BANNER RESEARCH ADMINISTRATION
Volume 5, Issue 3 SEPTEMBER 2009

Banner Health®

OBLIGATION MANAGEMENT

Authors: Wendy Schroeder, RN, CCRC, National Speaker on Medicare Coverage Policy and Jeremy Stoloff, JD, MS Bioethics, Associate General Counsel, Banner Research

Have you ever heard of the concept of "obligation management"? Jeremy Stoloff, Associate General Counsel at Banner Health, recently shared this idea as he had heard it described by a leading pharmaceutical company. The forgoing pharmaceutical company described obligation management, in part, as the ability or inability for the clinical/operational team to implement and honor the instructions contained within a contract. From a study site's perspective, this term relates to the implementation (or failure to implement) the sponsor's, university's or vendor's instructions which are contained in the applicable research contract. These instructions may include references to certain laws and regulations, which then require the real-world study team to be familiar with, and implement such laws and regulations. In short, the concept of obligation management forces research team members to evaluate the real-world actions needed and logistical implementation of detailed operational instructions contained within the research contract.

Research team members should ask themselves the following questions: (1) can they effectively implement the terms and conditions of the agreement; (2) can they live with the risks and burdens which the agreement applies to my team and facility? For example: is your team comfortable conducting a study with patient volunteers but no enforceable confidentiality protection for such volunteers' individually identifiable information? What will you do if the study subject is injured, cannot afford treatment for such injury and the sponsor will not pay for such medical care? Surely, the forgoing topics are of concern to the investigator, research team members and facility, and are not of interest solely to BH legal team members and contract reviewers. The forgoing examples show that many topics addressed and controlled by the research contract are not merely "legal" in nature, but are the underlying obligations and rules which control the investigator, study team and facility.

(continued on page 4)

INSIDE THIS ISSUE:

Research Compliance: Deviation? Violation? Deviation?

Author: Susan Colvin, MHSA, BSN, CCRP, Compliance Analyst, Banner Health Ethics and Compliance Department

In the world of clinical research, a standard definition for the terms deviation and violation does not exist. Federal regulations governing investigational products (21 CFR 312) and devices (21 CFR 812) do not define the terms. The regulations, instead, refer to compliance with the investigational plan. The FDA views the terms as synonymous, and mean the approved protocol was not strictly followed. Webster defines deviation as a "variation from the common way, from an established rule, etc." The related term, violation, is defined as a "breach, infringement, or transgression, as of a law, rule, promise, etc." The National Institutes of Health defines a deviation as "any change, divergence, or departure from the study design or procedures of a research protocol that is under the investigator's control and that has not been approved by the IRB."

Most importantly, Banner Health (BH) defines a deviation as an inconsistency between the Institutional Review Board (IRB) reviewed and approved protocol and the actual research activities. Deviations are further categorized as major and minor.

MAJOR DEVIATION

DOES effect subject safety/risk

DOES damage the scientific integrity of the data collected

DOES demonstrate willful/knowing misconduct

DOES involve serious or continuous noncompliance with research regulations

DOES exhibit repeated minor protocol deviations

DOES reveal a failure to follow ordered corrective actions for minor deviations

MINOR DEVIATION

DOES NOT substantially effect subject safety/risk

DOES NOT substantially damage the value of the data collected

DOES NOT demonstrate willful/knowing misconduct

Refer to BH Policy # 6011 *Research – Protocol Deviations* for more detailed information.

Protocol deviations also include changes from good clinical practice (GCP) guidelines and institutional policy and procedures, as well as standard operating procedures. Per federal regulations, changes to any research activity must be reviewed and approved by the IRB prospectively, **except** when necessary to eliminate apparent immediate hazards or risks to the subject. Research activity is outlined in the IRB application and protocol, which was reviewed and approved by the IRB. It includes all aspects of the conduct of the study, including but not limited to the consent process, recruitment, screening, enrollment, treatment/ intervention, subject visits, and study documentation.

continued on page 3

Research Compliance: *continued from page 2*

Federal IRB regulations (21 CFR 56) also require procedures be in place to ensure the prompt reporting of changes to research activity, unanticipated problems involving risks to subjects, and any instance of serious or continuing noncompliance with the regulations, requirements or determinations of the IRB. The investigator has the responsibility to report protocol deviations to the IRB of record and the study sponsor as required. The table below outlines the BH policy for reporting deviations to its IRB.

