

Your Legacy

Advance Decisions

Isky Gordon
Emeritus Professor of Paediatric Imaging
UCL, London
Healthcare Professionals for Assisted Dying

Advance Decision

- Conclusion
 - Must be made when you are fully compos mentis
 - Only comes into effect if you lose mental capacity
 - Your family / friend / GP must know and have the signed advanced decision document
 - Reaffirm your wishes on a regular but infrequent basis (5 years?)

GMC Guidelines (June 2008)

- Patients and doctors making decisions together
- Guidelines define
 - Consent
 - Capacity http://www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_part3_capacity_issues.asp

Mental Capacity Act 2005

Aim

- To empower and protect adults who lack the capacity to make decisions for themselves
- Into effect from 2007

Purpose of the MCA

- Integrates common law into statute
- Allows advance decisions (living wills)
- New Lasting Power of Attorney
- New court of protection
- New office of public protection
- New statutory advocacy service
 - Independent mental capacity advocates (IMCA)
- New criminal offence
- Protects those who act on behalf of those with lack of capacity

Lacking capacity

- Having given all appropriate help and support a patient cannot
 - understand,
 - retain,
 - use,
 - weigh up the information needed to make that decision,
 - or communicate their wishes.

New law sets out

- who can make decisions for those with lack of capacity
- who can act on behalf of such people
- in which situations

Which situations

- from everyday decisions
 - such as what to wear
 - what to eat
- to major decisions about
 - property
 - finance
 - healthcare

New services and rules

- Advance decision (living will) on a statutory footing
- “Independent Mental Capacity Advocate Service”
 - to support people who lack capacity and have no friends or relatives to look after their interests
- increases the powers of the Court of Protection
- new criminal offence of ‘ill treatment or neglect of a person who lacks capacity’
- to govern research with people who lack capacity
- Lasting Power of Attorney

Advance Decision (living wills) under MCA

- legal document
- which medical treatments you do not want in the future
- doctor **must** comply with the advance decision
- **request** treatment, but this is not legally enforceable

Invalid advance decision

- The person was younger than 18 when they made the decision
- The person did not have mental capacity at the time when they made the decision
- The person has acted in a way that is clearly inconsistent with the advance decision, since they made it

Inapplicable advance decision

- The person still has capacity to make decisions
- If it refers to treatments or circumstances which are different to those specified
- Change in circumstances
 - e.g. new drug to treat the condition

Rules for refusing life-sustaining treatment

- the advance decision is signed by the patient and by a witness.
- includes an explicit, written statement confirming that the advance decision should apply even if it will result in your death
 - this statement is also signed and witnessed (double signature)

Advance decision

- mustn't be ambiguous
- must be very clear about the particular treatment that is to be refused
- doctors will not have to comply with advance decision that talk in broad or general terms
- GPs can help patients word the advance decision
 - e.g. if I suffer from dementia (whatever the cause) so that I no longer recognise my family, I refuse any intervention that will prolong or sustain my life.
 - e.g. if I develop any degenerative disease or debilitating neurological condition which is irreversible and renders me with a loss of capacity and /or an inability to recognise my family members, or any incurable dysplasia, then I do not wish to receive any intervention what so ever that might prolong or sustain my life

Lasting Powers of Attorney

- the right to nominate an ‘attorney’
 - Could be a friend / relative / lawyer
- donor is person who gives the power to the attorney
- donor could appoint different attorneys
 - different types of decisions (health vs finance)
 - appoint two or more attorneys to act jointly

Lasting power of attorney

- Extent of lasting power of attorney is up to you (the patient)
 - make financial decisions
 - decisions about the donor's property,
 - about day-to-day care.
 - to make decisions about medical treatments including life-sustaining treatments

LPA safeguards

- The donor must be over 18
- have the mental capacity
- the donor must fill out a legal document,
- register that document with the Public Guardian.
 - **If LPA document is not registered, the attorney will have no power to make decisions on behalf of the donor** (cost £120).
- a third party must sign a certificate and state:
 - the donor understands the purpose of the LPA
 - neither fraud nor undue pressure has been used to persuade the donor to make it.

Restriction on attorney

- a person who is bankrupt is not allowed to be an attorney in charge of property and financial affairs, although they can make health/welfare decisions.
- a beneficiary of a person's will may be an attorney.
- an attorney must always act in the donor's best interests. If the attorney does not act in the donor's best interests, the Court of Protection can revoke the power.

Limits of LPA

- attorneys do not have the power
 - to **demand** any medical treatments if the doctors do not believe they are necessary or appropriate
 - to ask for anything illegal such as assisted dying

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Relationship between advance decision and LPAs

- an attorney will **not** have the power to **give** consent to any treatment that you have specifically **refused** in your advance decision
- one exception:
 - if you had created your LPA **after** you made the advance decision, and had **specifically** given your attorney the power to give or refuse consent e.g. to antibiotics, then the LPA takes precedence and the advance decision becomes invalid.

Ensure your wishes are known



- Given unique ID number
- In an emergency, vital information is available on the back of your MedicAlert® Emblem (e.g. advance decision)
- Medical and emergency personnel can then telephone (7/24 service)
- Appropriate personnel receive important details where appropriate.
 - name and address
 - doctor's details
 - current drug therapy
 - next of kin.

Dignity in dying

- Promotes quality of life
- Supports patient's choice
- Encourages advanced decisions (living wills)
- In favour of good palliative care & hospice care

Dignity in dying

your life, your choice

A dignified death for all