Department of Veterans Affairs
Office of Inspector General

Alleged Documentation Irregularities and Human Subjects Protection Violations at Bay Pines VA Healthcare System Bay Pines, Florida

Report No. 06-01952-63 **January 23, 2007**

VA Office of Inspector General
Washington, DC 20420

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Executive Summary

Bay Pines VA Healthcare System (VAHCS) currently conducts more than 125 research projects with more than 50 principal investigators (PIs). As a facility active in research, Bay Pines VAHCS must follow the provisions of the Veterans Health Administration (VHA) policy describing protections for human research subjects. The Office of Research Oversight (ORO) is responsible for ensuring compliance with human subject protections.

During the course of a national review of VHA compliance with human subjects protection policy, we received information alleging that a PI at Bay Pines VAHCS failed to document research patient visits in the Computerized Patient Record System (CPRS) and appointments in the computerized appointment system in one study (Study 1). In addition, in a second study (Study 2), the same PI was alleged to have violated several provisions of VHA policy.

In Study 1, we substantiated the allegation that in several instances, there was no CPRS documentation of research visits or appointments for those patients in the appointment system. We determined that this lack of documentation constituted an inadequate medical record and had the capacity to affect the quality of patient care by compromising communication between providers responsible for that care.

In Study 2, we found that the medical center had already evaluated the alleged human subject protection violations and taken action against the PI involved, in the form of a 2 year suspension from research activities and permanent probation. We therefore do not make additional recommendations regarding findings in Study 2. We recommended that the VISN Director ensure that the Medical Center Director:

1) Create an institutional policy defining under what circumstances, if any, appointments may be entered into the VISTA appointment manager after the date of the appointment.

2) Require compliance with the documentation requirements for research visits as described in the 2006 version of VHA Handbook 1907.01.

3) Ensure all applicable VHA policies and procedures concerning conflicts of interest and nepotism are followed in the designation of study coordinators and compliance officers regardless of whether the individuals are employed by a VA nonprofit or by the VAHCS.

4) Take appropriate administrative action relative to the findings contained within this report.

DEPARTMENT OF VETERANS AFFAIRS
Office of Inspector General
Washington, DC 20420

TO: Director, Veterans Integrated Service Network (10N08)

SUBJECT: Healthcare Inspection – Alleged Documentation Irregularities and Human Subjects Protection Violations at Bay Pines VA Healthcare System, Bay Pines, Florida

Purpose

The Department of Veterans Affairs, Office of Inspector General (OIG), Office of Healthcare Inspections (OHI) conducted an inspection to determine the validity of allegations that a researcher violated human subjects protection and engaged in research improprieties at Bay Pines VA Healthcare System (VAHCS).[1]

Background

VA specifies that research is part of its core mission. While recognizing the need to nurture scientific innovation, VA values quality standards that protect human subjects as well as integrity in research findings. VA's policies governing research misconduct, as described in Veterans Health Administration (VHA) Handbook 1058.2,[2] address violations of research integrity involving fabrication, falsification, or plagiarism. It does not specify what documentation is required to ensure research integrity. The Federal Policy for Protection of Human Subjects (known as the "Common Rule"), adopted by VA and 16 other Federal departments and agencies, sets forth specific protections for human subjects engaged in research. Codified in Titles 38 and 45 of the Code of Federal Regulations, the Common Rule covers those "activities for which a federal department or agency has specific responsibility for regulating as a research activity."

All VA institutions that perform federally funded or supported research must file a Federalwide Assurance (FWA) stating that the institution and its specified institutional review boards (IRBs) will comply with the Federal Common Rule. VHA Handbook 1200.5[3] prescribes specific procedures for implementation of the Federal Common Rule

[1] Bay Pines VAHCS was previously known as Bay Pines VA Medical Center (VAMC).
[2] VHA Handbook 1058.2, *Research Misconduct*, May 4, 2005.
[3] VHA Handbook 1200.5, *Requirements for the Protection of Human Subjects in Research*, July 15, 2003.

within VHA. The Office of Research Oversight (ORO), an oversight organization within VHA, manages the FWA program and is responsible for oversight of institutional review boards and compliance with the Federal Common Rule.

