Social media savvy—Think before you tweet!

an interview with Anne Van Dusen
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See page 16
“Did you get IRB approval for that?”

IRB approval is needed when the activity meets the federal definition of human subjects research.

The definitions used by Health and Human Services are not necessarily the same as those used by the Food and Drug Administration.

An IRB does not really exist unless its members meet all of the criteria outlined in the HHS regulations at 45 CFR 46.107.

The results of an expedited review must be reported to a full board.

Just because categories that address education exist in the human subjects regulations does not mean that all educational activities need IRB approval.

Research means a systematic investigation including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities, but they may not meet the definition of human subjects research.

Human participant means a living individual about whom an investigator (whether professional or student) conducting research obtains: (1) data through intervention or interaction with the individual; or (2) identifiable private information.

Intervention includes both physical procedures by which data are gathered (e.g., venipuncture) and manipulation of the participant or the participant’s environment that are performed for research purposes.

Interaction includes communication or interpersonal contact between investigator and participant.

Private information includes information about behavior that occurs in a context in which an individual can reasonably expect

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that no observation or recording is taking place. The information has been provided for specific purposes by an individual and the individual can reasonably expect it will not be made public (e.g., a medical record).

Private information must be individually identifiable (i.e., the identity of the participant is or may readily be ascertained by the investigator or associated with the information) in order for the act of obtaining the information to constitute research involving human participants.

**FDA definitions**

What adds to the confusion is that the Food and Drug Administration (FDA) has its own set of definitions that are similar yet vary slightly from those of HHS. **Research or a clinical investigation** is defined by the FDA as any experiment that involves a test article (i.e., drug, device, food substance, or biologic) and one or more human participants that either is subject to requirements for prior submission to the FDA (i.e., Investigational New Drug [IND], Investigational Device Exemption [IDE] requirements), or not subject to these requirements, but the results will be submitted later to the FDA or held for inspection by the FDA as part of an application for research or marketing permit. [21 CFR 50.3(c); 21 CFR 56.102(c)]

Research is subject to the IND requirements when it involves any use of a drug or biological drug that is used in a clinical investigation, or a biological product that is used in vitro for diagnostic purposes. [21 CFR 312.3(b)]

Research is subject to the IDE requirements when it involves any use of a medical device to determine safety or effectiveness of the device. [21 CFR 812.2]

**Human participant** means an individual who is or becomes a participant in research, either as a recipient of a test article or as a control, or an individual on whose specimen a medical device is used. A participant may be a healthy human or an individual who has a medical condition or disease. [21 CFR 50.3(g)]

**Test article** means any drug for human use, biological product for human use, medical device for human use, human food additive, color additive, electronic product, or any other article subject to regulation under the jurisdiction of the FDA. [21 CFR 50.3(j); 21 CFR 56.102(l)]

**Real-life examples**

Upon first glance these definitions look straightforward, but once you start working with them in the context of your activity, it is not so straightforward.

**Example 1: Poster presentation**

“I am a student who has worked with a community organization to help them organize their information. In working with the data, I now see some interesting trends. I want to present this as a poster presentation. Do I need IRB approval?”

The original activity did not require IRB approval, because it was being done for quality assurance. Once the student saw interesting trends, it may have become a research study. The “intent” is what becomes important. If this student just saw interesting trends and wants to point those out in her poster presentation, it still would not need IRB approval. However, if the student saw interesting trends and now wants to conduct a study to analyze those trends to answer a research hypothesis, assuming the data is private and identifiable, she would need to seek IRB approval before moving forward. Wanting to participate in a poster presentation is not the criteria on which the need for IRB approval is based.

**Example 2: Educational activities**

“I am a faculty member who collected data as part of my class. I now want to publish this information in an educational journal. Do I need IRB approval?”

Just because this faculty person wants to publish what he did in the classroom does not
mean that he needs IRB approval. Under the HHS regulations at 45 CFR 46.101(b)(1), there are a set of exempt categories. Two of these categories deal with educational research:

1. Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (i) research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

2. Research involving the use of educational tests (e.g., cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior, unless: (i) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (ii) any disclosure of the human subjects’ responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects’ financial standing, employability, or reputation.

