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Psychiatric Advance Directives:
Research and Regulations Review

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What are Psychiatric Advance Directives?

A psychiatric or mental health advance directive (PAD) is a legal tool that allows a person with mental illness to state their preferences for treatment in advance of a crisis.



History





Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990)

- Landmark case that serves as a legal basis for advance directives concept in the United States.
- USCS stated that
 - The U.S. Constitution grants a “right to die” (the 14th Amendment)
 - Clear and convincing evidence of a patient’s preferences are required for removal of life support.
- Patient Self-Determination Act of 1990 operationalized advance directives by requiring hospitals receiving federal assistance to ask patients if they had an advance directive or would like one, to give them information about how to create one, and to honor them.





What does research say?





“The Content and Clinical Utility of Psychiatric Advance Directives”

PSYCHIATRIC SERVICES ♦ May 2005 Vol. 56 No. 5

106 patients enrolled in ongoing services at two community mental health centers in Washington State between 2001-2003

- 55 % women
- 24 % nonwhite
- age 42 ± 9.1 years.
- 44 % **schizophrenia** spectrum
- 27 % **bipolar** disorder
- 22 % **major depression**
- 7 % other diagnoses
- 45 % also had a **substance use** diagnosis
- 37 % had a personality disorder diagnosis
- Global Assessment of Functioning (GAF) 30.7 ± 9.1



“The Content and Clinical Utility of Psychiatric Advance Directives” PSYCHIATRIC SERVICES ♦ May 2005 Vol. 56 No. 5

Clinical utility of treatment preferences

At least 95% of the directives described treatment preferences rated as **feasible, useful, and consistent with practice standards.**





“The Content and Clinical Utility of Psychiatric Advance Directives” PSYCHIATRIC SERVICES ♦ May 2005 Vol. 56 No. 5

Nontreatment personal care instructions

**At least 95% rated as feasible, useful, and
consistent with practice standards**





“The Content and Clinical Utility of Psychiatric Advance Directives” PSYCHIATRIC SERVICES ♦ May 2005 Vol. 56 No. 5

Study conclusions

Psychiatric advance directives provide a wealth of information about patient treatment preferences, and this information is almost uniformly considered clinically useful.

Data also suggest that people with mental illnesses are increasingly well informed about evidence-based cost-efficient interventions.





“PAD among Public Mental Health Consumers in Five U.S. Cities: Prevalence, Demand, and Correlates”
J Am Acad Psychiatry Law, 34:43-57, 2006

Significantly higher demand for PADs was found among participants who were

- **female;**
- **nonwhite;**
- had a **history of self-harm, arrest, and decreased personal autonomy;**
- those who **felt pressured to take medication.**



“PAD among Public Mental Health Consumers in Five U.S. Cities: Prevalence, Demand, and Correlates”
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Actual completion of PADs was more likely among participants with

- **higher insight,**
- those reporting **leverage by a representative payee,** and
- those who **felt external pressure to keep outpatient appointments** for mental health treatment.



“Facilitated Psychiatric Advance Directives”

Am J Psychiatry 2006; 163: 1943-1951

Preexisting data

- If given the choice and necessary assistance, one-half to two-thirds of patients with severe mental illness would complete a psychiatric advance directive.
- Only 4-13% of outpatients receiving public sector mental health treatment indicate that they have executed a psychiatric advance directive.



“Facilitated Psychiatric Advance Directives”

Am J Psychiatry 2006; 163: 1943-1951

239 patients randomly assigned to facilitated psychiatric advance directives group

174 (72.8%) participated in offered session (approximately 2 hours long) with a facilitator

146 (61%) subsequently completed advance directive form

13% - stand-alone advance instruction

5% - stand-alone power of attorney

43 % both

From **230 patients assigned to control group** and offered information and referral **7 (3%)** completed advance directive form





“Facilitated Psychiatric Advance Directives”

Am J Psychiatry 2006; 163: 1943-1951

Benefits

Participants in the intervention group **were** significantly **more likely** than control subjects **to report at 1-month follow-up that their need for treatment was met** indicated by

- Improvement in working alliance
- Increase in outpatient service utilization



“Overriding Psychiatric Advance Directives”

Law and Human Behavior, Volume 31, Number 1, February 2007 ,
pp. 77-90(14)

47% psychiatrists indicated that they **would override** the PAD refusal as described in the case vignette;

53% indicated that they **would not override** the PAD.

Significantly more likely to override if they:

- worked in a hospital ED or crisis center
- considered patient insight to be among the most important factors
- were highly legally defensive

Much more likely to override if they were concerned both about patient insight and violence.



“Overriding Psychiatric Advance Directives”

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47% psychiatrists indicated that they **would override** the PAD refusal as described in the case vignette;

53% indicated that they **would not override** the PAD.