IRBs ensure compliance with the Common Rule, both in the selection process for proposals that are funded and approved as well as through continuing review of ongoing research protocols. The Common Rule requires that such reviews occur with a frequency appropriate to the degree of risk involved in the study, but not less than once per year. Under VHA Handbook 1200.5, all VA research involving human subjects must be approved by the IRB. During the approval process, the IRB may accept, reject, or require modification to the protocol. The IRB Chairperson or other designated IRB member may also determine that the protocol is exempt from the full requirements of VHA Handbook 1200.5. "Exempt research is research determined by the IRB to involve human subjects only in one or more of certain minimal risk categories."[4]

Not only the initial protocol, but all subsequent amendments to the protocol must be approved by both the IRB and the facility's Research and Development (R&D) Committee. The facility's research compliance officer, who reports directly to the Chief of Staff, is responsible for implementing methods of improving researcher compliance with human subjects protection and IRB regulations. An individual known as a study coordinator often facilitates appropriate interaction between the IRB and the principal researcher or investigator, but the ultimate responsibility for compliance with all human subjects protections lies with the principal investigator (PI).[5]

During the course of an ongoing national OHI research oversight project, we received information alleging that a PI of two protocols at Bay Pines VAHCS violated human subjects protection and failed to properly document research visits. Bay Pines VAHCS is a 569-bed facility offering general medical, surgical, psychiatric, and long term care to a veteran population of 350,000. This VAHCS serves 10 counties in west central and southwest Florida. In addition to its clinical programs, the facility currently conducts more than 125 research projects ranging from clinical trials to basic science investigations. These projects involve more than 50 PIs, 23 VA R&D employees, and 30 Bay Pines employees. Bay Pines VAHCS maintains its own institutional review board, called the Bay Pines Healthcare System IRB.

Allegations received by OHI concerned two studies conducted by the same PI at Bay Pines VAHCS. In the first protocol (Study 1), documents obtained alleged:

- Documentation irregularities in patient files involved in the research including the absence of scheduled research appointments in the electronic appointment manager

[4] VHA Handbook 1200.5 p. 2; 38 CFR 16.101(b).
[5] A principal investigator is defined by VHA Handbook 1200.5 as a person conducting research or the responsible leader of a team conducting research.

(VISTA[6] appointment manager) on or around the date noted in the case report folder, and the absence of documented study visits in the Computerized Patient Record System (CPRS).

- In two instances, patients enrolled did not meet inclusion criteria for the study approved by the IRB.

In a second protocol (Study 2), it was additionally alleged that the same PI:

- Conducted research involving human subjects without the approval of the facility's IRB or R&D Committee.
- Permitted unapproved personnel to access private health information to conduct the research.
- Allowed the participation of an investigator who did not have the required human subject protection research training.
- Violated the institution's publication policy by inappropriately presenting results of the unapproved research at two conferences and submitting a manuscript for publication.

Scope and Methodology

To investigate these allegations we reviewed Study 1 and Study 2 files from the PI, the facility's IRB and R&D Committee files, and investigative files from ORO. These documents included minutes of meetings, e-mails, correspondence with internal and external agencies and organizations, as well as facility responses to the allegations. We further reviewed all subject medical records enrolled in Study 1 to determine whether they appropriately fit within the study's inclusion and exclusion criteria. We also examined scheduled research appointments in the VISTA appointment manager on or around the dates of study visits. We compared study visit documentation submitted to the sponsor of Study 1 against CPRS entries and sponsor payments to a VA nonprofit corporation for those visits. Additional documents considered included external and internal policies and procedures pertaining to scheduling, documentation of research visits, and the conduct of research at Bay Pines VAHCS.

After document review, we conducted a site visit August 7–9, 2006, and a second site visit September 14–16, 2006. Onsite, we interviewed the PI of Study 1 and 2, IRB members, R&D Committee members, administrative staff, and VA management personnel.

[6] VISTA is the acronym for Veterans Health Information Systems and Technology Architecture, VA's electronic records system. It contains VHA's appointment manager system.

