



Psychiatric Advance Directives: A Tool to Improve Care?

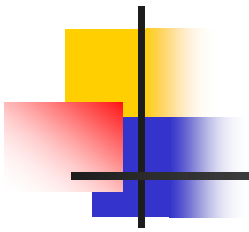
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What are Psychiatric Advance Directives (PADs)?

- **Legal instruments that allow competent persons**
- **To refuse or give consent to future psychiatric treatment**
- **May authorize an agent to make future decisions about mental health care on behalf of the mentally ill person, if he/she becomes incapacitated.**



Origins of Psychiatric Advance Directives

- Notion of a “psychiatric will” proposed by Thomas Szasz
- Assumes that impaired capacities fluctuate and are restored fully enough to allow “good decisions” to be made to avoid unwanted involuntary care



Goals of an Advance Directive

- **To ensure patients are treated in accordance with their wishes.**
- **To facilitate more informed and open dialogue between patients and their treatment providers.**



Why are PADs of interest?

- **Implied by Patient Self-Determination Act (PSDA) 1991.**
- **Support patient autonomy and empowerment in mental healthcare decision-making.**
- **PADs seen as potential remedy for coercion; means of reducing involuntary treatment.**
- **May improve continuity of care.**
- **May enhance therapeutic alliance.**
- **Enhance informed consent process.**
- **May provide timely information sharing through limited waiver of confidentiality.**



Two PAD Statutes in N.C.

- **Advance Instruction: G.S. 122C-71 through 77.**
- **Health Care Power of Attorney: G.S. 32A-15 through 25.**
- **Not required to have either, can have either or both.**



Advance Instruction for Mental Health Treatment

- **Permits individual to plan for, consent to, or refuse:**
 - **Hospital admission**
 - **Administration of medications**
 - **Electroconvulsive treatment**
 - **Other treatments for mental illness**
- **In the event individual loses decision-making capacity (is “incapable”).**



Advance Instruction: Additional Information

- **Who to contact in case of MH crisis.**
- **What may cause MH crisis.**
- **What may help client to avoid hospitalization.**
- **How patient generally reacts to hospitalization.**
- **Other instructions.**



Making an Advance Instruction (AI)

- **Any adult “of sound mind” can make.**
- **Signed in presence of two witnesses:**
 - **Not a relative.**
 - **Not attending MD or mental health provider or other staff.**
 - **Not staff of a health care facility in which the client is a patient.**
- **Notarized.**
- **Present to attending physician and other MH treatment providers.**



What To Do With Advance Instruction

- **Must make a part of medical record.**
- **Must act in accordance with AI when patient is determined to be “incapable”.**
- **May notify all other providers to follow AI.**



“Incapable” Definition

“...in the opinion of a physician or eligible psychologist the person currently lacks sufficient understanding or capacity to make and communicate mental health treatment decisions.” G.S. 122C-72



Advance Instruction Is Not Binding If:

- **AI conflicts with:**
 - **“Generally accepted community practice standards.”**
 - **Treatments requested are infeasible or unavailable.**
 - **Conflicts with emergency treatment needs.**
 - **Conflicts with applicable law.**
- **NOTE: Involuntary commitment generally over-rides an AI.**



When AI Is Not Followed:

- **If one part of an Advance Instruction cannot be carried out, does not negate responsibility to carry out other parts.**
- **Must notify client or HCA (if applicable) and document notification and reason for not complying.**



The Advance Instruction Can Be Revoked:

- **At any time the patient is capable.**
- **In “any manner by which the patient is able to communicate intent to providers.”**
- **Must be documented in medical record.**



Health Care Power of Attorney (HCPA)

- **Permits an individual to appoint a surrogate decision maker (health care agent) to make treatment decisions when patient is incapable.**
- **Can be combined with Advance Instruction.**
- **Any capable adult may execute.**



Who Can Be Health Care Agent (HCA)?

- **Any competent adult 18 or older.**
- **Cannot be providing healthcare to client.**
- **Patient can name successive HCAs.**



When Does HCA Authority Arise?

- **When patient determined “incapable” and continues during period of incapacity.**
- **Determined by physician or eligible psychologist designated in HCPA.**
- **If unavailable, patient’s attending physician or eligible psychologist determines.**
- **Determination must be in writing.**



What Can HCA Do?

- **Make treatment decisions to same extent patient could if patient did not lack decisional capacity, unless the patient limits the authority of the HCA.**
 - **HCA's authority can be limited to making only MH decisions.**
 - **Patient can instruct HCA on medications, ECT, hospital admission, other.**
- **HCA must act how HCA believes patient would act if capable—not 'best interest' standard.**



What Can HCA Do?

- **Must act consistently with any statements expressed in AI, if one exists.**
- **Can discuss and review treatment information.**
- **Can employ or discharge providers.**
- **Can consent/refuse admission to treatment facility.**
- **Can consent/refuse medications and ECT.**



Examples of Use of PADs

- **Advance informed consent to future hospitalization in the event of incapacitating mental health crisis.**
- **Request/refuse future treatment with specific medications or other interventions.**
- **Authorize healthcare agent to make future decisions about psychiatric treatment in patient's best interest.**
- **“Voluntary settlement” alternative to outpatient commitment (e.g., through mediation).**



Web Resources

- **NAMI**
www.nami.org
- **Bazelon Center**
www.bazelon.org
- **National Mental Health Association**
www.nmha.org
- **NC Mental Health Consumers Organization**
www.naminc.org/consumer.htm
- **NSCU Cooperative Extension Services**
www.ces.ncsu.edu/depts/fcs/pub/1998/aimht.html