Advance directives’ or ‘living wills’ were originally designed for terminally ill patients. They are now seen as increasingly relevant to psychiatry, where self-determination has been recognised as a fundamental ethical principle. Following the implementation of the Mental Capacity Act 2005, there are two sorts of advance decisions – advance statements and Advance Decisions to Refuse Treatment (ADRTs). These anticipate a time when the capacity to make a treatment decision has been lost, and detail a person’s wishes for future medical treatment. As such, they are a way of enhancing patient autonomy and choice. As advance treatment refusals become more commonplace in clinical practice, psychiatrists may well be called upon to give an opinion about a person’s capacity to make an ADRT or be presented with one by a patient. Thus, they need to feel confident in this area.

Advance decision-making – definitions and limitations

- **Advance statements** are expressions of wishes made by an individual anticipating future mental incapacity. Because no one has the right to demand a particular treatment (only to refuse it), these statements are not legally binding, but should be considered and honoured, if appropriate, in the same way as a contemporaneous request.

- Advance statements can be vague and open to interpretation, particularly if they are a statement of values or preferences, but they can be helpful in expressing treatment choices and are becoming a routine part of the care planning process. An advance statement could also inform the process of determining a person’s best interests under the Mental Capacity Act 2005 procedure.

- An Advance Decision to Refuse Treatment (ADRT) is a mechanism that aims to extend the right of refusal of treatment to the future – to a time when the patient lacks the capacity to consent to, or refuse, treatment. Provided certain criteria are met, they are legally binding for clinicians. ADRTs cannot request illegal or inappropriate treatment including euthanasia; nor can they be used to refuse basic analgesia or nursing care.

- ADRTs can reassure and empower patients who face future mental incapacity because they have made their wishes known in advance. They can help in times of crisis, as difficult decisions have already been taken. This can alleviate the pressure, and sometimes the sense of responsibility and guilt often felt by families when they are consulted about these treatment decisions. ADRTs can help doctors to know what the patients themselves would have wanted.

- ADRTs can have a number of limitations. They may be too specific and not cover the precise situation that may arise. They may be too broad, and therefore interpretation in a specific situation may be unclear. The ADRT may only be applicable if the person had foreseen the exact current situation they now find themselves in and the consequences of the advance decision they had made. The use of ADRTs can be limited in psychiatry because of conflict with the Mental Health Act 1983.

- While seeking to maximise autonomy, ADRTs could actually lead to unforeseen harm and unintended consequences for the patient. Once capacity has been lost, the ADRT cannot be changed. Therefore, access to new treatments or technologies may be denied. There are examples of people who are relieved to find their advance decisions have been ignored. This is either because their wishes have changed or because they had failed to fully appreciate the possible consequences. Thus, we need to be cautious about allowing a patient to come to serious harm as a result of an ADRT.

Advance Decisions to Refuse Treatment – legal aspects

- ADRTs now have a statutory basis following the introduction of the Mental Capacity Act 2005. The law states that an ADRT must be made by a properly informed adult with capacity and the person making the ADRT must be able to foresee the likely effects of their advance refusal. Thus, patients should be fully informed about the risks and potential unintended consequences of their ADRT.
By law, an ADRT allows any treatment that can be refused contemporaneously to be refused in advance and only becomes valid when capacity is lost. It must be applicable to the current circumstances and should ideally be written and witnessed. It is not valid if the person withdrew the decision while they still had capacity, or the person overruled the ADRT by specifically conferring authority to a Lasting Power of Attorney to give or refuse consent to the treatment covered in the ADRT, or the person has done anything else inconsistent with the ADRT.

To demonstrate capacity an individual should be able to understand in simple language what the medical treatment is and its purpose and nature and why it is being proposed; understand its principal benefits, risks and alternatives; understand in broad terms what will be the consequences of not receiving the proposed treatment; retain the information for long enough to make an effective decision; and make a free choice (i.e. free from pressure).

The treatment information given must include the likely effects of the treatment refusal, including death if that is applicable. Before acting on an ADRT it is important that a careful assessment is made of what thought processes took place and whether the likely consequences were foreseen and intended.

By authorisation of the Mental Health Act 1983, a treatment refusal for a mental disorder can be invalidated if treatment is indicated in the interests of that person’s health, safety or for the protection of others. However, it is possible for a person to make an advance statement, i.e. to express treatment preferences in the event of their future incapacity. These should be considered and honoured if clinically appropriate, even if the person is detained under the Mental Health Act 1983.

Advance Decisions – practical aspects

Discussing a patient's ADRT often takes place in the context of a life-limiting illness and needs to be handled with sensitivity and respect. Ideally, a discussion about an ADRT should occur with a team member already known to the patient, building on an existing therapeutic relationship. A number of sessions may be necessary.

ADRTs should be made by fully informed adults with capacity, so patients must be given adequate information about their condition, prognosis, treatment options and the likely consequences of refusing treatment.

There is no particular format an ADRT should take and no statutory forms must be completed. However, if the ADRT refuses life-sustaining treatment it must be written, signed and witnessed.

It is sensible to distribute the ADRT widely and review it regularly.

Further reading


Mental Capacity Act (2005) [website]