Inspection Results

Issue 1: Alleged Documentation Irregularities in Study 1

We substantiated the allegation of missing appointments and CPRS notes for patients enrolled in Study 1. Study 1 involved comparisons of medication efficacy in the prevention of a stroke. Participants were asked to make 10 clinical visits over a period of years for health assessment and medication monitoring. At the completion of each visit, a Case Report Form (CRF) was completed and sent to the sponsor. A pharmaceutical company sponsored this study, issuing payments to a nonprofit foundation based on CRFs completed. The facility's IRB and R&D Committee approved this protocol in 2003. The researcher in question functioned as the PI for this study from its beginning in 2003 to March 2006.

A. Alleged Missing CPRS Notes and Patient Appointments

We reviewed medical records for the 13 patients enrolled in Study 1. From May 17, 2004, to April 20, 2006, 70 CRFs were completed for these patients. While visits could occur by phone or in person, 42 (60 percent) of these visits were classified as in-person visits on the CRFs. Seven (10 percent) of the forms did not classify the visits as in-person or telephone visits, but medications were dispensed at five of these visits.

On each CRF, the investigator or sub-investigator signed the following statement:

> By signing and dating this page, I declare that I have reviewed for accuracy all the case report form pages for this patient visit; the information contained on these pages accurately reflects the medical record including the results of tests and evaluations performed on the specified dates.

The PI told us that she interpreted the reference to a "medical record" to mean study source documents, which were copies of the case report forms themselves.

We examined VHA's Health Information Management and Health Records policy, found in VHA Handbook 1907.1.[7] The version in effect at the time of the study visits involved in this inspection stated: "patient records must be timely, relevant, necessary, complete and authenticated." It further states that "completeness implies that all required data is present and authenticated; all final diagnoses are recorded without use of abbreviations..." We note that VHA revised Handbook 1907.1 on August 25, 2006, explicitly requiring that: "VHA health record must be created or updated for all research subjects who are admitted as in-patients, treated as outpatients, or when research procedures or interventions are used in the medical care of the research subject…."

[7] VHA Handbook 19007.1, *Health Information Management and Health Records*, August 25, 2006.

In reviewing medical record documentation of Study 1 patient visits in CPRS, we found that 18 (43 percent) of the 42 clinic study visits were not documented in CPRS on or around the date specified on the study visit forms. Many telephone visits were also not documented in CPRS. Fourteen of these CRFs appeared to be signed by the PI of Study 1. We interviewed the PI, who stated that she was unaware of any medical center policy that would require her to document study visits in CPRS. When asked why some visits were documented while others were not, she indicated that she documented only significant changes in the patient's condition. The CRF forms contained a summary statement of the patient's neurological status, requiring the person completing the CRF to determine if the patient's neurological status was unchanged, improved, or worsened. However, the CRF forms did not document neurological exams to support these findings.

The patients enrolled in Study 1 were stroke victims over the age of 55 who received medication to prevent additional strokes. Failure to document serial neurological exams, side effects, and responses to treatment rendered constitutes, in our opinion, failure to maintain complete patient records. It further has the capacity to compromise patient care by failing to adequately communicate the patient's status to other providers utilizing the medical record.

In addition, we found that there was no record of patient appointments for some of the dates on the CRFs. A search for all research appointments for Study 1 disclosed only a total of 20 patient appointments between May 24, 2004, and August 8, 2006, 6 of which were entered into VISTA appointment manager up to 2 years after the date of the appointment. We found four instances in which a study visit form was submitted to the sponsor when there was no CPRS documentation of the visit and the appointment was entered into VISTA 1–2 years after the date of the appointment. These appointments would not affect medical center workload or reimbursement for services rendered. In her interview, the PI stated that she gave the appointments clerk a list of all study visit appointments and asked her to verify future appointments. The PI stated that the clerk interpreted the list to require entry of appointments from past visits.

Research patient appointments are scheduled in the same manner as clinic appointments, by the same personnel. There is no facility policy requiring separation of research clinics and patient care clinics. All patients should have an appointment. The facility's policy concerning Outpatient Program Scheduling is described in Bay Pines VAHCS Memorandum 516-04-136-8 d, but it does not address the issue of appointments entered into the VISTA appointment manager after the date of the appointment.