Significantly less likely to override if they indicated both that

- coercion would be largely unnecessary given the high quality accessible services in the community, and
- such services did in fact exist in the community



SB50.

May 26, 2017 Approved by the Governor.
Effective May 26, 2017

*“Advance directive for psychiatric care” or
“advance directive” means a writing pursuant to
which the principal makes a declaration of
instructions, information and preferences
regarding his or her psychiatric care.*

NRS 449A.600 – 449A.645



Serving as principle

VS

Appointing agent

- Written document that describes the preferences of an individual
 - Can be based on previous experience
 - Can consent to a voluntary inpatient admission*
- Written document that authorizes a designated person to make mental health decisions for a person
 - Can address unforeseen circumstances
 - Cannot consent to a voluntary inpatient admission



What can advance directives describe?

Psychoactive medication;

The mental health treatment facility patient wishes to be admitted to in the event inpatient care is needed, the duration of consented admission, and other conditions and limitations;

Other medical interventions such as ECT;

Additional matters (emergency contacts, visitations, sharing records, expected reactions in crisis/hospitalization, de-escalation, etc.)

Not explicitly stated

Participation in experimental studies or drug trials;





Who Can Execute Declarations And Powers Of Attorney?

A person of sound mind who is 18 or more years of age or

Any minor who is at least 16 years of age, who is married or living apart from his or her parents or legal guardian, and has been declared emancipated pursuant to NRS 129.080 to 129.140



Who can be designated as an agent acting on principle's behalf?

Another natural person of sound mind and 18 or more years of age to make decisions governing the provision of psychiatric care.



Who witnesses the document?

The advance directive must be signed by the principal, or another at the principal's direction, and attested by two witnesses.

Neither of the witnesses may be:

- The attending physician or provider of health care;
- An employee of the attending physician or provider of health care;
- An owner or operator of a medical facility in which the principal is a patient or resident or an employer of such an owner or operator; or
- A person appointed as an attorney-in-fact by the advance directive.



When PADs Become Operative?

When it is communicated to a physician or any other provider of health care; and

The principal is determined to be no longer able to make or communicate decisions regarding the provision of psychiatric care.



Who Determines That An Individual Is Incapable Of Making Mental Health Decisions?

- attending physician
or
- licensed psychologist



- physician,
- physician assistant,
- licensed psychologist,
- psychiatrist
- advanced practice registered nurse who has the psychiatric training and experience prescribed by the State Board of Nursing pursuant to NRS 632.120



Who determines that the principal has regained the ability to make or communicate decisions regarding the provision of psychiatric care?

- Principal's attending physician
or
- Advance practice registered nurse who has the psychiatric training and experience prescribed by the State Board of Nursing pursuant to NRS 632.120 and has an established relationship with the principal



Medications and ECT

The principle or appointed agent can consent to

- Anything physician recommends
- Anything physician recommends with exception of...
- None

The Agent cannot consent to medications for which the principle has specifically denied consent

PAD do not provide any dosage instructions

* If consent is withheld for specified drugs, or all drugs, the psychiatrist must follow that direction unless and until a court rules otherwise.





Other issues

Treatment facility – a preference, not a mandate

Activities the Declarant believes help or worsen symptoms

The type of intervention preferred in the event of a crisis

Dietary requirements

Religious preferences

Temporary custody of the Declarant's children

If and how the Declarant's family should be notified

Limitations on the release or disclosure of mental health records





Limitations

Can't affect the standard of care

Can't make a psychiatrist or other providers of health care provide care he or she believes to be medically inappropriate



What if the treatment team can't comply with patient's preferences?

Notify

Document

Make "every reasonable effort" to arrange a transfer to a physician who will comply

If "reasonable efforts to transfer" the patient fail, the patient may be discharged from the facility and/or from treatment.

While Transfer Efforts Are Underway the psychiatrist should not provide treatment that is inconsistent with professional standards.

In absence of an emergency situation, the psychiatrist should not provide care to which the patient has refused to consent.





Psychiatrist's obligations and limitations

Upon being presented with an advance directive for psychiatric care, an attending physician or other provider of health care shall make the advance directive a part of the principal's medical record.

The attending physician or other provider of health care shall make the revocation part of the principal's medical record.

Psychiatrist may not refuse to treat a patient who has a declaration or power of attorney solely on that basis.



Psychiatrist's obligations and limitations

Physician or other provider of health care treating the person must make a reasonable inquiry as to whether the person has executed PADs

Not for any patient they are treating may psychiatrists serve as witness on PADs, or serve as an agent under a power of attorney, unless the psychiatrist is related to the patient by blood, marriage, or adoption.



