

Clinical Research Ethics Question of the Month: Prison Amphetamine Study

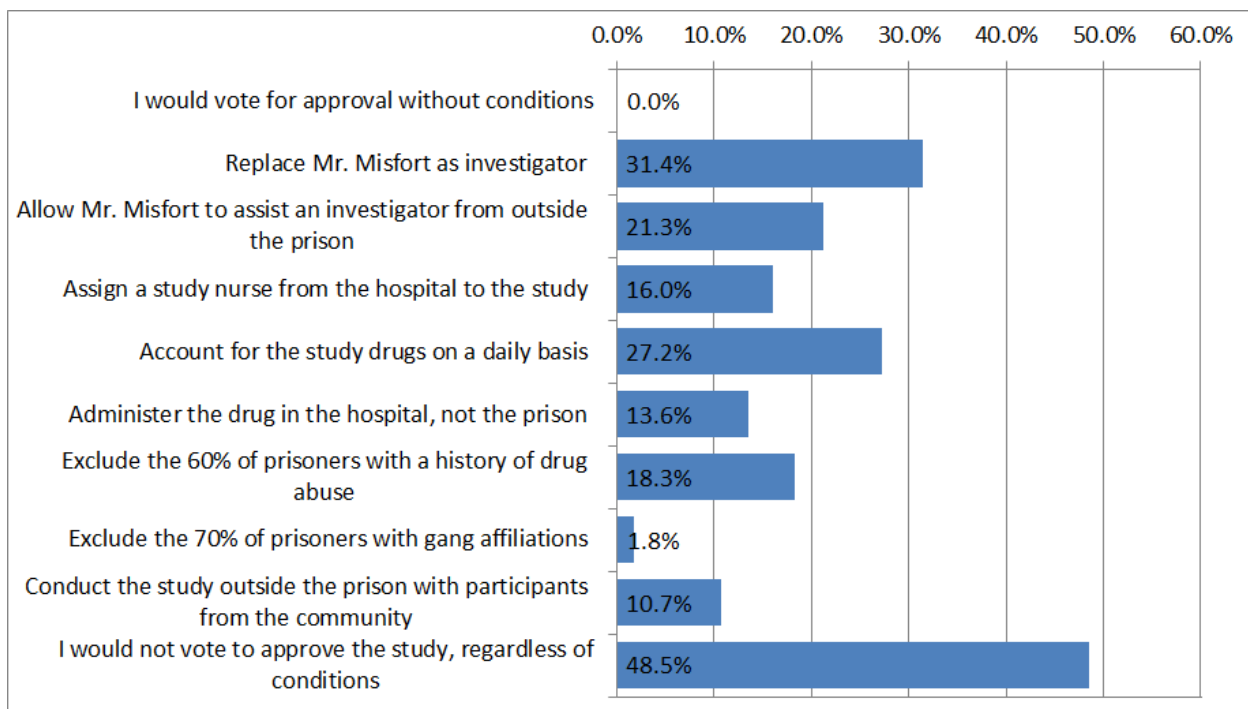
By Norman M. Goldfarb

You are a member of the institutional review board of Ace Hospital, a community hospital that serves the city of Ace, along with nearby high-security Ace State Prison. James Misfort, an inmate at the prison, has submitted an application to conduct a study of the prisoners. Mr. Misfort was a licensed physician (MD) until he was convicted of real estate fraud and was unable to obtain the continuing education hours required to maintain his license. The purpose of the study is to determine whether administering a low level of a prescription amphetamine would counteract the negative effects of the prisoners' sedentary lifestyle. The State Prison Board strongly supports the study. You have no other information to make your decision and no clever way to dodge it.

Results

The 170 respondents answered the following question:

What conditions, if any, would you place on the study before you would vote to approve it?



Discussion

The past abuse of prisoners in clinical studies is well documented, most notably in Pennsylvania's Holmesburg State Prison. (See: http://firstclinical.com/journal/2006/0604_Ackerman.pdf).

Based on these abuses, conducting clinical research with prisoners now requires compliance with the stringent requirements set forth in 45 CFR 46 Subpart C: Additional Protections

Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects (Appendix A below).

None of the respondents would vote to approve the study without conditions. 51.5% of respondents would vote to approve the study with conditions. 48.5% of respondents would vote against approving the study under any conditions.