Therefore, we substantiated the allegation that study visits were not documented in CPRS and that patients did not have appointments for all study visits entered into the VISTA appointment manager. While the medical center did not supply us with a policy that explicitly requires PIs to document every research visit in CPRS, several policies had general language concerning the adequacy of the medical record. We found that the CRF

forms did not constitute an adequate medical record for purposes of ensuring quality of patient care.

B. Alleged Enrollment of Patients Not Meeting Study Inclusion and Exclusion Criteria

The protocol for Study 1 outlined applicable inclusion and exclusion criteria. We substantiated the allegation that patients were enrolled in Study 1 who did not meet these criteria at the time of their enrollment. The study enrolled individuals at least 55 years of age with a history of stroke within 90 days of entry into the study. We found two patients who were enrolled who did not meet the minimum age requirement at the time of their enrollment. These patients were enrolled on April 21 and 25, 2005, respectively. Prior to those dates, the sponsor amended the protocol to include younger patients. However, this amendment did not have the approval of both the facility's IRB and R&D Committee at the time these patients were enrolled.

VHA Handbook 1200.5 requires that any amendment to inclusion or exclusion criteria must have IRB and R&D approval prior to implementation. The eligibility form for a patient in Study 1 noted that the sponsor waived enrollment criteria to allow enrollment of a patient under age 55. However, a sponsor waiver would not obviate the need for IRB and R&D approval for changes in inclusion or exclusion criteria. The patient suffered no adverse events, and the protocol's inclusion and exclusion criteria have since been amended to include patients in the age range of the enrolled patients. We did not find any other violations of inclusion or exclusion criteria, but we note that the quality of the CPRS documentation referencing these patients impaired our ability to make that determination.

C. Facility Compliance Review of Study 1

Because of issues identified with the same PI in Study 2 as discussed below, the facility proactively initiated a compliance review of Study 1 in January 2006. The compliance officer at that time, who no longer is employed at the Bay Pines VAHCS, was the spouse of the study coordinator. An ad hoc compliance committee composed of the IRB Chairperson, R&D Committee Chairperson, and the Research Pharmacist reviewed 6 of the 13 charts, noting missing appointments and CPRS documentation in those 6 cases. They did not identify the problem of post-dated appointments. The compliance committee recommended assigning another experienced study coordinator to the study and reviewing it again, 60 days after the new study coordinator assumed responsibility for the study.

We found subsequent compliance reviews for this study dated May 22 and June 28, 2006. One review addressed appropriate identification of patients in CPRS as research patients,

but neither addressed the absence of CPRS notes and appointments for the dates of study visits as previously identified in the January compliance review.

Issue 2: Alleged Human Subject Protection Violations in Study 2

We found the facility addressed the allegations concerning Study 2 prior to the date of this inspection. We review their findings below.

On November 7, 2005, the Human Research Protection Program Administrator (hereinafter the Administrator) at Bay Pines VAHCS noted that the PI named in the complaint attended two scientific meetings and presented research information involving a protocol not approved by the Bay Pines IRB, by the R&D Committee, or by the affiliated IRB. The PI replied in a letter dated November 14, 2005, that she submitted an initial request for IRB approval on October 17, 2003, and attached the application. The Administrator found that the submission was returned due to incompleteness. On December 8, 2005, the Administrator's findings were affirmed by the IRB. The Associate Chief of Staff for Research and Development (ACOS/R&D), the Privacy Officer, and the Administrator met with the PI on December 15, 2005, and communicated these findings as well as concerns that individually identifiable patient information was accessed without approval. On December 21, 2005, an e-mail from the Administrator to the ACOS/R&D noted physical evidence that the PI and two other investigators accessed private health information charts for the unapproved research.

The IRB subsequently found that research was conducted without IRB or R&D approval; that information from the research appeared in presentations at two professional conferences and was submitted for publication; and that one investigator under the supervision of the PI conducted research without the required training on the protection of human subjects. In addition, the IRB noted a history of noncompliance resulting in the administrative closure of a previous protocol supervised by the same PI. Based upon these findings, the IRB suspended the PI from conducting research involving human subjects for 1 year; asked another investigator to assume the role of PI in Study 1; asked the PI named in the allegations to inform the conference organizers that the data presented did not arise from an IRB or R&D approved protocol; asked that the PI retract any submissions for publication containing this data; and asked that all data, posters, files and presentations be submitted to the Administrator.

