



# Mental Capacity Act 2005

## Checklist for assessing "Advance Decisions" for patients aged 18 or above.

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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 Has the AD been revoked or altered?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?**

YES / NO

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- Has the patient withdrawn the advance decision when he/she had capacity to do so?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 of the above question is "yes" then the AD is not valid and is not binding.

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

YES / NO

- 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.

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

YES / NO

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.**

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Signature of health professional	Date	Name and position of health professional
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*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:

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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 24 March 2020.

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<p><b>Capsticks</b> www.capsticks.com  @capsticksslpl</p>	<p><b>Birmingham</b> 35 Newhall Street, Birmingham B3 3PU T +44 (0)121 230 1500 F +44 (0)121 230 1515 DX 13003 - Birmingham</p>	<p><b>Chorley</b> Ordnance House, 6 East Terrace Business Park, Euxton Lane, Chorley PR7 6TB T +44 (0)125 726 6008</p>	<p><b>Leeds</b> Toronto Square, Toronto Street, Leeds LS1 2HJ T +44 (0)113 322 5560 F +44 (0)113 242 2722 DX 713112 - Leeds Park Square</p>	<p><b>London</b> 1 St George's Road, London SW19 4DR T +44 (0)20 8780 2211 F +44 (0)20 8780 1141 DX 300118 - Wimbledon Central</p>	<p><b>Winchester</b> Staple House, Staple Gardens, Winchester, SO23 8SR T +44 (0)1962 678 300 F +44 (0)1962 678 311 DX 2532 - Winchester</p>
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