Respondents were clearly uncomfortable with conducting this study in Ace Prison with Mr. Misfort as the principal investigator. 31.4% of respondents would replace Mr. Misfort as principal investigator. 21.3% would allow Mr. Misfort to assist an investigator from outside the prison. 16.0% would assign a study nurse from the hospital. 10.7% would vote support conducting the study outside the prison with participants from the community.

Respondents were also concerned about dispensing even a mild amphetamine in a prison where hard drugs are probably available. Study participants might hoard the study drug. Other prisoners might coerce study participants to obtain the study drug since even a mild amphetamine might appeal to former or current drug users (or retailers). Several respondents thus focused on tight controls of the study drug and its administration, 27.2% of respondents would require accounting for the study drugs on a daily basis. 13.6% would require the study drug to be administered at Ace Hospital rather than in the prison. One respondent suggested supervised consumption of the study drug. Another suggested having a pharmacist dispense the drug.

18.3% of respondents would exclude the 66% prisoners with a history of drug use, but only 1.8% of respondents would exclude the 70% of prisoners with gang affiliations. Respondents did not explain their tolerance of prisoners with gang affiliations. One respondent noted that excluding prisoners with a history of drug abuse would rule out any confounding effects. Frequent drug tests could address this problem for current drug usage. Excluding the 66% of prisoners with a history of drug abuse would severely limit the applicability of the study's results. However, if they were allowed into the study, the data should be analyzed for the two subgroups.

One respondent stated that, because Mr. Misfort does not have valid medical license, he cannot be an investigator. In fact, people who are "qualified by training and experience as appropriate experts to investigate the drug" can serve as principal investigators (21 CFR 312.53). Also, since Mr. Misfort is not "prescribing" the study drug, a medical license is not required for that reason. Mr. Misfort's previous medical training and experience, any clinical research experience, and his experience in real estate fraud may or may not qualify him as an *appropriate* expert to investigate the drug.

Mr. Misfort's incentives are mixed. He likely has a sincere interest in putting his medical experience to use in answering the study question. Positive study results would please the State Prison Board by leading to improvements in the prisoners' health that reduce healthcare costs. On the other hand, Mr. Misfort probably would not want to get caught fiddling with the study. To put these incentives in perspective, note that principal investigators outside prison also have multiple and often conflicting incentives.

The study poses more than minimal risks. A low dosage of a prescription amphetamine is probably harmless but might, for example, reactivate a study participant's (undisclosed) previous drug abuse problems. Several respondents expressed concerns about the ability of prisoners to freely give consent without coercion or undue influence in the prison environment. This concern is valid since Mr. Misfort's ethics are questionable. Ace State Prison no doubt holds prisoners and employs guards prone to coercion and undue influence. In addition, as one respondent noted, the State Prison Board strongly supports the study, so it might encourage participation. One respondent asked how it would be possible to know whether participation is truly voluntary in the prison environment.

Mr. Misfort's study would address a serious issue in prisons. However, two respondents noted that sedentary people also can be found outside the prison, obviating the need to deal with the complications of conducting the study in the prison. One suggested that, based on a successful study outside the prison, the IRB could then consider a study in the prison.

Next Month's Question:

You are the member of an institutional review board that has approved a pediatric study. The protocol requires that study participants, accompanied by a responsible adult, stay overnight in a Phase I facility. The investigator is having trouble meeting the study's diversity goals because economically advantaged parents (predominantly Caucasian) are unwilling to spend the night in the facility. However, they would be willing to pay a caregiver to stay with their children, provided the study pays the cost. If you approve amending the protocol to include this payment, the other parents (predominately minority) will want the same payment, even if they stay with their children themselves, as is their strong preference. However, that payment could be considered unduly influential...

Read the rest of the question and give us *your* answer at:
<https://www.surveymonkey.com/r/XTL56QM>.

Please send your ethical conundrums to editor@firstclinical.com.

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Appendix A Subpart C - Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects

§46.301 Applicability.

- (a) The regulations in this subpart are applicable to all biomedical and behavioral research conducted or supported by the Department of Health and Human Services involving prisoners as subjects.
- (b) Nothing in this subpart shall be construed as indicating that compliance with the procedures set forth herein will authorize research involving prisoners as subjects, to the extent such research is limited or barred by applicable State or local law.
- (c) The requirements of this subpart are in addition to those imposed under the other subparts of this part.

§46.302 Purpose.