Provider to comply with advance directive; exceptions

When acting under the authority of an advance directive for psychiatric care, an attending physician or other provider of health care shall comply with the advance directive unless:

- Compliance, in the opinion of the attending physician or other provider, is not consistent with generally accepted standards of care for the provision of psychiatric care for the benefit of the principal;
- Compliance is not consistent with the availability of psychiatric care requested;
- Compliance is not consistent with applicable law;



Provider to comply with advance directive; exceptions

When acting under the authority of an advance directive for psychiatric care, an attending physician or other provider of health care shall comply with the advance directive unless:

- The principal is admitted to a mental health facility or hospital pursuant to NRS 433A.145 to 433A.330, inclusive, and a course of treatment is required pursuant to those provisions; or
- Compliance, in the opinion of the attending physician or other provider, is not consistent with appropriate psychiatric care in case of an emergency endangering the life or health of the principal or another person.



Provider to comply with advance directive; exceptions

In the event that one part of the advance directive is unable to be followed because of any of the circumstances set forth in subsection 1, all other parts of the advance directive must be followed.



Liabilities

Providing care for which the patient has specifically refused consent is a battery.

- even in the absence of medical harm
- even if the care was consistent with the standard of care



Immunities

- Complying with a direction given or a decision made by a person that the physician or other provider believes, in good faith, has authority to act as an agent for a principal concerning decisions relating to psychiatric care;
- Refusing to comply with a direction given or a decision made by a person based on a good faith belief that the person lacks the authority to act as an agency for a principal concerning decisions relating to psychiatric care;
- Giving effect to an advance directive for psychiatric care that the physician or other provider assumed was valid;
- Disclosing information concerning psychiatric care to another person based on a good faith belief that such disclosure was either authorized or required;



Immunities

- Refusing to comply with a direction given or a decision made by a person because of conflicts with the physician's or other provider's contractual network or payment policy restrictions;
- Refusing to comply with a direction given or a decision made by a person if such direction or decision violates accepted medical or clinical standards of care;
- Making a determination that causes an advance directive to become effective; or
- Failing to determine that a person lacks sufficient understanding or capacity to make or communicate decisions regarding psychiatric care, thereby preventing an advance directive from becoming effective.



How PADs Remain Valid?

Terminate two years from when they were signed unless revoked or amended previously.

Probably should not expire while is in effect.



Patient Advocacy Support

NAMI supports the development of public policies and laws that encourage psychiatric advance directives.

In particular, NAMI supports psychiatric advance directives that include processes for caregivers and health care providers to work together with individuals who live with mental health conditions to not only develop plans for treatment, but also services and supports that may be necessary in the future.



References

Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990)

Hargrave v Vermont, 340 F. 3d 27 (2nd Cir 2003)

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Psychiatric Services, May 2005 Vol. 56, No. 5

“Facilitated Psychiatric Advance Directives” Am J Psychiatry 2006; 163:
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34:43-57, 2006



References

Overriding Psychiatric Advance Directives: Factors Associated with Psychiatrists' Decisions to Preempt Patients' Advance Refusal of Hospitalization and Medication *Law and Human Behavior*, Volume 31, Number 1, February 2007, pp. 77-90(14)



Online Resources

National Resource Center on Psychiatric Advance Directives

<https://www.nrc-pad.org/>

A PRACTICAL GUIDE TO PSYCHIATRIC ADVANCE DIRECTIVES

https://www.samhsa.gov/sites/default/files/a_practical_guide_to_psychiatric_advance_directives.pdf

Bazelon center resource page [http://www.bazelon.org/wp-](http://www.bazelon.org/wp-content/uploads/2017/04/PAD-Template.pdf)

[content/uploads/2017/04/PAD-Template.pdf](http://www.bazelon.org/wp-content/uploads/2017/04/PAD-Template.pdf)

Substance Abuse and Mental Health Services Administration

<https://www.samhsa.gov/section-223/governance-oversight/directives-behavioral-health>





Online Resources

National Alliance on Mental Illness [https://www.nami.org/Learn-More/Mental-Health-Public-Policy/Psychiatric-Advance-Directives-\(PAD\)](https://www.nami.org/Learn-More/Mental-Health-Public-Policy/Psychiatric-Advance-Directives-(PAD))

The American Psychiatric Association <https://www.psychiatry.org/newsroom/apa-blogs/apa-blog/2016/12/psychiatric-advance-directives-planning-for-mental-health-care>

Introducing Psychiatric Advance Directives, with Jeff Swanson, PhD
<https://www.youtube.com/watch?v=eBSZ4ooRoZ8>



Questions?



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Acronyms

- PAD – Psychiatric Advance Directives