

<b>SOP: CO 601</b> <b>Version No.: 04</b> <b>Effective Date: 12/19/10</b>	<b>NONCOMPLIANCE</b>	<b>Supersedes</b> <b>Document</b> <b>Dated: 7/1/08</b>
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Steering Committee approved 1/13/11

## 1. POLICY

The IRB requires Investigators and their clinical staff participating in research to comply with all Aurora IRB policies and applicable federal regulations and other law in conducting research on human subjects and in using and disclosing protected health information for Research purposes. The IRB's responsibility is to protect the rights and welfare of research subjects, which could be placed at risk if there is research misconduct, or noncompliance with IRB policies or applicable law on the part of an Investigator or any member of the research team. It is, therefore, the duty of the IRB to be receptive to and act in good faith in response to any and all complaints or allegations of misconduct or noncompliance.

The IRB shall promptly investigate any complaints of research misconduct or alleged noncompliance with IRB policies and applicable law and take appropriate action to ensure the safety and welfare of human research subjects. Allegations of research misconduct will be investigated in accordance with Aurora IRB Policy CO 602. Any action taken by the IRB will be reported in accordance with the appropriate policy and the federal regulations governing such action.

### Specific Policies

Key terms used in this policy are defined below, but any terms not defined herein shall have the meanings set forth in the Glossary.

#### 1.1. Definitions

1.1.1. "Noncompliance" is defined as the failure of an Investigator, his/her designees, IRB members, RSPP staff members, or any other person to adhere to the IRB policies, an IRB determination, applicable law governing the conduct of research on human subjects, and/or the IRB-approved protocol.

1.1.2. "Nonserious" means that the IRB has determined that the noncompliance is not Serious or Substantial noncompliance.

1.1.3. "Substantial" means noncompliance that the IRB has determined either (a) created increased risk of potential harm but did not actually cause such harm, or (b) actually caused harm, but the harm was not serious.

1.1.4. "Serious" means noncompliance that the IRB has determined -(a) created a significantly increased risk of potential serious harm and the harm occurred; (b) compromises the integrity or effectiveness of the human subject research; and/or (c) resulted in an Unanticipated Problem that caused harm.

1.1.5. "Noncontinuing" means that the IRB has determined that the noncompliance is not Continuing noncompliance.

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1.1.6. “Continuing” means a pattern of noncompliance that, if allowed to continue is likely to increase risk to subjects, adversely affect the rights, welfare and safety of research subjects, or adversely affect the scientific integrity of the study. It need not involve a sequence of similar events if the events, taken as a whole, indicate that examination of the methods and systems used is warranted.

1.1.7. “Allegation of noncompliance” means an assertion (made by a second party) of noncompliance that must be proven or supported with evidence to either confirm or deny.

1.1.8. “Finding of noncompliance” means an assertion of noncompliance that has been determined to have a basis in fact.

## **1.2. Review of Reports and Complaints for Instances of Noncompliance**

If noncompliance is suspected, but not formally documented, it is communicated to the RSPP Manager or Senior IRB Chair as an allegation of noncompliance. Allegations of noncompliance may also be identified during the review of research documents, submitted forms, requested reports, audit findings or complaints by subjects or others. When allegations of noncompliance are identified by any of these means, research staff are encouraged to report the matter to the IRB on a Significant Violation Report Form (RR 403-G). In such cases, the Senior IRB Chair determines whether the allegation of noncompliance has a basis in fact. If the Senior IRB Chair determines that the matter meets the Policy definition of noncompliance, it is documented as a finding of noncompliance. In all cases of allegations or findings of noncompliance, the event is reviewed in accordance with section 1.3 of this Policy.

## **1.3. Allegations or Findings of Noncompliance**

1.3.1. Review of event. Any allegation or finding of noncompliance will be reviewed and investigated, as necessary, by a subcommittee of at least two individuals that includes any of the following: RSPP Manager, RSPP Supervisor, Research Quality Assurance Specialist, and/or Director of Clinical Research. Other individuals, including but not limited to the IRB Chair or Institutional Official, may be included or consulted as necessary.

The purpose of the investigation is to obtain information related to the event to make further necessary determinations. The subcommittee may seek information from any of the following, as appropriate: the Investigator, the Principal Investigator, the Complainant, research staff members, research subjects, sponsor representatives, or others.

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The subcommittee may also request that an audit of the research study files be conducted. Such audits will be performed by the Research Quality Assurance Specialist according to Aurora IRB SOP QA902. The subcommittee will be provided a copy of the audit findings for review and consideration.

1.3.2. Outcome of subcommittee review.

(A) Allegations of noncompliance. The Subcommittee will obtain information to determine if the allegation has a basis in fact.

- If the allegation of noncompliance does not have a basis in fact, no further action is taken under this policy.
- If the allegation of noncompliance has a basis in fact, it is considered a finding of noncompliance and is handled under section 1.3.3.