On December 19, 2005, the PI addressed the R&D Committee concerning these findings. The PI presented the Committee with evidence that the two researchers under her supervision had completed the mandatory educational requirements for VA researchers. However, the R&D Committee found that one investigator had no proof of training prior to July 2005, despite evidence that the investigator had been involved in studies at the VAHCS since at least 2003. The R&D Committee agreed with all IRB actions except that, in consideration of the PI's former experience as an IRB member as well as her history of noncompliance, the Committee believed a 2-year suspension was more

appropriate, along with a provision placing the PI on permanent probation regarding the performance of research-related activities at the facility. The R&D Committee further noted that, upon chart review, there was no evidence of social, psychological, physical, or economic harm to the individuals involved.

The PI appealed the decision of the R&D Committee and retained legal representation. The Office of Research and Development identified ORO as the appropriate administrative body within VHA to review this decision. We therefore found that the facility fully addressed these allegations and appropriately referred the PI's appeal to ORO.

Conclusion

We substantiated the allegation of missing documentation in Study 1, as well as two instances of inclusion and exclusion criteria violations. While the medical center conducted a compliance review on Study 1 that identified some of these issues, we found that the results of that compliance review did not prompt change in medical center policy or procedure, nor did it prompt a full audit of the involved protocol. In addition, the relationship of the former compliance officer to the study coordinator created the appearance of a conflict of interest. We note, however, that the compliance officer in question is no longer employed by the medical center and that the medical center ensured that the compliance review conducted of the protocol was not done by that compliance officer.

The medical center thoroughly addressed the allegations concerning Study 2, acting to suspend the PI from participation in further research for a period of 2 years and to ensure that the researcher would receive close supervision in any future research activities. We therefore found that the medical center fully addressed problems identified with Study 2. We offer the following recommendations concerning Study 1.

Recommendations

Recommended Action 1. The VISN Director should ensure that the Bay Pines HCS Director create an institutional policy defining under what circumstances, if any, appointments may be entered into the VISTA appointment manager after the date of the appointment.

Recommended Action 2. The VISN Director should ensure that the Bay Pines HCS Director require compliance with the documentation requirements for research visits as described in the 2006 version of VHA Handbook 1907.01.

Recommended Action 3. The VISN Director should ensure that the Bay Pines HCS Director ensure all applicable VHA policies and procedures concerning conflicts of

interest and nepotism are followed with regard to employees of the VAHCS and the VA nonprofit corporation.

Recommended Action 4. The VISN Director should ensure that the Bay Pines HCS Director take appropriate administrative action relative to the findings contained within this report.

Comments

The VISN and Bay Pines HCS Director concurred with the findings and recommendations of this inspection and presented acceptable improvement plans. We will follow up until all actions have been completed.

(original signed by:)
JOHN D. DAIGH, JR., M.D.
Assistant Inspector General for
Healthcare Inspections

Appendix A

VISN Director Comments

DEPARTMENT OF VETERANS AFFAIRS

Memorandum

Date: December 13, 2006

From: Network Director (10N8)

Subj: Healthcare Inspection – Alleged Human Subjects Protection Violations in Research at Bay Pines VA Medical Center, Bay Pines, Florida

To: Regional Director, Office of the Inspector General/Office of Healthcare Inspections

1. Thank you for the opportunity to review and respond to the draft report, Healthcare Inspection – Alleged Human Subjects Protection Violations in Research at Bay Pines VA Medical Center, Bay Pines, Florida.

2. I concur with the recommendations of the report and the actions that are being implemented by Bay Pines VAHCS.

3. Should you require any additional information please contact Karen Maudlin, VISN Risk Manager at (727) 319 – 1063.

George H. Gray, Jr.

George H. Gray, Jr.

