

PERSONAL WELLNESS ACTION PLANS AND ADVANCE DIRECTIVES

HOW TO GO ABOUT MAKING THEM



COMMUNITY MENTAL HEALTH PEER ADVOCACY AND SUPPORT SERVICE

Wellness Planning

Participate actively in your recovery.

Plan what you want and need to do and involve others who can support you to achieve it.

- What keeps me well
- Patterns of wellness over time
- Personal triggers/buttons
- Early warning signs and action plan
- Ways of coping and self-management
- Support systems
- Crisis planning/advance directives
- Ways of building wellness

Wellness Recovery Action Plans

"A system for monitoring, reducing and eliminating uncomfortable and dangerous physical symptoms and emotional feelings"

- What must I do *EVERY DAY* to keep myself healthy?
- What are my *TRIGGERS* and *HOT BUTTONS*?
- What are my *EARLY WARNING SIGNS*?
- What is my personal *PLAN* for managing early warning signs?
- What are the signs everything is *BREAKING DOWN*?
- *CRISIS PLAN* – ADVANCE DIRECTIVE - what should happen if I cannot make decisions for myself?

Advance directives

Note: This fact-sheet gives basic information about advance directives. It is not intended to be a substitute for proper legal advice from a qualified lawyer.

What is an Advance Directive?

Also known as a 'living will', an advance directive enables a competent person to make decisions about future treatment, anticipating a time when they may become incompetent to make such decisions.

The debate around advance directives has often focused on situations involving people who are terminally ill and refusals of life-prolonging treatments. However, an advance directive can apply to other situations where capacity is lost, including those which may be reversible, for example, where a person is experiencing mental health problems. Advance directives can therefore be potentially useful in giving service users some control over their own care and treatment.

Under New Zealand Law the unambiguous and informed advance *refusals* of competent adults are legally binding (except in the circumstances outlined below). Advance *consents* are not legally binding as no one can require that medical treatment be given. A person can therefore outline their wishes and preferences to receive certain treatments but this does not mean that the doctor must give that particular treatment or any treatment at all – it is only the advance *refusal* of treatment that is legally binding and must be respected by doctors.

In addition, advance directives cannot be used to require that a doctor end a person's life or perform any other unlawful act. In addition, The Law Commission has recommended that an advance refusal of treatment should never be able to include a refusal of 'basic care' (basic care includes the care required to ensure that the person is safe, alleviate pain and distress and the provision of direct oral nutrition and hydration).

The decisions made in an advance directive cannot be ignored by a doctor unless:

- the advance directive does not apply to the particular situation that arises;
- the advance directive is not clear, or
- if the Mental Health Act is used to override a person's intentions regarding treatment⁶. A patient who is detained under certain sections of the Mental Health Act can have their wishes overridden if the proposed treatment is for 'mental disorder'. Nevertheless, a

detained patient's advance directives about their treatment preferences should always be considered with respect by mental health professionals⁷.

Although the decisions made in an advance directive cannot be ignored by a doctor, an individual can change their mind about a refusal of treatment or substitute another decision as long as that decision is unambiguous and made while the person has capacity to make a treatment choice.

Capacity

To make an advance directive you need to be 'competent' or 'have the necessary capacity'. You need to be capable of:

1. Understanding and remembering information about treatment

This means understanding in broad terms what is involved in making the decisions included in your advance directive and the effects of making them. For example you need to show an understanding of the diagnosis and treatment previously prescribed by your doctor for your mental health problem and that the advance directive would bind your doctor unless the Mental Health Act 1992 was used to override your decisions about treatment.

2. Believing the essential information about treatment

This means believing that your doctor is motivated by his or her medical knowledge rather than anything else.

3. Weighing it in balance to arrive at a choice

This means that you are able to make a choice and that you are not compelled to make only one decision because of the way you are feeling (for example, not to eat because you think you are evil and do not deserve to live).

