

# **PRIORSLEGH MEDICAL CENTRE LIVING WILL / ADVANCED DIRECTIVE PROTOCOL**

## **Introduction**

Patients who wish to make their preferences known in advance about treatments which might occur in the future may present the practice with a “Living Will”. This is more correctly known as an Advance Directive (AD).

The protocol is not however a legal guide and the practice should not rely on this in dealing with patient issues. In all cases practices should approach their professional indemnity insurers for advice on the correct way to proceed.

## **Background**

An AD may be made in respect of a condition which may arise in the future, or a present condition which may be expected to deteriorate. An AD is made by a competent person who may intend that the AD remains effective in the event that the patient themselves later become incompetent.

An AD need not be written. An oral statement appropriately witnessed may be equally as valid however it is recommended to advise patients that ADs should always be written to avoid ambiguity and error at a later date.

It is a general principle of law and medical practice that all patients have the right to consent to, or to refuse treatment, and ADs are a means by which that right can be exercised. An AD may well be binding on a doctor where it expresses a refusal of treatment in circumstances which the patient has foreseen. It may be ineffective if the circumstances which follow were not anticipated by the patient.

Under the Mental Capacity Act, an advance refusal of treatment is valid if:

- The person making the AD was over 18 and had capacity at the time.
- It is given in writing, is signed and witnessed, and it states clearly that it is to apply even where life is at risk.
- The AD states the specific treatment to be refused, and the circumstances which may apply – this may be stated in non-clinical (lay-persons’) terms.
- The AD has not been withdrawn by the patient during a time when they had Capacity.
- The appointment of an Attorney to make the same decision has not taken place after the date of the AD.
- There has been no act or other indication that the person has changed their views, nor have they done anything inconsistent with the terms of the AD.

## Policy

- The practice will consider Advance Directives very carefully.
- Advance Directives will be in writing.
- Any approach by a patient asking for advice relating to ADs will be treated with full consideration by the GP and appropriate advice will be offered (see below)
- Young people under the age of 18 are entitled to have their views on future treatment also taken into account.
- Where the circumstances giving rise to treatment fall clearly within the full terms of the AD then this will be regarded as being the settled wishes of the patient.
- The practice and its doctors will fully consider the possibility that the patient may have changed his / her mind since signing the AD, and take into account any indication or likelihood that this has occurred. Statements made a long time in advance of any treatment are not necessarily invalid, however the courts are more likely to accept a more recent, or recently reviewed statement.
- In cases where it becomes necessary to invoke the terms or provisions of an AD the individual GP will normally consult with both an alternative GP colleague and with the practice's professional indemnity insurers.

## Limitations

- The AD has no binding on illegal acts.
- An AD cannot compel a GP to carry out a particular treatment
- An AD which refuses treatment does not prevent the provision of basic care such as cleaning, pain relief etc.

## Content Of AD's

Advance Directives may be of different types, and written statements should be written in clear and unambiguous language. They should be signed by the patient and witnessed by at least 1 other person. They may be:

- General statements about the patient's views on care, which may help a doctor to make decisions on courses of treatment without restricting them to specified courses of action.
- A statement which names third parties who are to be consulted in the event that the planned circumstances arise.
- A clear directive regarding specified or generalised treatments which may be legally binding.
- A statement made to support religious or other similar beliefs
- A combination of the above elements which may very well have legal force.

## Acceptance, Recording & Medical Records

The storage of an AD is primarily the responsibility of the patient. When presented with an AD the practice will take the following action:

- Clearly identify the patient. If not known personally suitable ID should be requested such as a full driving licence, bank card etc.
- Photocopy the **original** document. Photocopy the identification.
- The person accepting the document should endorse the photocopy as a true and accurate copy of the original, sign and date the copy, and hand the original back to the patient. Endorse the copy of the identification in a similar way.
- The documents are to be scanned into the patient's medical record.
- The photocopies are to be retained indefinitely within the paper records or a special file maintained for that purpose.
- The clinical system will be populated with an alert message to the effect that an Advance Directive is held on file. Attention will be drawn to this prior to appropriate treatments.
- The patient is to be advised that the practice recommends that they re-authorise the AD on an annual basis. The practice will not provide a reminder service.
- Offer an extended appointment to discuss the situation with their usual GP (note: minimum of 3 days notice required for research).
- In all cases (including where an appointment offer is not taken up) a patient presenting an AD will be advised that their usual GP will review the document. The GP will then undertake research in advance of the appointment to determine the extent and potential impact of the AD in relation to the health and needs of the individual patient.
- The patient should be advised to inform family and close friends that an AD exists and its contents.
- GPs will routinely remind patients that they should review ADs after each 12 month period has passed. A note that this reminder has been issued should be entered into the medical record, along with the patient's decision, if one has been made.
- GPs will provide details of the AD to other healthcare professionals at appropriate times, e.g. on referrals or in emergency situations, and where appropriate a copy of the AD will be provided.
- In an emergency situation, treatment should not normally be delayed in order to search for an AD. **In all cases, in an emergency situation, clinical judgement must be made.**

The practice will code the following on the patient record when applicable:

- 9X0 – Advanced Directive Discussed
- 9X2 – Advanced Directive Signed

## GP Advice

The patient's usual GP will consider all ADs presented by his / her patient. In formulating the advice to be given due regard will be taken of:

- Capacity to give consent or refusal.
- Is there any form of duress or undue influence being applied by third parties.
- The validity and acceptability of the AD when viewed on an individual case by case basis.
- The options and treatments open to the patient taking into account their current anxieties, presented in a way which will enable them to make an informed choice.
- The desirability of making a decision at a particular stage should be considered (e.g. is the patient depressed or otherwise in a temporary frame of mind) and is the advice to review the decision after a further period of time appropriate.