Director's Comments to Office of Inspector General's Report

The following Director's comments are submitted in response to the recommendation(s) in the Office of Inspector General's Report:

OIG Recommendation(s)

Recommended Action 1. The VISN Director should ensure that the Healthcare System Director create an institutional policy defining under what circumstances, if any, appointments may be entered into the VISTA appointment manager after the date of the appointment.

Concur **Target Completion Date:** January 2007

Planned Action: The Chief, Health Administration Service is currently updating Center Memorandum 516-04-136-8, Outpatient Program Scheduling to be in compliance with VHA Directive 2006-055, VHA Outpatient Scheduling Processes and Procedures dated October 11, 2006. The new policy will clarify entering appointments into the VISTA appointment manager after the date of the appointment. The changes will be completed and disseminated to the facility by January 31, 2007.

Recommended Action 2. The VISN Director should ensure that the Healthcare System Director require compliance with the documentation requirements for research visits as described in the 2006 version of VHA Handbook 1907.01.

Concur **Target Completion Date:** January 2007

Planned Action: The Human Research Protection Program (HRPP) Office has updated the Clinical Research Coordinator Training to include CPRS documentation requirements relating to Research.

The HRPP Office has added research documentation requirements to the coordinator meeting agenda.

The Chief, Information Resource Management Service, is reviewing Center Memorandum 516-01-11-26, Medical Record Documentation, to ensure compliance with VHA Handbook 1907.01, Health Information Management and Health Records dated August 25, 2006. Interim changes as they relate to documentation of research activities will be added to the existing center memorandum to clarify the requirements if needed. Any interim changes will be completed and disseminated to the facility by January 31, 2007.

Recommended Action 3. The VISN Director should ensure that the Healthcare System Director ensure all applicable VHA policies and procedures concerning conflicts of interest and nepotism are followed with regard to employees of the VAHCS and the VA nonprofit corporation.

Concur **Target Completion Date:** January 2007

Planned Action: The Bay Pines (BP) Foundation (VA nonprofit corporation) has reviewed Center Memorandum 516-05-05-37, Employment of Relatives and will coordinate with Chief, Human Resources Management Service, to include Without Compensation (WOC) individuals with a special reference to WOC individuals that are hired by the nonprofit corporation. This interim change will be completed and disseminated to the facility by January 31, 2007.

Additionally, BP Foundation staff with a WOC appointment have been included in the BPVAHCS "Synquest" system (on-line education training and tracking system). Inclusion of these individuals in "Synquest" will enable the electronic assignment and tracking of VA required training module "CBI Training: Corporate Compliance and Standards of Ethical Conduct." The annual training will be assigned to all Bay Pines Foundation staff with a WOC appointment, by January 31, 2007

Bay Pines Foundation staff have drafted policy changes to include the Standards of Ethical Conduct of the National Association of Veterans' Research and Foundation (NAVREF) and expanded policies regarding nepotism. These proposed policy changes will be presented to the Bay Pines Foundation Board members at the December 18, 2006 board meeting. Further action will be taken based on the Board's actions.

Recommended Action 4. The VISN Director should ensure that the Healthcare System Director take appropriate administrative action relative to the findings contained within this report.

Concur **Target Completion Date:** January 2007

Planned Action: Administrative actions in the form of policy and educational mandates are occurring as indicated in the previous 3 recommendations. Additionally, all research staff, principal investigators (PI) and members of the research teams will be made aware of changes in policy and annual education requirements through discussion at various staff meetings, research committee meetings, memos from Director and/or Chief of Staff, etc., by January 31, 2007. The responsible services (Human Resources, Education, Health Administration Service, Health Information Management, etc), as well as the clinical service chiefs under which PI's are organizationally aligned will continue to monitor adherence to the above stated policy changes for their respective areas of concern and will provide information to the Executive Management Team when violations do occur so that appropriate corrective and/or disciplinary action is carried out as necessary and in a timely manner.

Appendix B

OIG Contact and Staff Acknowledgments

OIG Contact	Marisa Casado, Director St. Petersburg Regional Office Healthcare Inspections 727 395-1416
Acknowledgments	Andrea Buck, M.D. Annette Robinson Idell Graham

Appendix C

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