Materials are routinely collected during the course of a class. Most often, these materials are returned or destroyed at some point. However, instructors can write about classroom activities and these activities do not always constitute human subjects research. It is important to know the faculty member’s “intent.” Just because categories that address education exist in the human subjects regulations does not mean that all educational activities need IRB approval.

I chose the above examples because they are common and they are not “black and white.” Often in instances such as the above, further information is required before a determination can be made.

Does the faculty member in Example 2 want to analyze this data as part of a research study or does he simply want to report on his classroom activities? Does he want or need to conduct research? Is there a hypothesis or is he simply reporting what happened? If there is a draft, what terminology is being used? Is it research terminology or terminology found in general practice of the discipline?

Answers to these questions are not often simple, but they help to get an idea of the individual’s “intent.” A confounding factor with publishing is that more and more journals are requiring an IRB determination before they accept a submission. I believe this is to reduce the number of retractions as instances of research misconduct continue to climb.

IRB requirements

Once it has been established that IRB approval will be needed, what requirements must be met to constitute an IRB? The requirements for IRB membership are addressed in the HHS regulations at 45 CFR 46.107 (Note: 45 CFR 46.304 requires a specialized IRB composition when research involving prisoners is being reviewed, including the presence of a prisoner representative.)

An IRB must:

- Have at least five members with varying backgrounds to promote complete and adequate review of the research activities commonly conducted by the institution;
- Make every non-discriminatory effort to ensure that the membership is not composed of entirely men or entirely women;
- Include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in non-scientific areas;
Include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution; and

Not allow any member to participate in the initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.5

Yet, I encounter researchers who are told that they must submit their study to an IRB, but when the IRB to which they must submit is looked at, one or more of the above criteria are missing, so an IRB does not really exist. Additionally, these IRBs are not registered.

Registration of IRBs is required and must be renewed every three years or within 90 days if the contact person changes.6 Registration is done electronically with the OHRP. In the end, these types of entities are most often research committees that vet projects done at the institution, but they are not IRBs and their approval does not meet the requirements of the HHS and the FDA regulations.7

Privately funded research
What if your institution tells you that they do not have HHS- or FDA-funded research and, therefore, do not need to meet the requirements of these regulations? Most institutions receive some type of federal funding; therefore, they still have to follow federal guidelines. For instance, if your institution obtains funding from the Department of Education, this department has requirements for the conduct of human subjects research. The same is true for the Department of Energy, Department of Justice, Veteran's Affairs, Department of Defense, and the Environmental Protection Agency, to name a few. So, unless your institution receives only private funds for all its operations, it most likely must abide by some agency's regulations. When a study is truly not funded, the generally accepted regulations and guidelines are those that fall under HHS.

Expedited review vs. administrative review
What is expedited review and how does this differ from an administrative review by an institution? According to OHRP's “Guidance on Expedited Review Procedures”:

Under an expedited review procedure, the IRB Chairperson, or one or more experienced reviewers designated by the Chairperson from among the members of the IRB, reviews the research protocol. The IRB shall adopt a method for keeping all IRB members advised of research proposals that have been approved under the expedited review procedure. In conducting expedited review, the IRB reviewers may exercise all of the authorities of the IRB except that they may not disapprove the research. A research activity may be disapproved only after review by the convened IRB in accordance with the non-expedited procedure set forth in 45 CFR 46.108(b). Under 45 CFR 46.110(d), HHS may restrict an institution's or IRB's authority to use the expedited review procedure.8

...I encounter researchers who are told that they must submit their study to an IRB, but when the IRB to which they must submit is looked at, one or more of the above criteria are missing, so an IRB does not really exist.
It is well within an institution’s purview and prerogative to require that someone, usually someone in an administrative oversight position, be aware of activities occurring on its site(s). As such, you may be asked to have this designated individual review and approve the conduct of your study at the site(s). However, this does not mean that this individual is a designated, expedited reviewer, nor does it necessarily mean that your study falls within one of the exempt or expedited categories outlined in the Common Rule 45 CFR 46. If this person is not a member of a fully constituted IRB, your study has undergone an administrative approval to operate at that site. If you have not already obtained an IRB approval, you need to do so.

