

# Ministerial Order No 806 of 12 July 2004 on Information and Consent at Inclusion of Trial Subjects in Biomedical Research Projects

Pursuant to S.16(6), S.17(6), and S.29(2) of Act No. 402 of 28 May 2003 on a Biomedical Research Ethics Committee System and the Processing of Biomedical Research Projects the Order provides as follows:

## Part 1

### *Objective, applicability, definitions etc.*

1. The objects of the Ministerial Order are to lay down stipulations on providing information to and obtaining consent from trial subjects in connection with their participation in biomedical research projects.

2. Trial subjects shall mean healthy as well as sick individuals participating in research as part of biomedical research projects.

3. A biomedical research project shall mean an activity planned according to research methods which aims at producing new, valuable knowledge about human biological and psychological processes, either in relation to healthy persons or for the purpose of prevention, recognition, relief, treatment or cure of disease, symptoms and pain, including affecting bodily functions.

-( 2) A biomedical research project may include clinical research involving medicinal products or medical equipment.

-( 3) In certain cases, the Committee may direct that register research projects, which also include human biological material, cf. S.8(3) of the Act, shall not be covered by the stipulations on providing information and obtaining consent, cf. S.16(3) of the Act.

## Part 2

### *Informed consent*

#### *General Issues*

4. No biomedical research projects shall be initiated or continued without the informed consent of the trial subject who is of legal capacity and of age, cf. S.16 of the Act.

-( 2) For the purpose of this Ministerial Order, informed consent shall mean a decision made voluntarily, following satisfactory information, by a person capable of giving consent. The consent shall be given on the background of both the written and the oral information, cf. SS. 7-10 and S.12, cf. also S.6.

-( 3) The consent shall be given as soon as possible after the information is received. Although the trial subject shall be allowed time of reflection.

-( 4) In connection with the trial subject's provision of consent, at the latest, the investigator shall certify that the written information has been handed to the trial subject and that provision of oral information has taken place. The trial subject is entitled to receive a copy of the certified declaration of consent.

-( 5) An informed consent pursuant to this subsection must be in writing, dated and signed or submitted by electronic signature. The consent shall be given to the

investigator or a person authorised by him/her who has direct connection with the research project.

-( 6) The trial subject may at any time withdraw his/her consent under subsection 1.

5. It is the task of the Committee to ensure that in connection with approval of the biomedical research project a form shall be provided for the use of the trial subject's provision of informed consent.

6. The Danish National Committee on Biomedical Research Ethics can lay down specific guidelines for situations in which the regional committees may authorise and subsequently evaluate information given in a form different from the rules in Part 2.

### *Requirements concerning written and oral information*

#### *General Issues*

7. The trial subject shall receive information on the biomedical research project in which the individual contemplates to participate.

-( 2) The information shall be provided by the investigator, cf. S.7(1)(6) of the Act, or by a person authorised to do so who has the professional qualifications to communicate the contents of the research project and who is directly associated with the research project. The person submitting the information shall be responsible for the trial subject's proper understanding of the information prior to initiation of the trial.

-( 3) The information shall include an understandable presentation of the research project without the use of technical or value-laden terms and expressions. Information shall be given in a considerate way and be suited to the individual trial subject's circumstances such as age, maturity, experience, etc. The information shall contain details on any predictable risks, adverse reactions, complications and drawbacks and that participation in a biomedical research project may involve unpredictable risk and harm.

-( 4) In case of patients being involved in biomedical research projects aimed at results of research as well as treatment, the information shall be supplemented by both oral and any written information on other possible treatment methods, cf. Act on the legal status of patients.

-( 5) Where the trial subject is otherwise found not to be aware of matters of significance to the trial subject's consideration, the information shall include such matters.

8. It is the task of the Committee to ensure that in connection with approval of the biomedical research project, written information shall be provided as well as procedures described for providing oral information to the trial subject or his/her surrogate.

-( 2) Oral information must be based on the written information.

-( 3) The written information must be submitted in paper form or electronically.

However, the trial subject may always request to receive the information in paper form.

-( 4) The written information shall as a minimum include the details mentioned in SS. 9, 10, and 12.

