"LIVING WILL"
(ADVANCE DIRECTIVE/DECISION) PROTOCOL

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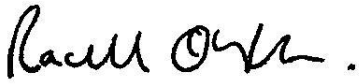
GP Signature (To confirm policy and procedures)	
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Introduction

Patients who wish to make their preferences known in advance about treatments that might occur in the future have the right to present the practice with a "Living Will". This is more correctly known as an Advance Directive (AD) or an advance decision.

The purpose of this protocol is to specify the practice procedure to follow when presented with an AD. *See also:* Advance Directives Desk Aid [*] which provides a flowchart for handling ADs.

This protocol also introduces the basic provisions of the Mental Capacity Act 2007 as applied to the presentation and validity of Advance Directives. The protocol is not, however, a legal guide and practices should not rely on this in dealing with patient issues.

Background

An AD may be made in respect of a condition which may arise in the future, or a present condition which may be expected to deteriorate. An AD is made by a competent person who may intend that the AD remains effective in the event that the patient themselves later become incompetent. In October 2007 the Mental Capacity Act 2005 took full effect formalising Directives relating to the withholding of life-sustaining treatment. See Power of Attorney Protocol [*] and Mental Capacity Act [*] - further details relating to this provision can be found below. In some circumstances, the subsequent appointment of an Attorney can supersede the validity of an AD.

An AD need not be written. An oral statement appropriately witnessed may be equally as valid. Patients may carry cards to record effective ADs. It should be noted however that Advance Directives which contain provision regarding the withholding of life-sustaining treatments are ***only*** valid under the above Act if they are in

writing. It is therefore recommended that practices advise patients that ADs should always be written to avoid ambiguity and any error at a later date.

Until the Mental Capacity Act the concept of an AD was not contained within UK legislation, however the government has issued statements on the subject and the UK courts and higher courts have ruled in cases involving ADs. In these circumstances, the principles of ADs have been generally supported as being a natural extension of patient choice and the right to determine the acceptance of treatments.

It is a general principle of law and medical practice that all patients have the right to consent to, or to refuse, treatment. ADs are a means by which that right can be exercised. An AD may well be binding on a doctor where it expresses a refusal of treatment in circumstances which the patient has foreseen. It may be ineffective if the circumstances which follow were not anticipated by the patient.

Under the Mental Capacity Act, an advance refusal of treatment is valid if:

- The person making the AD was over 18 and was mentally competent at the time.
- It is given in writing, is signed and witnessed, and it states clearly that it is to apply even where life is at risk.
- The directive must specify – in medical or lay terms – the treatment(s) refused, and the circumstances which may apply – this too may be stated in medical or lay) terms.
- The AD has not been withdrawn by the patient during a time when they had Capacity.
- The appointment of an Attorney (See Power of Attorney Protocol [*]) to make the same decision has not taken place after the date of the AD.
- There has been no act or other indication that the person has changed their views, nor have they done anything inconsistent with the terms of the AD.
- The individual lacks capacity to make decisions at the time the AD is invoked

Policy

- The practice will consider Advance Directives very carefully.
- Advance Directives will be in writing.
- Any approach by a patient asking for advice relating to ADs will be treated with full consideration by the GP and appropriate advice will be offered (see below)
- Young people under the age of 18 are entitled to have their views on future treatment also taken into account.
- Where the circumstances giving rise to treatment fall clearly within the full terms of the AD, this will be regarded as being the settled wishes of the patient. The practice and its doctors will fully consider the possibility that the patient may have changed his / her mind since signing the AD, and take into

account any indication or likelihood that this has occurred. Statements made a long time in advance of any treatment are not necessarily invalid; however the courts are more likely to accept a more recent, or recently reviewed statement.
- In cases where it becomes necessary to invoke the terms or provisions of an AD the individual GP will normally consult with both an alternative GP colleague and with the practice's professional indemnity insurers.