Inasmuch as prisoners may be under constraints because of their incarceration which could affect their ability to make a truly voluntary and uncoerced decision whether or not to participate as subjects in research, it is the purpose of this subpart to provide additional safeguards for the protection of prisoners involved in activities to which this subpart is applicable.

§46.303 Definitions.

As used in this subpart:

(a) *Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom authority has been delegated.

(b) *DHHS* means the Department of Health and Human Services.

(c) *Prisoner* means any individual involuntarily confined or detained in a penal institution. The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial or sentencing.

(d) *Minimal risk* is the probability and magnitude of physical or psychological harm that is normally encountered in the daily lives, or in the routine medical, dental or psychological examination of healthy persons.

§46.304 Composition of Institutional Review Boards where prisoners are involved.

In addition to satisfying the requirements in §46.107 of this part, an Institutional Review Board, carrying out responsibilities under this part with respect to research covered by this subpart, shall also meet the following specific requirements:

(a) A majority of the Board (exclusive of prisoner members) shall have no association with the prison(s) involved, apart from their membership on the Board.

(b) At least one member of the Board shall be a prisoner, or a prisoner representative with appropriate background and experience to serve in that capacity, except that where a particular research project is reviewed by more than one Board only one Board need satisfy this requirement.

[43 FR 53655, Nov. 16, 1978, as amended at 46 FR 8366, Jan. 26, 1981]

§46.305 Additional duties of the Institutional Review Boards where prisoners are involved.

(a) In addition to all other responsibilities prescribed for Institutional Review Boards under this part, the Board shall review research covered by this subpart and approve such research only if it finds that:

(1) The research under review represents one of the categories of research permissible under §46.306(a)(2);

(2) Any possible advantages accruing to the prisoner through his or her participation in the research, when compared to the general living conditions, medical care, quality of food, amenities and opportunity for earnings in the prison, are not of such a magnitude that his or her ability to weigh the risks of the research against the value of such advantages in the limited choice environment of the prison is impaired;

(3) The risks involved in the research are commensurate with risks that would be accepted by nonprisoner volunteers;

(4) Procedures for the selection of subjects within the prison are fair to all prisoners and immune from arbitrary intervention by prison authorities or prisoners. Unless the principal investigator provides to the Board justification in writing for following some other procedures, control subjects must be selected randomly from the group of

available prisoners who meet the characteristics needed for that particular research project;

(5) The information is presented in language which is understandable to the subject population;

(6) Adequate assurance exists that parole boards will not take into account a prisoner's participation in the research in making decisions regarding parole, and each prisoner is clearly informed in advance that participation in the research will have no effect on his or her parole; and

(7) Where the Board finds there may be a need for follow-up examination or care of participants after the end of their participation, adequate provision has been made for such examination or care, taking into account the varying lengths of individual prisoners' sentences, and for informing participants of this fact.

(b) The Board shall carry out such other duties as may be assigned by the Secretary.

(c) The institution shall certify to the Secretary, in such form and manner as the Secretary may require, that the duties of the Board under this section have been fulfilled.

§46.306 Permitted research involving prisoners.

(a) Biomedical or behavioral research conducted or supported by DHHS may involve prisoners as subjects only if:

The institution responsible for the conduct of the research has certified to the Secretary that the Institutional Review Board has approved the research under §46.305 of this subpart; and, in the judgment of the Secretary the proposed research involves solely the following:

(i) Study of the possible causes, effects and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(ii) Study of prisons as institutional structures or of prisoners as incarcerated persons, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(iii) Research on conditions particularly affecting prisoners as a class (for example, vaccine trials and other research on hepatitis, which is much more prevalent in prisons than elsewhere; and research on social and psychological problems, such as alcoholism, drug addiction, and sexual assaults) provided that the study may proceed only after the Secretary has consulted with appropriate experts including experts in penology, medicine and ethics, and published notice in the FEDERAL REGISTER of his intent to approve such research; or

(iv) Research on practices, both innovative and accepted, which have the intent and reasonable probability of improving the health or well-being of the subject. In cases in which those studies require the assignment of prisoners in a manner consistent with protocols approved by the IRB to control groups that may not benefit from the research, the study may proceed only after the Secretary has consulted with appropriate experts, including experts in penology, medicine, and ethics, and published notice in the FEDERAL REGISTER of the intent to approve such research.

(b) Except as provided in paragraph (a) of this section, biomedical or behavioral research conducted or supported by DHHS shall not involve prisoners as subjects.