1.3.3. Findings of noncompliance. The subcommittee will determine which policy definition the noncompliance meets:

(A) Noncompliance that is deemed by the subcommittee to meet the Policy definition of Serious or Continuing is handled under section 1.4 of this Policy.

(B) Noncompliance that is deemed by the subcommittee to meet the Policy definition of Nonserious or Substantial and Noncontinuing, is handled under section 1.5 of this Policy.

If the subcommittee is unable to determine whether the noncompliance meets the Policy definition of serious or continuing, the event will be referred a primary reviewer or to the fully convened IRB for consideration. Any materials collected by the subcommittee will be provided to a primary reviewer (if determined to be necessary) for consideration and presentation to the full IRB. The IRB's determination will be managed under section 1.4 or 1.5 as appropriate.

**1.4. Management of Noncompliance that is Either Serious or Continuing**

1.4.1. The subcommittee, in consultation with the Senior IRB Chair may select a Primary Reviewer who will review any collected materials and present the event to the fully convened IRB. The IRB will determine the management of the Serious or Continuing noncompliance.

All IRB members are provided and review:

- The most recent IRB Submission Form (FO 301-A), if appropriate.
- The current consent document if appropriate.
- A copy of the initial report or written summary of the allegation or finding of noncompliance, and any other relevant materials.
- A summary of the subcommittee's factual conclusions if available.
- The audit report, if an audit was performed.

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The Primary Reviewer is also provided and reviews:

- The complete protocol, when appropriate.
- Other materials, as necessary.

The convened IRB considers the following possible actions, as applicable, in response to a determination of Serious or Continuing noncompliance:

- Suspension of the research.
- Termination of the research.
- Notification of current subjects when such information may relate to subjects' willingness to continue to take part in the research.
- Modification of the protocol.
- Modification of the information disclosed during the consent process.
- Providing additional information to past subjects.
- Requiring current subjects to re-consent to participation.
- Modification of the continuing review schedule.
- Monitoring of the research.
- Monitoring of the consent.
- Referral to other organizational entities, e.g. Research Quality Assurance and Compliance Committee.
- Other actions as determined by the IRB, e.g. suspension of Research Privileging.

### **1.5. Management of Noncompliance that is Nonserious or Substantial and Noncontinuing**

The subcommittee considers the following possible actions, as applicable, in response to a determination of Nonserious or Substantial and Noncontinuing noncompliance:

- Notification of current subjects when such information may relate to subjects' willingness to continue to take part in the research.
- Modification of the protocol.
- Modification of the information disclosed during the consent process.
- Providing additional information to past subjects.
- Requiring current subjects to re-consent to participation.
- Modification of the continuing review schedule.
- Monitoring of the research.
- Monitoring of the consent.
- Referral to other organizational entities, e.g. Research Quality Assurance and Compliance (RQAC) Committee
- Other actions as appropriate.

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### **1.6. Communication with Investigator**

Results of a noncompliance review by the IRB will promptly be sent to the Investigator in writing, regardless of whether the noncompliance is Nonserious, Substantial or Serious, or Continuing or Noncontinuing. All findings of Serious or Continuing noncompliance will be reported to regulatory agencies and institutional officials in accordance with the IRB’s External Reporting Policy (SOP RR 408).

If the Investigator’s research privilege or subject enrollment in the research study (or any other research studies) has been suspended by the IRB, the letter will outline the conditions or timeframe for lifting the suspension.

The Investigator must acknowledge receipt of the letter and respond to any instructions included in the letter within 10 working days of receipt for serious or continuing noncompliance that resulted in reporting to external agencies. Any response from the Investigator related to the IRB’s investigation, findings, or instructions will be reviewed by the subcommittee and will be brought before the full IRB if necessary.

### **1.7. Restoration of Reputation**

When appropriate, the IRB or subcommittee conducting the noncompliance investigation, in consultation with the affected individual, shall make all reasonable efforts to restore the reputation of an individual alleged to have engaged in noncompliance when the allegations are not confirmed by the investigation.

### **1.8. Follow-up With Complainant**

If the investigation of noncompliance resulted from a complaint, upon completion of the noncompliance investigation, a member of the subcommittee will contact the Complainant and inform him or her of the outcome of the review of the complaint by the subcommittee and/or IRB.

## **2. SCOPE**

This SOP applies to all research being conducted at any Aurora Facility, and to the reports of noncompliance during a research study.

## **3. APPLICABLE REGULATIONS, GUIDELINES AND STANDARDS**

21 CFR 56.113

45 CFR 46.113

OHRP Guidance on Written IRB Procedures (January 15, 2007)

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AAHRPP Element II.2.G.

**4. REFERENCES TO OTHER APPLICABLE SOPS**

This SOP affects all other SOPs.