

June 4, 2019

Peter O. Newton
Setting Scoliosis Straight Foundation
2535 Carmino Del Rio S, Ste 325
San Diego, CA 92108

Dear Dr. Newton:

SUBJECT: REGULATORY OPINION: IRB EXEMPTION
Investigator: Peter Newton, MD
Sponsor/Institution Protocol #: NA
Protocol Title: Setting Scoliosis Straight Surgeon Performance Program Quality Improvement Registry Guidelines

This letter is in response to your request for an opinion as to whether the above mentioned project would constitute human subject research requiring IRB review.

This opinion is based on federal regulation 45 CFR 46 and associated guidance.

Under 45 CFR 46.102(I), the definition of research includes "...a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities. ."

The Office of Human Research Protection has issued guidance indicating that quality improvement projects do not meet the definition of research. This guidance states:

Question 2: Do the HHS regulations for the protection of human subjects in research (45 CFR part 46) apply to quality improvement activities conducted by one or more institutions whose purposes are limited to: (a) implementing a practice to improve the quality of patient care, and (b) collecting patient or provider data regarding the implementation of the practice for clinical, practical, or administrative purposes?

Answer: No. Such activities do not satisfy the definition of "research" under 45 CFR 46.102(d), which is "...a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge..." Therefore the HHS regulations for the protection of human subjects do not apply to such quality improvement activities, and there is no requirement under these regulations for such activities to undergo review by an IRB, or for these activities to be conducted with provider or patient informed consent.

This project does not involve research. The project is a quality improvement program designed to collect comparative practice data from surgeon participants. This data will be presented to the

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surgeons individually in the form of de-identified dashboard reports to enable the surgeons to track their surgical cases in comparison to their peers. This data will not be used purely to provide feedback to the surgeon participants. Therefore, WIRB has determined this project is not research and does not require IRB review.

This determination that this project is not research subject to 45 CFR 46 can apply to multiple sites, but it does not apply to any institution that has an institutional policy of requiring an entity other than WIRB (such as an internal IRB) to make such determinations. WIRB cannot provide a determination that overrides the jurisdiction of a local IRB or other institutional mechanism for making such determinations. You are responsible for ensuring that each site to which this determination applies can and will accept WIRB's determination.

Please note that any future changes to the project may affect its status as research, and you may want to contact WIRB about the effect these changes may have on the status before implementing them. WIRB does not impose an expiration date on its determinations of research.

If you have any questions, or if we can be of further assistance, please contact Andrei Chertov, PhD, at 360-252-2458, or e-mail RegulatoryAffairs@wirb.com.

AOC:dao

Not Research-Quality Improvement Exemption – Newton (06-04-2019)

cc: Mary Dalupang, SSSHSG

WIRB Accounting

WIRB Work Order #1-1188631-1