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PSYCHIATRIC ADVANCED DIRECTIVE

By Thomas D. Begley, Jr., Esquire

Psychiatric Advanced Directives (PADs) are legal documents similar to advanced directives given in connection with end-of-life decision making. However, PADs are used to give instructions with respect to preferences for future mental health care treatment. They can also be used to designate a proxy decision maker. A number of states have enacted PAD legislation.^[1] In some states, such as Wisconsin, a Power of Attorney may not be used to authorize mental health treatment.

Frequently, PADs are used to request or refuse specific treatment, such as any types of medication and other mental health interventions, use of physical and chemical restraints, release of information for treatment, participation in clinical trials of experimental treatments, hospital selection, and other directions to manage the person's routine responsibilities.

Advantages of Advanced Directives

The advantage of a PAD is that the individual can assume control over future health care treatment decisions. They are useful in communicating preferences to family members and providers. They may also facilitate appropriate and timely treatment interventions before situations deteriorate to emergency status. Utilization of PADs may lead to a reduction in adversarial court proceedings involving involuntary psychiatric treatment. Some states do not allow agents to make decisions in regard to psychiatric care; instead, court proceedings are necessary if the treatment is not voluntary.

^[1] Alaska, Hawaii, Idaho, Illinois, Maine, Minnesota, New Jersey, North Carolina, Oklahoma, Oregon, South Dakota, Texas and Utah.

Legal Capacity

There are two points in the PAD process in which legal capacity is an issue:

- 1, *Execution.* At the time the individual drafts and signs an advanced directive, the person must be competent. Most states presume that persons are competent at the time the advanced directive is executed. Also, most state statutes require that the PAD be signed by two adult witnesses who attest the person's capacity at the time the instrument is drafted.
2. *Utilization of Document.* At the time the document is used for health care or psychiatric decisions, the person must be incompetent to make those decisions for him or her self. Some states require that a court make capacity determinations at the time the PAD is utilized. Other states, such as Oregon, provide that determinations may be made by either a judge or two physicians. Since one of the goals of PADs is to avoid court involvement, the Oregon approach is preferable.

Refusal of Treatment

There is a controversial issue concerning the use of PADs to refuse all treatment. Most state laws provide that an individual may use a PAD to consent *or* refuse psychiatric treatment.

Override

Under what circumstances can a PAD be overridden? There have been no court decisions yet on when a PAD may be overridden, but it is likely that a PAD authorizing treatment refusal would be overridden if the individual was determined to be dangerous to him or her self or others.

Revocation

So long as an individual is competent, he or she clearly reserves the right to revoke a PAD. If the individual is actively symptomatic and in need of treatment, the issue becomes murky. A court hearing may be required in individual cases.

The National Alliance for the Mentally Ill (NAMI) suggests that an "Ulysses clause" be considered. Under a Ulysses clause, an Advanced Directive instructs treatment providers about specific treatment preferences, and explains that any statements made refusing treatment during periods of incapacity should be ignored.^[2]

Interest in Advanced Directives

A recent study of mental health consumers in public health treatment settings (in five states) showed that only 4% to 13% have completed a PAD. However, between 66% and 77% of those consumers say that although they currently do not have a PAD, they would want to complete one if they had the necessary assistance.^[3] The study showed that there were likely to be more interest in PADs when the following factors were present:

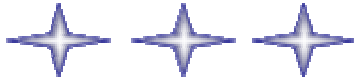
^[2] Advanced Directives by Ronald S. Honberg, www.nami.org.

^[3] Psychiatric Advanced Directives Among Public Mental Health Consumers in Five U.S. Cities: Prevalence, Demand, and Correlates.

- Past adverse experiences with treatment pressures
- Social disempowerment
- Degree of insight into their illness and need for treatment
- Existence of social resources, including marriage

Registration

New Jersey is in the process of establishing a registry where PADs can be registered. Vermont and Washington State have established registrations for all advance directives through the US Living Will Registry.^[4]



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^[4] www.USLivingWillRegistry.com

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