### *Requirements concerning the contents of the written information*

9. The written information shall state that this concerns a request to participate in a biomedical research project and it must contain the following information:-

1) aim and method and the importance, nature and scope of the research project, including the practical arrangement of the project and any clinical trials,

- 2) the use of and the names of approved and non-approved medicinal products, the dosage and use of randomization, blind preparations and treatment-free periods including any known interaction with other medicinal products,
- 3) any predictable risks, side effects, including known long-term side effects, complications and inconveniences by participating in the research project, and that participation in a biomedical research project may involve unpredictable risk and harm,
- 4) the possible benefits of the research project. A distinction must be drawn between benefits accruing to the individual trial subject, to others and to research ethical progress,
- 5) circumstances which may result in the involuntary exclusion of the trial subject concerned from the research project, as well as circumstances under which the project as a whole may be discontinued. In the event of a discontinuation of the project, the trial subject shall be informed about the reason for this, and
- 6) name, address, e-mail address and phone number of a contact person connected with the research project.

**10.** In addition to this, the written information shall state:-

- 1) that participation in the research project is voluntary and that participation can only occur after both written and oral information has been provided and written consent to participation has been given by the trial subject,
- 2) that the trial subject may at any time withdraw consent to participate in and discontinue participation in the project orally, in writing or in any other clearly expressed way without this affecting access to existing or future treatment or other rights which the trial subject might have,
- 3) that the trial subject has a right to time for reflection before giving consent, just as the trial subject shall be entitled to be accompanied by a friend or relative when receiving the oral information,
- 4) that data about the patient's health, other purely private matters and other confidential information about the trial subject which is given or is obtained during participation in the research project shall be covered by the rules on professional secrecy,
- 5) that storing of data identifiable with the subject concerned, including tissue, blood samples, etc, shall be done in pursuance of Act on the Handling of Personal Information and Act on the legal status of patients,
- 6) that it is possible to gain access to documents in the research protocol in accordance with the act on free access to public records, and
- 7) the complaints procedure as well as the possibility of obtaining damages in accordance with the act on patients' insurance, or the act on compensation for medicinal injuries and other compensation for injuries resulting from the research project.

**11.** Information to the trial subject on his/her general rights, as stated above in S.10, may be attached as a separate appendix to the information on the individual biomedical research project.

**12.** Under S. 14(1)(1) of the Act, the written information shall also clearly state the financial support that the investigator receives from private undertakings, foundations etc. for the implementation of the biomedical research project concerned. Information shall be presented in a way to provide the trial subject with an opportunity to decide whether he/she wishes to participate in the research project.

-( 2) Information on financial support shall include details on

- 1) who initiated the biomedical research project,

- 2) names of commercial as well as non-commercial sponsors,
- 3) sponsored amounts for each sponsor and the way in which the sponsorship is involved in the research project, including whether the sponsorship is paid as a fixed sum or as a remuneration per trial subject, and whether the sponsorship is paid directly to the chief investigator, to his/her division/ward/institute, to a common research fund or otherwise, and
- 4) whether the chief investigator is otherwise financially attached to private enterprises, foundations, etc., who may have interests in the research project concerned.

**13.** The trial subject shall be informed, if during the implementation of a biomedical research project significant information becomes available on the trial subject's health condition, unless the trial subject has expressly stated that he or she does not want this.

**14.** If, during the course of a biomedical research project, new facts turn up about the effects, risks, side effects, complications or drawbacks of the trial, or if the trial design of the research project is considerably changed in relation to the safety of the trial subject, the trial subject is to be informed accordingly. In such situations, the trial subject shall provide renewed consent, cf. S.4.

-( 2) If it is feasible and the trial subject so wishes, the chief investigator or an authorised person when reporting the research project shall inform the trial subject of the results achieved and of any consequences for the individual trial subject.

*Increased requirements of information and consent when including trial subjects exposed to particular pressure or compulsion*

**15.** Where, because of placement in an institution, incarceration, circumstances of employment or in similar circumstances, the trial subject is particularly exposed to pressure regarding participation in a biomedical research project, but where the subject is otherwise capable of making decisions, the committee may after concrete assessment decide that the consent of the trial subject to participate in the research project shall be given to a person authorised by the committee. The committee may also decide that in such cases the information shall be supplemented by a statement that the course of the research project shall be observed by an independent professional.

-( 2) Persons subject to compulsion cf. S. 23(1) of the act on incarceration and other compulsion in psychiatry may not participate as trial subjects in biomedical research projects.

### Part 3

#### *Surrogate consent*

##### *General Issues*

**16.** The committee may only grant authorisation to initiate and continue a biomedical research project that involves trial subjects who because of age or reduced physical or mental functional capacity as a consequence of a mental condition, age, mental handicap or similar conditions are incapable of giving informed consent to participation in trials, if a surrogate consent is obtained, cf. also S. 21(1). The committee shall verify that a form is available to be used for making a surrogate consent under the rules in Part 2 as well as Part 3.

