

Statement of Intent

This protocol applies to adults over the age of 18.

The intention of this protocol is

- to assist staff in the decision-making process should a patient present staff with an advanced directive.
- to ensure the patient's prior wishes and instructions are at least considered (even if not enacted)
- to ensure staff act appropriately when considering what is in the best interests of the patient¹.
- to provide guidance to staff.

This protocol does not substitute discussion with all relevant stakeholders, including the patient and/or relatives, or Trust legal advisors.

What is an advanced directive?

An advanced directive is an instruction in advance requesting or refusing some or all medical procedures and treatments, and may include the circumstances in which such instructions apply. In some cases, an advanced directive may appoint an individual to take health care decisions affecting the patient if the patient becomes incompetent.

For the purpose of this protocol, an advanced directive covers the following possibilities:

- **A request directive** - instructions by the patient about the kind of treatment the patient wishes to have and may also include the circumstances in which such instructions apply;
- **A refusal directive** - instructions by the patient about the sort of treatment the patient does not wish to have and may also include the circumstances in which such instructions apply;
- **A proxy directive** – the appointment of a person by the patient to take health care decisions affecting the patient is the patient becomes incompetent.

¹ The criteria that would apply to determine the appropriate standard of care is acting in accordance with practice accepted as proper by a responsible body of medical opinion (*Bolan v. Frien Barnet HMC* 1875 2 All ER 118).

Overriding principles

1. An advanced directive (sometimes called a living will) may contain request, refusal or proxy instructions to staff. The patient's expressed instructions must be respected and at least fully considered (even if not enacted).
2. An advanced directive cannot authorise a clinician to do anything unlawful, or compel a clinician to carry out a particular treatment that is not in the patient's best interests.
3. **Only a refusal directive is recognised in English law.** *“Case law is now clear that an advanced refusal of treatment which is valid and applicable to the subsequent circumstances in which the patient lacks capacity is legally binding (Department of Health, page 10).”* A failure to respect such an advanced refusal can result in legal action against the practitioner.
4. A suicide note is not considered to be an advanced directive and therefore is not valid in the decision-making process for treatment and care.

Exceptions to these principles

- a) Mental Health Act 1983, Part IV - Consent to Treatment, overrides an individuals' power to refuse treatment where the patient has been admitted under the Act. Informal patients are not covered by the Part IV and their advanced directive would be enforceable if executed whilst mentally capable;
- b) Invocation of an advanced directive during pregnancy if the life of the foetus would be endangered, in which case the directive can be overridden;
- c) A refusal of 'basic treatment' is not legally binding [considered to include the provision of warmth, shelter, pain relief and hygiene]. It should be noted that only the provisions refusing basic care are invalid and not the entire directive.

Validity

The validity of an advanced directive is dependent upon certain conditions. These conditions are:

Relevance and Applicability

- The advanced directive must be relevant and applicable to the current situation that the patient is in at the time the advanced directive is being considered by staff.
- The advanced directive must demonstrate that the patient had taken account of the current circumstances when the advanced directive was made.
- To be valid, any refusal of care, written or verbal, must be documented

Process for handling advanced directives

In Emergency situations

1. Contact the Consultant in Charge of the patient's clinical care or most senior doctor available.
2. The Consultant or most senior doctor available must check the advanced directive to ensure it relates to the patient, is clear, applicable to the emergency situation and valid.
3. If the advanced directive is not clear, applicable or valid then the Consultant or most senior doctor available should consider the known preferences of the patient and act in the patient's best interest.
4. If the advanced directive is clear and valid but **does not** address the current emergency situation then emergency treatment **should** be given.

5. If the advanced statement is clear, applicable to the current emergency situation and valid, **but there is evidence of a changed opinion**, then emergency treatment **should** be given.
6. If the advanced directive is clear, valid and addresses the emergency situation and there is no evidence of changed opinion, the advanced directive should be carefully considered by the Consultant or most senior doctor available and legal advice obtained if time will allow. If time will not allow and all the conditions for validity are met then the directive refusing treatment should be followed.

Non-Emergency situations

- Contact the Consultant in Charge of the patient's clinical care.
- The Consultant must check the advanced directive to ensure it relates to the patient, is clear, applicable to the current situation and valid.
- If the advanced directive is not clear, applicable or valid then the Consultant should consider the known preferences of the patient and act in the patient's best interest.
- The Consultant should assess the patient to ensure the patient has mental capacity.
- If there is any doubt regarding the patient's mental capacity or ability to make decisions advice should be sought from a Consultant Psychiatrist.
- If the patient is mentally competent and does not withdraw the advanced directive following discussion of the implications then:
 - seek legal advice from the Trust solicitors
 - the advanced directive should be regarded as current and refusal of treatment adhered to unless advised otherwise by the Trust solicitors.

Withdrawal of an advanced directive

The patient can, at any time, withdraw a refusal to treatment. An advanced directive is superseded by a clear and competent, contemporaneous decision by the individual concerned (BMA 1995).

References

- British Medical Association (1995) Advanced statements about medical treatment. BMJ Publishing Group. London.
- Department of Health (2001) Reference Guide to Consent to Examination or Treatment. Department of Health. London