but are not limited to, the following:

1) Evaluation of the individual’s ability to serve on or support the IRB.
2) Any administrative disciplinary action will be taken in accordance with Administrative Policies at BVAMC with the Chief of Staff.

j. Reporting concerns, suggestions, or problems concerning the HRPP including the IRB review process: Investigators, researchers, research coordinators or any other research staff may contact the ACOS/R&D, the COS or the RCO if they wish to report concerns, suggestions or problems with the HRPP including the IRB review process. Each concern, suggestion or problem will be investigated as outlined above.

VA personnel, including WOC and IPA appointees, must ensure written notification to the VA facility’s R&D Committee within 5 business days after becoming aware of any apparent systemic deficiency that has a reasonable likelihood of substantially compromising the facility’s research protection programs, including persistent failure by any subcommittee of the R&D Committee to adhere to the requirements governing VA research.

The R&D Committee shall at the next convened meeting (within 30 business days of the notification), determine whether the deficiency could substantially compromise the Facility’s research protection programs, and if so determine what remedial actions are warranted and notify the VA facility Director and the ACOS/R&D within 5 business days. The Facility Director must report R&D Committee determinations to ORO within 5 business days.

k. Reporting Serious or Continuing Non-Compliance: If the IRB determines that serious or continuing non-compliance has occurred, it will be reported in accordance with VA regulations outlined in VHA Handbook 1058.01 Research Compliance Reporting Requirements. The individual that made the allegation or report of non-compliance will receive a written acknowledgement that the report or the allegation was received. The RIO or RCO will maintain a file of all documentation pertaining to allegations and confirmed reports of non-compliance.

The IRB will report to the Director of BVAMC serious adverse events, any serious non-compliance, continuing non-compliance, or suspensions of research studies as required within 5 days of discovery. The Director must report this to ORO, the VISN Director and ORD within 5 days in accordance with VHA Handbook 1058.01 Research Compliance Reporting Requirements. Serious non-compliance, continuing non-compliance, suspensions, serious adverse events and unanticipated problems will also be reported within 5 working days of the IRB’s determination to Institutional officials including the; Research Compliance Officer (if not already informed/involved), ACOS/R&D, Chief of Staff; Director; Research Pharmacist; Privacy Officer (PO) (if applicable) when the report involves unauthorized use, loss, or disclosure of individually identifiable patient information; and/or the Information Security Officer (ISO) when the report involves violations of information security.
requirement. The Director will report these findings as defined in VHA Handbook 1058.01 Research Compliance Reporting Requirements within 5 days to ORO, the VISN Director, ORD and other federal agencies when the research is overseen by those agencies and FDA if the research is FDA-regulated.

1. If a study is suspended or terminated (for cause), the reporting of suspensions and/or terminations of IRB approval is reported within 5 days to the following:

   - ACOS/R&D
   - Chair of the R&D Committee
   - Chief of Staff
   - BVAMC Director
   - Research Compliance Officer
   - Research Pharmacist if investigational drugs are involved.

Within 5 days of notification from the IRB the BVAMC Director must report suspensions, terminations (if for cause) of IRB approval to ORO and the VISN Director.

The following will be notified within 30 days (if not already notified) of the IRB determination:

   - OHRP, if the study is subject to DHHS regulations or subject to a DHHS federal-wide assurance.
   - FDA, if the study is subject to FDA regulations.
   - The VA Office of Research and Development, if the research is VA-funded.
   - Any other federal agency when the research is overseen by them
   - Central Office if an unanticipated problem involving risks to participants or others is an adverse event
   - Any “Common Rule” Federal Agency that is supporting the research.
   - The Sponsor, if the study is sponsored.
   - The Privacy Officer, if the report involves unauthorized use, loss, or disclosure of individually identifiable patient information.
   - The Information Security Officer, if the report involves violations of information security requirements.
   - Others as deemed appropriate by the Director.
   - Current study participants, when the study is terminated or suspended or when such information might relate to participants’ willingness to continue to take part in the research.

The above reporting procedures will also be followed when it is determined that an unanticipated problem, a serious adverse event or a protocol deviation/violation that involves risks to participants or others has occurred in a study.
The determination to suspend any research activity will be made by the IRB Chair or in his absence the Vice Chair, or ACOS/R&D if both of the Chairs are unavailable or have a conflict of interest.

In the absence of all of the above the COS, or Director in consultation with the RCO may make this determination.

m. Noncompliance involving research information protection incidents: Within one hour of becoming aware of any situation involving unauthorized access to VA sensitive information, (including but not limited to unauthorized use, disclosure, transmission, removal, theft or loss) related to research must be reported by the research community to the ACOS/R&D, facility ISO, RCO and PO. The ACOS/R&D is responsible for reporting this information to the Director, R&D Committee and the IRB. The Director must report any findings of noncompliance related to research information security or privacy (that have been reported to her by the ACOS/R&D) within 5 days in writing to the Southern Regional Office (SRO) ORO. The Director must assure that the PO and ISO have been informed of this information as well.

5. REFERENCES
   - VHA Handbook 1058.2, Research Misconduct
   - VHA Handbook 1058.01 Research Compliance Reporting Requirements
   - Title 21 CFR 56.108(b)(2) and CFR 56.108(b)(3) and 56.113

6. ATTACHMENTS
   - Medical Center Memorandum 151-06 Research Misconduct
   - Appendix A- Tables 1-3 Reporting Requirements (VHA Handbook 1058.01 Research Compliance Reporting Requirements)

7. REVISIONS
   SOP #18 Complaints, Allegations or findings of Non-Compliance June 2010, June 25, 2013, March 3, 2015. Reviewed August 1, 2018

8. REVIEW DATE
   August 2021.

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