

Advance Directives & Advance Care Planning

This factsheet focuses on Advance Directives and Advance Care Planning and what doctors need to consider should they encounter an Advance Directive when providing medical care or when making a plan with a patient for their future healthcare.

What is an Advance Directive?

An Advance Directive sets out in advance the treatment and care that a patient wants, or does not want, should they become unwell in the future and lose the capacity to make decisions about their care. Every patient has the right to make and use an Advance Directive.

Under the Code of Health and Disability Services Consumers' Rights (the Code), an Advance Directive is defined as:

"...a written or oral directive –

- a. *by which a consumer makes a **choice** about a possible **future health care procedure**; and*
- b. *that is intended to be **effective** only when he or she is **not competent**..."*

Assisting a patient to create an Advance Directive

The initiative to create an Advance Directive may come from the patient, or the conversation may be started by the medical practitioner. If a patient does seek your help in creating an Advance Directive, the first step is to assess whether the patient is mentally competent to do so. Information about assessing capacity can be found in NZMII's **Enduring Power of Attorneys and Welfare Guardians** factsheet.

You will need to ensure that the patient is properly informed about their treatment preferences. For example, do they have an informed understanding of what the treatment is, the risks and benefits of such treatment, any side effects, the cost of the treatment, and the possible interventions that may be required when undergoing such treatment?

It is recommended that you check with the patient whether there are family members or other significant people in their life that they may wish to be involved in the process. The patient should also be encouraged to undertake regular reviews of their Advance Directive to ensure it remains aligned with their preferences for future healthcare.



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Following an Advance Directive

Doctors are obliged to follow the wishes set out in an Advance Directive, unless there is reason to question its validity. Importantly however, where an Advance Directive indicates a positive preference for a particular treatment or service, a doctor cannot be required to provide that treatment or service where it is not indicated, offered, or available.

The HDC has provided five points for doctors to consider when deciding whether an Advance Directive is valid and should be followed:

1. Was the patient competent when they made the Advance Directive?
2. Did the patient make the decision of their own free will (i.e. free from undue influence)?
3. Were they sufficiently informed to make the decision?
4. Did they intend their Directive to apply to the present circumstances, which may be different from those anticipated?
5. Is the Advance Directive out of date?

These questions can be hard to answer, especially where the patient is no longer competent. However, where possible, doctors should take reasonable steps to ascertain the patient's views, or that of a person authorised to make decisions on the patient's behalf (for example, the patient's attorney if they have an activated Enduring Power of Attorney for Personal Care and Welfare).

It should be noted that proxies such as welfare guardians or attorneys under an EPA are not permitted to refuse consent to standard medical treatments or procedures intended to save the patient's life or prevent serious damage to health.

If concerns remain as to whether the Advance Directive is valid and should be followed, Coles Medical Practice recommends that doctors err on the side of preservation of life, and that Right 7(4) of the Code may then apply.

It should be noted that an Advance Directive does not override the ability for a patient's medical practitioner to authorise compulsory treatment, where the patient is subject to a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992. [1]

[1] Where a consumer is not competent to make an informed choice and give informed consent, and no person entitled to consent on behalf of the consumer is available, the provider may provide services where –

- it is in the best interests of the consumer; and
- reasonable steps have been taken to ascertain the views of the consumer; and
- either,—
 - if the consumer's views have been ascertained, and having regard to those views, the provider believes, on reasonable grounds, that the provision of the services is consistent with the informed choice the consumer would make if he or she were competent; or
 - if the consumer's views have not been ascertained, the provider takes into account the views of other suitable persons who are interested in the welfare of the consumer and available to advise the provider

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Advance care planning

Advance care planning is when a patient makes a plan for their future healthcare, in consultation with their doctor or another healthcare professional. It allows the patient to 'have a say' should they find themselves subsequently in circumstances where their health has declined and they are unable to participate in discussions about their care.

There are certain circumstances which should trigger a medical practitioner to initiate a conversation with a patient about advance care planning. For example, if a patient is diagnosed with a life-limiting condition, or is admitted to hospital with a chronic condition, or (of particular importance) where a patient has early cognitive impairment.

Advance care plans are usually documented, for example by way of an enduring power of attorney (EPA), and/or by writing out their decisions and preferences for future healthcare in a signed statement, known as an advance directive.

Contact Us

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