TYPE OF DEVIATION	REPORTING REQUIREMENT
MINOR	Time of IRB continuing review
MAJOR Impacting subject safety Increasing risk Resulting in serious adverse event	Within 24 hours of the discovery of the deviation
MAJOR All other categories	Within 10 working days of the discovery of the deviation

In addition to reporting the details of the deviation to the IRB, the investigator or his/her designee must also submit and implement a corrective action plan for preventing future occurrences. The investigator must outline effective measures. These measures should include:

- Description of the intervention
- Who is responsible for implementation
- How it will be accomplished
- When it will occur

It is important to note another term associated with a departure from the investigational plan - exception. Exception refers to a temporary, planned change to research activity. It generally involves a single subject and does not require a permanent revision to the study protocol. Most often, this is in the form of an investigator request to the sponsor, prior to enrollment, to allow a subject not meeting a certain inclusion or exclusion criterion to enter the study. In this instance, the deviation is not expected to ethically or medically harm the subject, or scientifically affect the study results. Prior approval for a protocol exception is also required from the responsible IRB. Documentation of the sponsor's approval of the exception should be submitted to the IRB. Documentation of both sponsor and IRB approval should be filed in the subject's research record, if applicable.

continued on page 5

Obligation Management: *continued from page 1*

In order to engage in effective obligation management research team members should ask: C*an I:*

- *comply with the terms and conditions of the research contract?*
- *comply with granting agency regulations and rules referenced in the contract?*
- *find staff to make this project happen?*
- *be responsible for time and effort (T&E) reporting referenced in the contract as well as T&E reporting of non-Banner Health entities?*
- *keep this study open to enrollment and operational with regard to the enrolled subjects even if I do not have adequate research support staff since I decided to accept a contract without a termination clause?*
- *remember to request a contract renewal every year since the university or vendor will only agree to a 12 month contract?*
- *afford to pay for devices that are not used during the study and cannot be returned to the sponsor?*
- *pay an injured subject's non-Banner medical bills that allegedly arose from the study?*
- *force the Institutional Review Board (IRB) to forgo changing the informed consent form since the sponsor, university or vendor will not agree to such changes?*

Many topics contained in the research agreement and questions related to such topics should first be evaluated, explored and discussed by the operational research team and facility before the topic or related question is posed to the BH legal department. This approach will reverse the less desirable practice of forwarding *all* topics contained within the agreement, *including all operational topics*, to BH legal and contract reviewers, without any operational input or "position" on such topics.

The concept of obligation management extends far beyond the realm of research contract review. Research team members should evaluate their real-world obligations including human subject protection, privacy, resource utilization, financial impact (profit v. loss), and financial management.

Research Compliance: *continued from page 3*

Federal regulations (45 CFR 46.103) mandate certain incidents be promptly reported by the IRB to the Office for Human Research Protections (OHRP). The reporting requirements apply to all nonexempt human subjects research conducted or supported by the Department of Health and Human Services (HHS), conducted or supported by non-HHS federal departments or agencies that have adopted the Common Rule, or covered by a Federalwide Assurance (FWA). The covered incidents include:

- Any unanticipated problem involving risks to subjects or others
- Any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB
- Any suspension or termination of IRB approval

Protocol deviations should not be taken lightly. The investigator has a responsibility to adhere to the protocol. This commitment is evidenced by the investigator's signature on the FDA Form 1572. Another responsibility includes supervision of the conduct of the study, including the prescribed research activities. This includes assuring the research staff is adequately trained in protocol requirements and regularly meeting with them to ensure protocol compliance. When in doubt about whether a change, inconsistency, divergence, or departure is a protocol deviation or violation or with questions regarding the reporting timeframe, the investigator should contact the responsible IRB for guidance.

Visit our website at www.bannerhealth.com/research

Integrated Research Information System (iRIS): Tips and Tricks

Author: Ranae Jestila, BS MT (ASCP) SH , System Consultant, Banner Research

Questions?

