



Advance directives in Ireland

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Currently in Ireland there is no specific legislation in relation to advance directives. It is therefore difficult at present to determine the legal status of advance directives and consequently their implementation may or may not be enforced.

- The rights of self-determination, bodily integrity and privacy are enumerated in the Constitution of Ireland.
- Competent patients may accept or decline treatments as they wish.
- To have capacity a person must understand the nature, purpose and likely effects of their proposed treatment.
- Refusal of treatment by a competent individual to facilitate a natural death is permitted, but this right does not extend to allow euthanasia or assisted suicide.
- No person can consent on behalf of another adult.

Legally, patients who lack capacity should be made wards of court under the *parens patriae* jurisdiction.

- An application for wardship can be made by any interested party.
- The President of the High Court appoints a 'committee', which is responsible for making all decisions in relation to the ward's finances, property and welfare.
- Contentious decisions are the responsibility of the High Court.
- The wardship system is not widely used as it is perceived to be slow and cumbersome.

The Law Reform Commission has suggested:

- replacing the wardship system, whilst amending the law on enduring powers of attorney
- that the enduring power of attorney and nominated personal guardians be given additional medical decision making authority to include minor and routine medical treatment
- that major healthcare decisions should remain the responsibility of the High Court.

The Irish Council for Bioethics has made recommendations for Advance Directives in Ireland in the report 'Is it time for Advance Directives? Opinion', which makes the following observations:

- Competent adults should have the right to prepare an Advance Directive to govern their future medical care should they become incapacitated, stemming from their rights to bodily integrity, privacy and dignity.
- There is a need to develop a legal framework for Advance Directives to facilitate their use and implementation.
- The nomination of a proxy may help in the interpretation and implementation of the advance directive.

References

Publications:

Mills, S. (2002) Clinical Practice and the Law, Butterworth (Ireland) Ltd. [\[Amazon\]](#)

Links to documents:

The Irish Council for Bioethics:

Advance Directives report

<http://www.bioethics.ie/pdfs/AdvanceDirectiveReport.pdf>

The Medical Council of Ireland:

Discussion article

<http://www.medicalcouncil.ie/news/discussionarticle.asp?NID=158&T=N&print=y>

Guidelines on professional ethics

<http://www.medicalcouncil.ie/professional/ethics.asp>

The Law Reform Commission:

Bioethics: Advance Care Directives

<http://www.lawreform.ie/publications/LRC%20CP%2051-2008.pdf>

List of reports published

<http://www.lawreform.ie/publications/reports.htm>

List of consultation papers published

<http://www.lawreform.ie/publications/consultpapers.htm>

Mental Health Commission:

The Mental Health Act 2001

<http://www.mhcirl.ie/act/Mental%20Health%20Act,%202001.pdf>

Court cases:

Cruzan v Director, Missouri Department of Health (1990) 497 US 261.

Re A Ward of Court (withholding medical treatment) (No 2) [1996] 2 IR 79 at 156 *per* Denham J.

Re A Ward of Court (withholding medical treatment) No 2 [1996] 2 IR 79, 156 *per* Hamilton CJ.

Links to other modules

Advance decisions in psychiatry: England and Wales

<http://www.psychiatrycpd.co.uk/learningmodules/advancedecisionsinpsychiatr.aspx>

Mental Capacity Act 2005

<http://www.psychiatrycpd.co.uk/learningmodules/mentalcapacityact2005m1.aspx>

Competence, capacity and decision-making ability in mental disorder

<http://www.psychiatrycpd.co.uk/learningmodules/competence%20capacityanddecis.aspx>