

South African Research Regulatory Environment

Lesley Henley, SACRA Conference, August 2009

Disclaimer ... my own views

Context of Clinical Research

Globalisation

Harmonisation

Multi-centre

Increased volumes

Outsourcing (CROs)

Economic inequality

Multiple Players and Agendas

Pharma

Research institutions

Researchers

Participants

Activists and CABs

RECs' function is protect the rights, welfare & safety of participants.

Regulatory Inflation

International guidelines

International technical standards

Country-specific laws & guidelines

Institutional guidelines

Advisory Boards: Reports

Disease-specific guidelines

UNAIDS/WHO Guidance

- UNAIDS/WHO Good Participatory Practice Guidelines for Biomedical HIV Prevention Trials, 2007
- UNAIDS/WHO Ethical Considerations in Biomedical HIV Prevention Trials, 2007

US Common Rule

- ◌ **45 CFR 46 (OHRP)**
- ◌ **21 CFR 50 and 56 (FDA)**

FDA ditches Helsinki Declaration

Helsinki 2008 and ICH GCP

Helsinki (and not GCP) requires:

- Disclosure of potential conflicts of interest
- Trial registration
- Research to be responsive to health needs of host populations
- Restricted use of placebos
- Post-trial access to interventions identified as beneficial or to other appropriate care or benefits

SA Regulatory Environment

Law and Ethics

SA Legal Framework

- **Constitution**
 - National Health Act 61 of 2003
 - Children's Act 38 of 2005
 - Sexual Offences Act 32 of 2007

SA Research Ethics Guidance

- Department of Health: Ethics in Health Research: Principles, Structures and Processes, 2004
- Department of Health: Guidelines for Good Practice in the Conduct of Clinical Trials with Human Participants in South Africa, 2006

National Health Act 2003

**National Health Research Ethics
Council (NHREC)**

Definition of 'Health Research'

- Biological, clinical, psychological or social processes in human beings
- Improved methods for service provision
- Human pathology
- Causes of disease
- Effects of environment on human body
- Pharmaceuticals and medicines
- New applications of technology

Scope of the Definition?

"...Biological, clinical, psychological or social processes in human beings ..."

Danger of Mission Creep

National Health Act 2003

S.71 (is not enacted)

Written consent

Research with Minors

Minor is a person under 18

Central Ethical Issues

- Vulnerability
- Balancing protection and opportunity for inclusion
- How to balance best interests of an individual child with best interests of children as a class
- Determining minimal risk standard

Who may consent to a minor's participation in research?

What does the law say?

**Is the research therapeutic
or non-therapeutic?**

Therapeutic Research

- Participation must be in minor's **best interest**;
- Parent or guardian provides consent;
- Minor, if capable of understanding provides **consent**

Non-therapeutic Research

- Minister of Health gives consent;
- Parent or guardian provides consent;
and
- Minor, if capable of understanding provides consent

... if capable of understanding ...

Burden on researcher to determine understanding

Who may consent to a child's participation in research?

What do the **guidelines** say?

Department of Health 2004

- Parent or legal guardian
- Minor if competent to understand
- **No other caregiver** can consent on child's behalf to take part in research
- **Unassisted consent** for adolescents

Unassisted Consent

- No more than minimal risk; and
- Nature of research must be acceptable to REC, parents or community at large
- Justify why adolescents are needed in study
- Justify why adolescents should consent unassisted

Who may consent to a child's participation in research?

What do **SA GCP** guidelines say?

Department of Health - GCP 2006

- Consent from a parent or legal guardian in all but exceptional circumstances (e.g. emergencies)
- Consent from a caregiver
- **Assent** from the minor if capable of understanding (affirmative agreement)

Who is a Caregiver?

Any person other than a parent or guardian who factually cares for a child.

Consent for Treatment

- Medical treatment >12y
- Surgical treatment >12y
- Access to contraception >12y
- HIV testing - 12y and older
- Non-medical circumcision $\geq 16y$

Consent to participate in research $\geq 18y$

Levels of Risk

Minimal Risk

Minimal risk means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

Minimal Risk Standard

"Everyday-risks" standard

"Routine examination" standard

Non-therapeutic Research

Minister of Health may not give consent:

- If aims of research can be achieved if conducted on adults
- Poses **significant risk** to health of minor
- There is **some risk** ... and potential benefit does not outweigh that risk

Mandatory Reporting

Children's Act of 2005

Sexual Offences Act of 2007

- A legal obligation to report deliberate neglect, and physical and sexual abuse
- Needs to be stated in consent and assent form

Sexual Offences Act 2007

- Child can consent to sexual activity if ≥ 16
- Is a **crime** for any person, adult or child, to engage in sexual activity with a child < 16 , even if consensual
- Exceptions if child is between 12 and 16
- Child < 12 cannot consent to any sexual activity

'A person who has knowledge that a sexual offence has been committed against a child must report such knowledge immediately to a police official'.

Cognitively Impaired

- National Health Act
- Mental Health Care Act

The distinction between research & treatment must be retained.

Does maximising regulatory oversight maximise participants' protection?

Emphasis on Paper Compliance

Application forms

Consent forms

REC letters

Amendments forms

Progress reports

AEs and SAEs

Closure reports

Protocol violations

All the rules in the world cannot guarantee a researcher will have an appropriately rich and honest conversation with a participant.

References

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