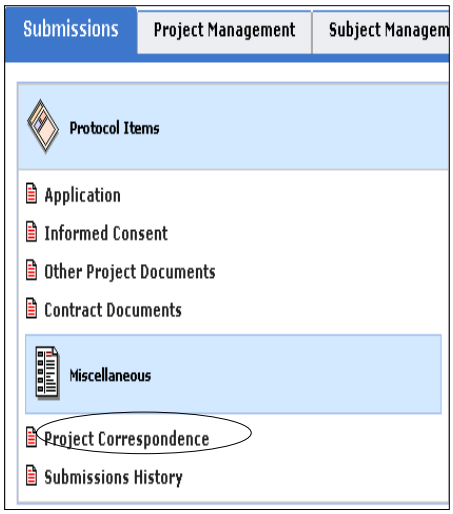
Contact Deidre Woods
(602) 747-9720
Deidre.woods@bannerhealth.com

The "Go" Letter has gone Green!

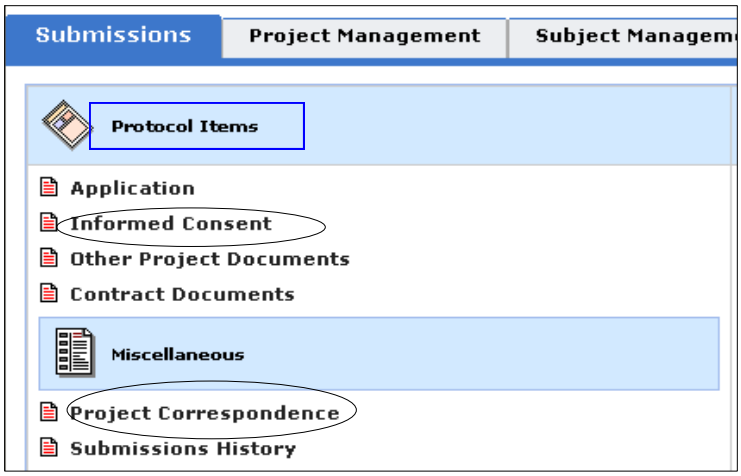
Research Directors and Principal Investigators are now being **notified electronically** when:

- concurrent review is complete
- project approval documents are available for release to the PI
- the project is ready to be changed to an open status

The signed "Go: letter is viewable and printable from the Project Correspondence section.



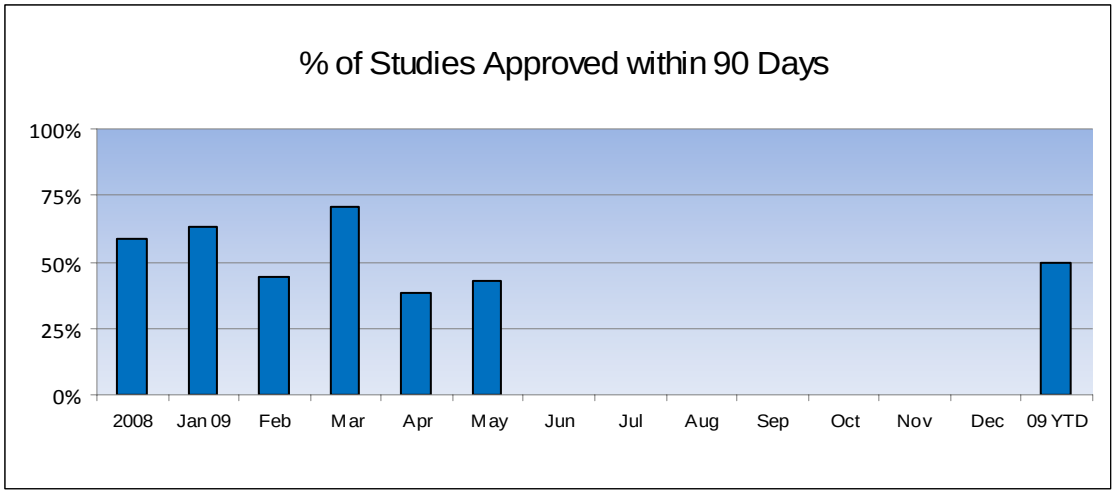
Once the Go Letter is issued, the stamped and approved Informed Consents are viewable and printable from the Protocol Items section. The fully approved IRB Letter is viewable and printable from the Project Correspondence section. Note: Banner Research Legal Department will still distribute the original fully executed agreements to the Research Director and Principal Investigator. Copies of the agreements will **NOT** be part of the electronic process.

