

MENTAL CAPACITY ACT 2005

Checklist for assessing “Advance Decisions” for patients aged 18 or above.

Patient's Name and Date of Birth:

Hospital Number:

An advance decision (AD) is an oral or written decision made by an adult (18+) with capacity to do so, that if:

- (i) at a later time in specified circumstances a specified treatment is proposed by a health professional; and
- (ii) the patient lacks capacity to consent to the carrying out of that treatment

then the treatment is not carried out or continued. Where the AD relates to life sustaining treatment the specific criteria stated overleaf must be met. The decision may be expressed in layman's terms.

Please document clearly in the patient's records or overleaf your reason for answering “yes” or “no” for any of the questions below. This form must be placed in the patient's records.

1. Does the patient have capacity or may he/she have it at some time in the future when he/she could take the decision to consent to or refuse treatment for him/herself?

YES/NO

If “yes” then the AD is not applicable and the patient's views should be obtained.

If “no” proceed to question 2.

2. Has the AD been revoked or altered? This need not be in writing, unless it includes a provision about life-sustaining treatment. (NB - a previous AD refusing life-sustaining treatment may be revoked orally).

YES/NO

If “yes” the revocation or alteration should be followed, but see question 6 and the checklist to consider for life-sustaining treatment.

If “no” proceed to question 3.

3. If possible has the patient been asked whether they now wish to revoke or alter their previous AD?

YES/NO

If “yes” and they have not changed their view proceed to question 4.

If “no” ask the patient if possible and if they wish to change their view legal advice should be sought. If there is no change in their view proceed to question 4.

4. Is the AD valid?

In answering this question please consider each of the following;

- Has the patient withdrawn the advance decision when he/she had capacity to do so?
- Has the patient done anything which is clearly inconsistent with the AD?
- Is there a person (donee) with a Lasting Power of Attorney, created after the AD was made, giving the donee authority to give or refuse consent to the treatment to which the AD relates?

If the answer to any question is “yes” then the AD is not valid and is not binding.

5. Is the AD applicable to the treatment in question?

- Does the treatment in question fall outside of what is specified in the AD?
- Are any particular circumstances specified in the AD now absent?
- Are there reasonable grounds for believing that circumstances exist which the patient did not anticipate at the time of the AD and which would have altered his decision had he anticipated them?

If the answer to any question is "yes" then the AD is not applicable and is not binding.

Life-sustaining treatment

6. Have the following conditions been satisfied for any AD which relates to life-sustaining treatment?

The AD is:

- Verified by a statement by the patient to the effect that it is to apply to that treatment even if life is at risk.
- In writing
- Signed by the patient or another person in the patient's presence and at the patient's direction
and
the signature is made or acknowledged by the patient in the presence of a witness
and
the witness signs or acknowledges his signature in the patient's presence.

If **all** the answers are "yes" then the AD will apply to life-sustaining treatment but you **must** also follow the remainder of this checklist. (An AD refusing life-sustaining treatment may be revoked orally)

I confirm I have understood and reviewed this checklist in respect of the above-named patient.

Signature of Health Professional

Date

Name and position of Health Professional

This checklist is only intended to provide guidance and a framework when considering an advance decision. Where there are any doubts concerning the validity or applicability of an advance decision further medical and/or legal advice should be sought.

Notes:

Capsticks

Capsticks Solicitors
77/83 Upper Richmond Road
London SW15 2TT

Tel 020 8780 2211
Fax 020 8780 1141
DX 59461 - Putney
Email info@capsticks.co.uk
Web www.capsticks.com

Always obtain professional advice before applying this information to particular circumstances. Capsticks accepts no liability for errors of fact or opinion contained within this document which is based on the law as at 31 January 2007.

Capsticks has no objection to healthcare professionals copying this form for clinical and educational purposes. We would welcome any comments or suggestions for improvement of this document. Please e-mail info@capsticks.co.uk

Version 1 - January 2007, © Capsticks Solicitors
Prepared by Majid Hassan and Peter Marquand.