-( 2) At the evaluation of research projects implemented on the basis of surrogate consent, the committee shall ensure prior to the approval that the project cannot with similar benefit be conducted by including legally competent trial subjects of legal

capacity whose voluntary participation cannot be disputed. The committee shall also ensure that surrogate consent is in the interest of the trial subject and that the criteria concerning adverse events in S.13 of the Act have been observed.

**17.** A trial subject who is incapable of giving informed consent shall be informed about and included in the discussions about the biomedical research project to the extent that the subject concerned understands the trial situation, unless this may harm the trial subject. Importance shall be attached to the indications of the trial subject in so far as these are relevant.

-( 2) A biomedical research project shall not be initiated or continued on the background of a surrogate consent if the trial subject objects to it.

**18.** The person giving surrogate consent may at any time withdraw the surrogate consent orally, in writing or in any other clearly expressed way without this affecting access to existing or future treatment or other rights which he/she or the trial subject might have.

**19.** If a trial subject gains or regains legal competence during the course of the biomedical research project, informed consent is to be obtained from the trial subject prior to the continuation of the search project under the rules in Part 2.

#### *Special issues on biomedical research projects involving minors*

**20.** The committee may only grant authorisation to initiate and continue a biomedical research project involving legally incompetent persons under the age of 18 if in connection with the surrogate consent the minor has been given oral information on the research project, its risks and benefits, cf, also S. 21(1). This information shall be provided by a person who has knowledge of the area concerning the research project and also with educational qualifications to communicate the contents to the age group comprised by the project.

-( 2) A trial subject in the 15-17 age group, who is not legally competent, must, if he or she so wishes, and to the extent the information may contribute towards clarifying the content of the research project, its risks and benefits, also receive written information on the research project.

-( 3) The oral as well as the written information to the legally incompetent 15-17-year-old trial subject must be adapted to this age group.

-( 4) The Danish National Committee on Biomedical Research Ethics may issue detailed guidelines for the contents of the information to 15-17-year-old trial subjects.

#### *Exemptions from the requirement for surrogate consent regarding 15 – 17-year-olds*

**21.** A legally incompetent 15-17-year-old trial subject may independently provide informed consent under the rules in Part 2 to participate in a research project where the research project does not involve or only to a limited extent involves clinical intervention, and where the research project is believed to present no risk or harm for the trial subject.

-( 2) If the 15 – 17-year-old minor gives his/her informed consent pursuant to subsection (1), the holder of custody shall receive the same information and shall be involved in the decision of the 15 – 17-year-old.

*Special issues on individuals under personal guardianship and permanently legally incompetent adults*

**22.** The committee may only grant authorisation to initiate and continue a biomedical research project involving permanently legally incompetent adults if surrogate consent has been obtained from the closest relative and the trial subject's general practitioner.

-( 2) The surrogate consent from the general practitioner shall be given on the background of the doctor's knowledge of the trial subject or on the doctor's ability to familiarize himself with the trial subject or to the doctor's ability to familiarize himself with the health condition of the trial subject in relation to the doctor's assessment of the content of the biomedical research project.

-( 3) In the trial subject's general practitioner's absence, or if the trial subject is not affiliated with a permanent general practitioner, the surrogate consent must be obtained from the closest relative and the medical officer of health.

*Special issues on biomedical research projects involving deceased persons*

**23.** A biomedical research project involving deceased individuals, can be implemented only in accordance with the rules under the Act on Coroner's Inquests, Post-Mortem Examinations, Transplantation, etc., which, among other things, states that consent to medico-legal post-mortem examination is required, cf. also subsection (2).

-( 2) Minor interventions made in connection with a biomedical research project which affect deceased individuals and which are mentioned in S. 17(2) of the Act on Coroner's Inquests, Post-Mortem Examinations, Transplantation, etc., may be made with a surrogate consent from the closest relative, cf. S.16.

Part 4

*Penal Provisions*

**24.** Unless more severe punishment is determined in other legislation, any person who initiates and implements a research project contrary to S.4, S.7(2), SS.9 and 10, SSS.12-14(1), S.15, S.17, S.19 and S.23 of this Order shall be punishable by fine.

*Commencement, etc.*

**25.** The Ministerial Order shall come into force on 1st August 2004 in relation to research projects notified to a committee on biomedical research ethics as from this date.

-( 2) At the same time Ministerial Order No. 935 of 12 October 2000 on Information and Consent at Inclusion of Trial Subjects in Biomedical Research Projects shall be repealed.

*The Danish Ministry of Interior and Health, 12 July 2004*

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