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Advance Decisions or 'Living Wills'

What is an Advance Decision?

An Advance Decision or 'Living Will' allows you to make a decision now to refuse specified medical treatment at a time in the future, when you lack the capacity to be able to consent to that treatment. Any healthcare professional treating you must adhere to the Advance Decision if it is correctly made and if you do not have capacity to consent to such treatment at the relevant time. An Advance Decision cannot be used to demand a specific treatment in the future.

What kind of decisions can the Advance Decision cover?

An Advance Decision can cover the refusal of any medical treatment such as taking antibiotics, blood transfusions etc. It can also include a refusal to accept life-sustaining treatment such as support systems, drugs, resuscitation and also artificial nutrition and hydration.

An Advance Decision can include a change in future circumstances. For example a woman may want to state whether her Advance Decision should still apply should she later become pregnant.

Who can make an Advance Decision?

Anyone who is over the age of 18 and who has capacity can make an Advance Decision.

How do I make an Advance Decision?

An Advance Decision can be made orally, but if it deals with life sustaining treatment, it will not be valid unless it is made in writing, signed by you (or someone on your behalf and at your direction) in the presence of a witness who must then sign in your presence.

In addition, if the Advance Decision relates to life-sustaining treatment, it must include an express statement that the decision stands "even if life is at stake".

You may withdraw the Advance Decision at any time when you have capacity. The withdrawal does not have to be in writing, but it is good practice to have any withdrawal in writing.

What do I do once I have made an Advance Decision?

You should consider very carefully where you should keep your Advance Decision and who should be told about your decision. It is advisable that it be recorded on your healthcare records, for example, by providing your GP with a copy. As with the rest of your healthcare records it will remain confidential.

You should also let those closest to you know of your decision and the reasons why you have made that decision.

Finally you should review your Advance Decision and update it as necessary as circumstances change.

What happens if there is a dispute about the validity of my Advance Decision?

The Court of Protection can settle disputes about the existence, validity or applicability of the Advance Decision. Whilst the Court decides, healthcare professionals can provide life-sustaining treatment or treatment to stop a serious deterioration in your condition.

What is the difference between an Advance Decision and a Lasting Power of Attorney (LPA)?

A personal welfare LPA allows a donor to give general authority for an attorney to consent or refuse life-sustaining treatment. Unlike an Advance Decision, it is not necessary to specify a particular type of treatment.

Under a personal welfare LPA an attorney must make decisions in the donor's best interests. There are statutory guidelines in the Mental Capacity Act 2005 which attorneys must follow in making such decisions. In following an Advance Decision, the best interest principle does not apply and the Advance Decision must be carried out, even if the

healthcare professionals think it goes against the person's best interests.

To create an LPA, a donor must complete and register a prescribed form. There are no particular formalities for making an Advance Decision except in relation to decisions relating to life sustaining treatment. This informality may be attractive for some but it can also lead to uncertainty over whether an Advance Decision exists or is valid.

What if I already have an LPA or make a later LPA?

If you already have a personal welfare LPA and you subsequently make an Advance Decision, which is valid and applicable in the circumstances, then the Advance Decision will take priority.

Similarly, if you make an LPA after making an Advance Decision, then the Advance Decision will become invalid if the LPA gives your attorney to make decisions about the same treatment.

Euthanasia

The law relating to euthanasia has not changed and the introduction of personal welfare LPAs and statutory Advance Decisions does not legitimise euthanasia.

Advance Statements

It is also possible to make an Advance Statement, which allows you to set out your wishes and feelings in relation to the care and treatment you would like to receive should you lose capacity in the future. Unlike Advance Decisions, Advance Statements are not legally binding but should be taken into account by decision makers, including attorneys when deciding what is in your best interests.

Should you require any further information please contact:

Michael Cash in Basingstoke
01256 407100
michael.cash@penningtons.co.uk

Anthony Whitwell in Godalming
01483 791800
anthony.whitwell@penningtons.co.uk

Lesley Lintott in London
020 7457 3000
lesley.lintott@penningtons.co.uk

London

t: 020 7457 3000
f: 020 7457 3240

Basingstoke

t: 01256 407100
f: 01256 479425

Godalming

t: 01483 791800
f: 01483 424177