Psychiatric Advance Directives: A Tool to Improve Care?

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Supported by grants from NIMH Grant MH63949, The MacArthur Foundation Research Network on Mandated Community Treatment and The Greenwall Foundation.
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?

- 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.
- 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