

Overview of PADs in the U.S. at present. Forty-six states permit some psychiatric treatment decisions to be addressed in generic healthcare ADs (Fleischner, 1998). However, a number of states that do allow mental health treatment decisions to be addressed in generic ADs limit the decisions that may be made and prohibit a surrogate from making particular treatment decisions. Surrogates in these states may not authorize placement in a mental health facility, electroconvulsive treatment and involuntary commitment—even if authorized in the AD. Fifteen states have laws that authorize advance directives specifically for mental healthcare. In all of these statutes, revocation of the PAD is conditioned on competency to make healthcare decisions, such that the PAD remains in effect during incapacitating crises. Eight of the states allow the appointment of a surrogate decisionmaker as part the PAD, while the others allow appointment of healthcare agents through broader statutory provisions. Fairly consistent standards apply to surrogates acting on behalf of persons who lose capacity to make decisions about their mental healthcare. The 1997 North Carolina “Advance Instruction for Mental Health Treatment” (N.C. Gen. Stat. 122c-71, 1997) was patterned after one of the earliest statutes enacted in Oregon (Oregon Revised Statutes, 1993).

PADs in North Carolina. In 1997, the General Assembly of North Carolina enacted Senate Bill 757 that created provisions for an Advance Instruction for Mental Health Treatment. The law gave legal authority for PADs to be used to consent to and/or refuse specific psychiatric treatment at a future time when a person may lack capacity to make such decisions. Through a Health Care Power of Attorney (HCPA), a person with mental illness in North Carolina can also designate a surrogate decisionmaker for future treatment. When a surrogate acts on behalf of another individual through HCPA, the surrogate is required to follow the person’s wishes regarding treatment, i.e., to act in a way that is consistent with the person’s previously stated and competently-made decisions. The appointed surrogate or agent may not make psychiatric treatment decisions unless the patient is incapable. While the patient remains incapable, the law allows a limited waiver of confidentiality that permits healthcare providers to discuss the patient’s psychiatric treatment information with the appointed agent. A completed PAD continues in effect indefinitely until it is revoked. The PAD may not be revoked during a period when a court and two physicians find the patient incapable of making mental healthcare

decisions. In short, in North Carolina the PAD is a substantive, instructional document and Health Care Power Attorney (HCPA) is a procedural document; both legal documents stand on their own, and may be prepared alone or simultaneously.

Important exemptions from the requirement to comply with PAD instructions are afforded North Carolina clinicians, and clinicians in most other states with PADs. Specifically, mental health professionals in North Carolina are not required to comply with patients' PADs under the following circumstances: (1) PAD instructions are "not consistent with generally accepted community practice standards of treatment to benefit the [patient]"; (2) when treatment requested is not available or is not feasible; (3) when the PAD "is not consistent with applicable law;" (4) when the patient is involuntarily committed to a 24-hour facility; (5) when "compliance, in the opinion of the attending physician...is not consistent with appropriate treatment in case of an emergency endangering life or health." Hence, the statute recognizes that some instructions will not be feasible given resource constraints, that clinicians cannot easily be bound to treatment instructions they deem clinically inappropriate, and that certain legal situations such as involuntary commitment may, at least temporarily, override some individual PAD instructions.