When a study undergoes expedited review, it may be reviewed by one qualified, designated reviewer. The results of those reviews are then reported to a fully constituted IRB, and you will receive a written IRB approval. Please note that IRB approvals are traditionally done in writing, not over the phone or in face-to-face conversations.

**When can expedited review be used?**
The study must fall within one or more of the exempt categories or one or more of the expedited categories found in the List of Categories in the federal regulations. The study meets either exempt or expedited categories, or it is sent to a full board for review. A study cannot cross between exempt and expedited categories. A study must meet the criteria of the categories exactly. For instance, to qualify for an Expedited Category 2 approval, you may not exceed 550 ml of blood in an eight-week period for a healthy adult weighing at least 110 lbs. If you want to enroll healthy adults who weigh 109 lbs. or less and you want to take 551 ml of blood, your study would not fit into this category and it would be sent to a full board for review and approval.

Furthermore, an expedited reviewer may review a study, ask questions (contingencies) about the study, approve the study, and/or refer it to the full board for approval. An expedited reviewer may not disapprove a study. Only the full board may disapprove a study.

**Inappropriate IRB approval**
What potential ramifications exist if a study is “IRB approved” by an entity that is not fully constituted? If you are a researcher and have found yourself in a situation where you were not given approval by a fully constituted IRB, halt your study and seek IRB approval before proceeding. You may also wish to report this instance to OHRP.

The OHRP website contains a list of determination letters. These letters are the results of audits conducted by the agency. More than one of the recurring themes of these determination letters is inappropriate review and/or approval by an IRB. Another recurring theme of these letters is inappropriate use of expedited review procedures. This shows that inadequate or inappropriate IRB approval is neither a rare nor insignificant problem.

For both the researcher and the institution who oversee the research, conducting human subjects research without IRB approval is a compliance issue. The severity of this non-compliance will vary based on a variety of factors that may include the type of study, duration of activity without IRB approval, resulting adverse events, and past non-compliance issues.

Sometimes non-compliance with federal regulations leads to research misconduct allegations that are handled and investigated by the Office for Research Integrity. The sooner an issue is identified, reported, and rectified, the better the outcome for all parties involved. Self-monitoring and reporting are always the way to go, and it gives you the opportunity to suggest how the situation can be handled, rather than having an outside entity mandate a course of action.
Conclusion
My advice to you is to read the regulations and the guidance documents for yourself. Once you have that knowledge, talk to others about current interpretations and current commonly accepted practices. Conducting research with human subjects or an individual’s private, identifiable information is an ever-changing, growing field. As such, interpretations and common practices change and evolve. It is not unusual to encounter a situation that has never presented itself before, and the IRB, the administration, the researchers, and sometimes the federal regulators have to all work together to determine the best course of action. It does help in these situations if everyone has a working knowledge of the federal guidance and regulations and sometimes the applicable state statutes. Hearsay and outdated information are plentiful, but bad information or advice can lead to devastating results. 

Changes are being proposed to 45 CFR 46 (Common Rule). Comments are being taken by the Department of Health and Human Services (DHHS) until December 7, 2015. For more information, visit the OHRP website at bit.ly/45CFR46-revisions.

1. HHS Office for Human Research Protections (OHRP): Applicability of 45 CFR part 46 to Clinical Investigations Conducted Under FDA’s Interim Final Rule at 21 CFR 50.23(e). Available at http://1.usa.gov/1GFQhCc
5. OHRP. Frequently Asked Questions: What are the requirements for IRB membership? Available at http://1.usa.gov/1GFQCog
7. 45 CFR 46 and 21 CFR 50

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