Being diagnosed as 'mentally ill' does not make someone legally unable ('incompetent') to decide about treatment or to make an advance directive. However, the application of the Mental Health Act means that an advance directive could be overridden in relation to treatment for 'mental disorder' (see above section on circumstances in which an advance directive can be overridden).

To be valid and therefore legally enforceable, an advance refusal of treatment must be available to the treatment provider and must be clear, unambiguous and cover the treatment now proposed. If there is doubt then an application to the courts may be considered for a declaration that the proposed treatment is lawful with clinically appropriate treatment being provided in the interim.

How to make an Advance Directive

1. Make your advance directive in writing. There is no prescribed form you can use the template provided as a guideline and add any personal directions you wish to make. You can have a lawyer draw up an advance directive on your behalf.
2. You should give your name, address, the date and your signature.
3. Your advance directive needs to be carefully written and clear. It must be obvious what you are refusing and/or consenting to and under what circumstances. You need to think about all the things which might affect your decision in the future, for example, if a new drug comes out between the time you made your advance directive and the time you become incompetent, would you wish a refusal of treatment to apply? If you say nothing about what you would want to happen in such circumstances your advance directive could be taken to mean that you did not intend it to apply to the circumstances that have arisen (i.e. to the new drug).
4. It is the responsibility of the person making the advance directive to make sure that it is valid and that health care professionals know it exists, preferably by being given a copy.
5. It is advisable to show in your advance directive why you have reached your decisions – showing that you have the necessary 'competence' to make these decisions (see above information on capacity). You should state that you understand about the treatment you are consenting to or refusing, what your beliefs are about why that treatment has been given to you or might be given to you and your reasons for making your decisions about your treatment.
6. You should also consider having your advance directive witnessed by another person. This person should be able to state that you were competent at the time you made the advance directive. You could have a doctor from your treatment team witness your capacity, but this could mean that you might feel coerced into signing a directive that does not reflect your wishes. You could consider having an advocate with you during any meeting with your treatment team about an advance directive, which may help address this power imbalance.

ADVANCE DIRECTIVE

(Personal crisis plan for mental healthcare advance decision making)

This is the Advance Directive of:

Name _____

Address _____

If at any time in the future I experience a mental health crisis, I direct that the following instructions are complied with. In particular, I refuse treatment which is contrary to that stipulated in this document. Where I have objected to a specific form of treatment this shall be legally binding on those treating me, unless I am subject to compulsory treatment under the Mental Health Act 1992.

Signed _____

Dated _____

Witnessed by **We recommend that you include a witness but this is optional -*

*Name _____

of Address _____

I confirm that I believe the above named _____ has freely stated his/her directions in this document. It is my understanding and belief that s/he has the mental capacity to understand the nature and consequences of these directions.

Signed _____

Dated _____

Issue Number: _____ (If this is the only advance statement you have made enter 1. If this document replaces an earlier version enter 2 and so on)

I have provided a copy of this document to the following people:

_____ (my GP)

_____ (my Psychiatrist)

_____ (my partner/spouse)

_____ (family member/s)*

*(If you know who your 'nearest relative' is, include that person here)

_____ (Advocate)

_____ (Social worker/Care manager)

**My Wishes regarding medication and treatment:
On previous occasions the following worked well for me:**

Things that have not worked well in the past include:

It is my wish that the following people should be told immediately that I have been admitted to hospital:

Other people to contact and tell I am not at home:

People who I do not wish to visit me while I am in hospital:

I would like the following people to care for my children/dependants until I am able to resume this responsibility myself:

When someone explains my situation to my children I would prefer them to be told the following:

**Needs that are special to me which I would like those caring for me to know about:
(health/religion/diet etc):**

**My choice of mental health lawyer if I am committed under the mental health act is (you have the option of appointing your own lawyer or using one appointed for you by the district inspector):
Name/address/telephone number including out of hours contact**

In the event that I lack capacity to make a decision for myself, I would like the following person(s) to be contacted and consulted:

Name/contact details.

I confirm that this person knows and understands the terms of this directive, and that they have given permission to be contacted and will speak for me in a crisis.

Signed

Dated