Limitations

- The AD has no binding on illegal acts.
- An AD cannot compel a GP to carry out a particular treatment
- An AD which refuses treatment does not prevent the provision of basic care such as cleaning, pain relief etc.

Content of Advance Directives

Advance Directives may be of different types, and written statements should be written in clear and unambiguous language. They should be signed by the patient and witnessed by at least one other person.

They may be:

- General statements about the patient's views on care, which may help a doctor to make decisions on courses of treatment without restricting them to specified courses of action.
- A statement that names third parties who are to be consulted in the event that the planned circumstances arise.
- A clear directive regarding specified or generalised treatments which may be legally binding.
- A statement made to support religious or other similar beliefs
- A combination of the above elements which may very well have legal force.
- A statement in the last few weeks of life requesting that an autopsy / post mortem is not carried out. This will mean that the doctor expects the patient to die within a matter of weeks and providing the patient has been seen 14 days before death then this wish can usually take effect. It is important for the surgery to have in place a system of ensuring visits are made regularly during this period

Acceptance, Recording and Medical Records

The storage of an AD is primarily the responsibility of the patient. When presented with an AD the practice will take the following action:

- Clearly identify the patient. If not known personally suitable ID should be requested such as a full driving licence, passport, bank card etc.
- Photocopy the ***original*** document. Photocopy the identification.
- The person accepting the document should endorse the photocopy as a true

and accurate copy of the original, sign and date the copy, and hand the original back to the patient. Endorse the copy of the identification in a similar way.
- The documents are to be scanned into the patient's medical record.
- The photocopies are to be retained indefinitely within the paper records or a special file maintained for that purpose.

- The clinical system will be populated with an alert message to the effect that an Advance Directive is held on file. Attention will be drawn to this prior to appropriate treatments.
- The patient is to be advised that the practice recommends that they re-authorise the AD on an annual basis. The practice will not provide a reminder service.
- Offer an extended appointment to discuss the situation with their usual GP (note: minimum of 5 days notice required for research).
- In all cases (including where an appointment offer is not taken up) a patient presenting an AD will be advised that their usual GP will review the document. The GP will then undertake research in advance of the appointment to determine the extent and potential impact of the AD in relation to the health and needs of the individual patient.
- The patient should be advised to inform family and close friends that an AD exists and its contents.
- GPs will advise patients that they should review ADs after each 12 month period has passed. A note that this advice has been issued should be entered into the medical record, along with the patient's decision, if one has been made.
- GPs will provide details of the AD to other healthcare professionals at appropriate times, e.g. on referrals or in emergency situations, and where appropriate a copy of the AD will be provided.
- In an emergency situation, treatment should not normally be delayed in order to search for an AD. ***In all cases, in an emergency situation, clinical judgement must be made.***

Coding

The following Read Codes will be used:

9X0 – Advanced Directive Discussed
9X2 – Advanced Directive Signed

GP Advice

The patient's usual GP will consider all ADs presented by his / her patient. In formulating the advice to be given due regard will be taken of:

- Capacity to give consent or refusal.
- Is there any form of duress or undue influence being applied by third parties.
- The validity and acceptability of the AD when viewed on an individual, case-by-case basis.

- The options and treatments open to the patient taking into account their current anxieties, presented in a way which will enable them to make an informed choice.
- The desirability of making a decision at a particular stage should be considered (e.g. is the patient depressed or otherwise in a temporary frame of mind) and is the advice to review the decision after a further period of time appropriate.

Resources

BMA Ethics Department – Advance Decisions and Proxy Decision Making in Medical Treatment and Research June 2007
British Medical Association – Code of Practice - Advance Statements about Medical Treatment
Report of the British Medical Association 1995
Mental Capacity Act

See also:
Advance Directives leaflet [*]
Advance Directives Desk Aid [*]
Power of Attorney Protocol [*]

Forms for advance disclosures can be found on sites such as:
www.compassionindying.org.uk
www.mariecurie.org.uk
www.ageuk.org.uk/money-matters/legal-issues/living-wills/advance-decision/