National Cancer Institute

Standardization/ Harmonization of Clinical Trial Agreement Terms

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Project Rationale

- Negotiation of clinical trial agreements between industry and academic medical centers is one of the key barriers to timely initiation of cancer clinical trials
- Perception: negotiated agreements contain clauses reflecting common key agreement concepts
- Perception: reaching common ground for each agreement requires **unnecessary duplication of effort that delays trial initiation**

Motivating Events

- **NCI Clinical Trials Working Group**
  - Recommended establishing commonly accepted clauses for clinical trial agreements between industry and academic medical centers
- **CEO Roundtable on Cancer Life Sciences Consortium**
  - Identified standardization of key clinical trial agreement clauses as a top priority
- NCI and CEO-RT established partnership to achieve common language

Participants

- **Life Sciences Consortium Companies**
  - AstraZeneca
  - Eli Lilly
  - GlaxoSmithKline
  - Johnson & Johnson
  - Novartis
  - OSI Pharmaceuticals
  - Pfizer
  - Quintiles
  - Sanofi-Aventis
  - Schering Plough
  - Wyeth

Participants

- **NCI-Designated Cancer Centers**
  - U. of Arizona
  - City of Hope
  - U. of Chicago
  - U. of Colorado
  - Dana Farber
  - Fox Chase
  - Johns Hopkins
  - Mayo Clinic
  - Moffitt
  - MD Anderson
  - U. of Pittsburgh
  - Roswell Park
  - UNC Lineberger
  - UCSF

Participants

- **Cooperative Groups**
  - Eastern Cooperative Oncology Group
  - Southwest Oncology Group
  - Cancer and Leukemia Group B
  - Gynecologic Oncology Group
  - Children's Oncology Group

Project Goals

- Identify key clauses that delay or complicate negotiations
- Determine if perception is correct that negotiations lead to consistent key concepts for those clauses
- **Draft proposed language for common key concepts identified**
- Obtain input from participants on language

Project Structure

- **Involved legal and business representatives from participants**
  - 17 reps. from LSC companies
  - 26 reps. from NCI-Designated Cancer Centers
- **Obtained copies of 78 clinical trial agreements from participating organizations**
  - 49 redacted copies of final negotiated agreements
  - 29 agreement templates
    - Approximately equal numbers of agreements from LSC companies and Cancer Centers
    - Agreements included company-sponsored and investigator-initiated trials

Key Clauses

- Through discussions with legal and business representatives, identified:
  - **Intellectual property**
  - **Study data**
  - **Publication rights**
  - Subject injury
  - Confidentiality
  - Indemnification
  - Biological samples

Agreement Analysis

- **Identified 45 key concepts** in the 7 clause categories
- **Captured exact language** that embodied these concepts for all 78 agreements
- **Organized agreement language** into categories representing embodied concept
- **Analyzed results** for similarities and differences in key concepts across final negotiated agreements
- **Analyzed template agreements** for key differences with negotiated agreements

Agreement Analysis Results

- Final negotiated agreements showed greater than 67% convergence on the vast majority of concepts analyzed
- **Drafted proposed clauses** based on common concepts identified
- **Obtained input** on proposed clauses from legal and business participants
- **Refined proposed clauses** based on feedback

Intellectual Property

- **Company-Sponsored Trials**
  - Inventions owned by company
  - Research institution retains right to use inventions for non-commercial research and education
- **Investigator-Initiated Trials**
  - Inventions owned by research institution
  - Research institution grants company a royalty-free, non-exclusive license and an option to obtain a royalty-bearing exclusive license

Study Data

- **Company-Sponsored Trials**
  - Research institution owns medical records
  - Company owns study data records and reports
  - Research institution makes medical records available to company (for study monitoring) and to regulatory authorities
  - Company licenses research institution to use study data for non-commercial research and education purposes (subject to confidentiality) and for publications

Study Data (cont'd)

- **Investigator-Initiated Trials**
  - Research institution owns medical records and study data
  - Research institution makes medical records available to regulatory authorities
  - Research institution makes study data available to regulatory authorities and company

Publication Rights

- **Company-Sponsored Trials**
  - Research institution can publish study data after 30-day company review period
  - Company right to require removal of company confidential information other than study data
  - Company right to delay publication for additional 60 days to apply for patents on inventions
  - Individual sites in multi-site studies may publish after a multi-site publication or 18 months after completion, termination or abandonment of the study, whichever is earlier

Publication Rights (cont'd)

- **Investigator-Initiated Trials**
  - Research institution can publish study data after 30-day company review period
  - Company right to require removal of company confidential information
  - Company right to delay publication for additional 60 days to apply for patents on inventions

Subject Injury

- **Company-Sponsored Trials**
  - Company reimburses research institution for treatment of adverse events and personal injury resulting from study
  - Except if caused by research Institution negligence or failure to follow protocol/applicable law
- **Investigator-Initiated Trials**
  - Subject injury reimbursement provisions not included in 90% of negotiated investigator-initiated agreements

Confidentiality

- **Company-Sponsored Trials**
  - Company pre-existing information and intellectual property, the protocol and study data are company confidential information
  - Research institution protects company's confidential information during the study and for 5 years after
  - Research institution can publish study data in accordance with the publication provision
- **Investigator-Initiated Trials**
  - Company pre-existing information and intellectual property is company confidential information
  - Research institution protects company's confidential information during the study and for 5 years after

Antitrust Considerations

- **Request for a Business Review Letter (BRL) from the Department of Justice (DOJ) Antitrust Division**
  - Favorable response received in early September
  - BRL indicated that DOJ has reviewed project and has no present intention to challenge the initiative
- **Implementation requirements include:**
  - Standardized/harmonized clauses are intended only as a starting point for individual negotiations between the parties
  - No agreement or understanding among project participants to use any of the standardized/harmonized clauses in their agreements
  - Companies and clinical centers should not discuss:
    - Strategies in negotiating clinical trial agreements
    - Specific language they will use in any particular contract
    - Other competitively sensitive terms or issues

Next Steps

- **Cancer Centers**
  - Presentation of proposed clauses for common concepts to Cancer Center Directors
  - Discussion with legal and business representatives of Cancer Centers not participating in initial project
  - NCI requests Cancer Centers to make their home institutions aware of the proposed clauses for common concepts
  - **NCI discusses project with academic medical centers**

Next Steps

- **Company Sponsors**
  - LSC member companies individually decide whether to adopt common concepts as their starting point for negotiations
  - Discuss proposed clauses for common concepts with sponsors of cancer clinical trials that are not LSC members
  - Publicize the project and proposed clauses for common concepts through professional and trade associations, industry meetings and other opportunities

Appreciation

- Tech Transfer and Legal Staffs from Academic Medical Centers, Cancer Centers, Cooperative Groups, and Pharmaceutical Firms
- Drs. Judy Hautala, Dale Shoemaker, and Sheila Prindiville: STPI and NCI
- Hogan & Hartson







Patients & Families


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