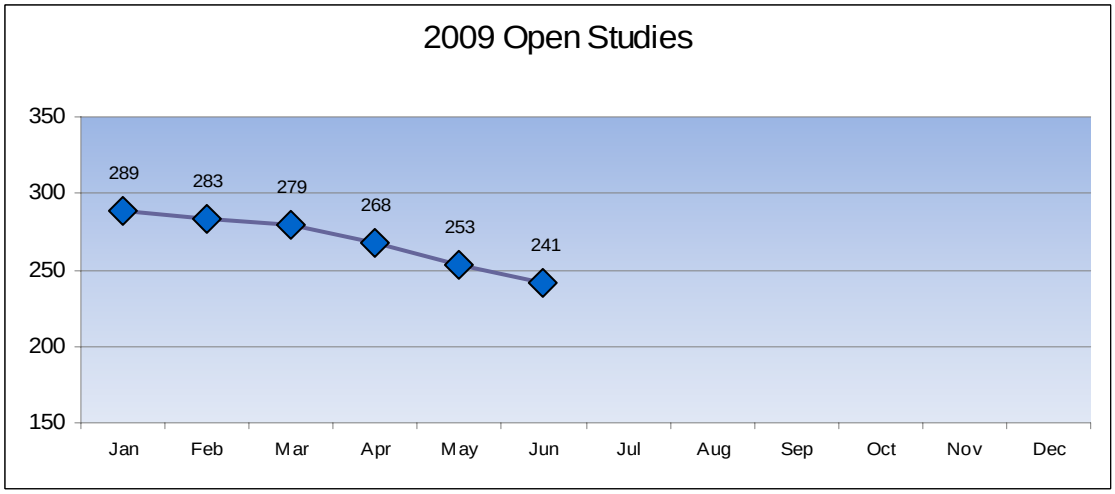


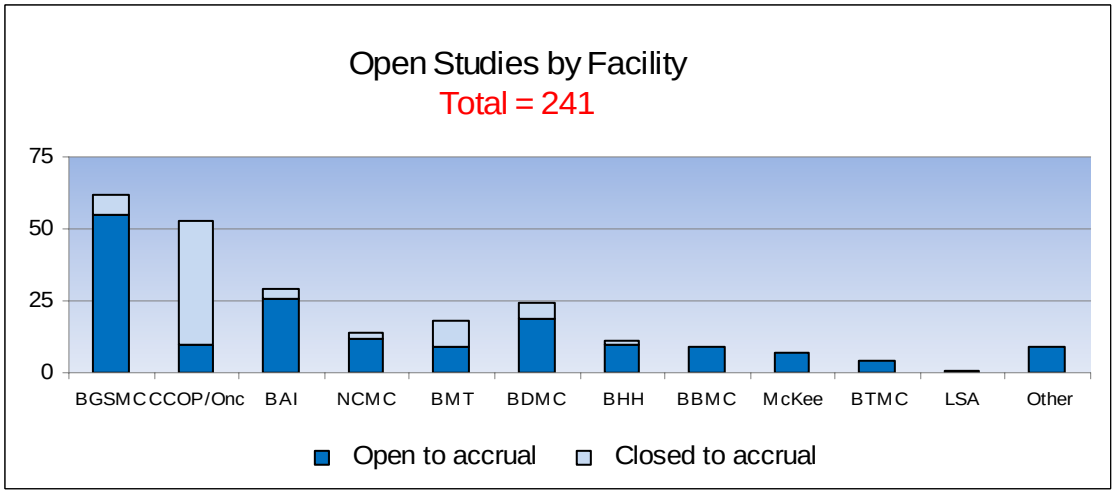
This process was implemented to ensure research is conducted efficiently at Banner Heath. Ranae Jestila is available for questions at 602-747-9744 or ranae.jestila@bannerhealth.com

Dashboard Reports (data through June 2009)

Data provided by Banner Research, Finance







Banner Research
926 E. McDowell Road, Suite 122
Phoenix, Arizona 85006