

Living wills: advance decision or directive

You can use an advance decision (also called advance directive) to indicate your wish to refuse all or some forms of medical treatment if you lose mental capacity in the future. You can't use it to request treatment. A valid advance decision has the same effect as a refusal of treatment by a person with capacity: the treatment cannot lawfully be given - if it were the doctor might face civil liability or criminal prosecution.

Limitations on advance decisions

You can't use an advance decision to:

- ask for your life to be ended
- force doctors to act against their professional judgement
- nominate someone else to decide about treatment on your behalf

As with advance statements, bear in mind that new drugs or treatments may be introduced in the future so you may wish to allow for new treatments even if refusing a current one.

Does an advance decision have to be in writing?

An advance decision doesn't all have to be in writing. However, although witnessed verbal instructions may be respected, it's best to make them known to a senior member of a medical team. A written decision helps to avoid any doubt about what you wish to refuse. In any case, since April 2007 some aspects of advance decisions have to be in writing.

You should sign, date and have witnessed a written advance decision in the same way as for an advance statement.

A written advance decision could form part of a general advance statement, but it is clearest if it sits under a distinct heading, ideally 'Advance decision' or 'Advance directive, refusing treatment'.

Regulation of advance decisions from April 2007

The Mental Capacity Act 2005 came into force in April 2007 and forms the legal basis for advance decisions.

Valid advance decisions

From April 2007, to be valid an advance decision needs to:

- be made by a person who is 18 or over and has the capacity to make it
- specify the treatment to be refused (it can do this in lay terms)
- specify the circumstances in which this refusal would apply
- not have been made under the influence or harassment of anyone else
- not have been modified verbally or in writing since it was made

Refusal of life-sustaining treatment

Advance decisions refusing life-sustaining treatment will need to:

- be in writing (it can be written by a family member, recorded in medical notes by a doctor or on an electronic record)
- be signed and witnessed (it can be signed by someone else at the persons direction - the witness is to confirm the signature not the content of the advance directive)
- include an express statement that the decision stands 'even if life is at risk'

When might an advance decision not be followed?

A doctor might not act on an advance decision if:

- the person has done anything clearly inconsistent with the advance decision which affects its validity (for example, a change in religious faith)
- the current circumstances would not have been anticipated by the person and would have affected their decision (for example, a recent development in treatment that radically changes the outlook for their particular condition)
- it isn't clear about what should happen
- the person has been treated under the Mental Health Act

A doctor can also treat if there is doubt or a dispute about the validity of an advance decision and the case has been referred to the court.

General written statements

A general written statement (sometimes called an 'advance statement') can set out which treatments you feel you would or wouldn't like to receive should you lose mental capacity in the future. Advance statements aren't legally binding, but health professionals do have to take them into account when deciding on a course of action. Family and friends can also use them as evidence of your wishes. You could also make your views known verbally, for example, when discussing treatment with a health care professional, but having it written down may make things clearer for everyone.

What a statement might include

Your statement could include:

- treatment you would be happy to have, and in what circumstances
- treatment you would want, no matter how ill you are
- treatment you would prefer not to have, and in what circumstances
- someone you would like to be consulted about your treatment at the time a decision needs to be made

It can also include a specific refusal of treatment, which has a different legal status.

If writing an advance statement, bear in mind that new drugs or treatments may be introduced in the future. So you could, for example, state that you would prefer not to receive certain current treatments but would allow for new treatments.

Include your name, address, date and signature in the advance statement. It's also advisable to say you understand what you're doing and are capable of making such decisions. And you may want to get the statement signed by a witness who can say that you had capacity at the time.

Living wills and mental capacity

You can still make a living will if you're diagnosed with a mental illness, as long as you can show that you understand the implications of what you're doing. You need to be competent to make the decision in question, not necessarily to make other decisions.

It's best to put your wishes in writing and explain:

- why you've made your decision about how you do or don't want to be treated
- what you understand about the treatment you're agreeing to or refusing
- why you're making these decisions now

Who needs to know about a living will?

It's important that your living will is entered into your medical notes so that in an emergency it is found and acted upon. Consider sending a copy to your doctor and to any hospital which is treating you and to your nearest relatives. If your living will is verbal, make sure close relatives or friends are aware.

Changing a living will and further advice

Consider reviewing your living will on a regular basis to make sure you're happy with it and particularly if your situation changes.

You can change or cancel it if you are able to think rationally and clearly explain what you want to happen. Ideally, put things in writing and destroy old versions.

Example of a Living Will-----

LIVING WILL DIRECTIVE

Full Name.....

Full address.....

.....

.....

.....

Postcode.....

Date of Birth.....

Your GP's name

Your GP's address

.....

.....

.....

GPs telephone number.....

I have discussed the contents of this form with my GP *Yes/No (delete one)*

I have discussed the contents with another health professional mentioned below *Yes/No (delete one)*

I have made this declaration at a time when I am of sound mind and after careful consideration. I understand that my life may be shortened by the refusals of treatment in this form. I accept the risk that I may not be able to change my mind in the future when I am no longer able to speak for myself, and I accept the risk that improving medical technology may offer increased hope, but I personally consider the risk of unwanted treatment to be a greater risk. I want it to be known that I fear degradation and indignity far more than death. I ask my medical attendants to bear this in mind when considering what my intentions would be in any uncertain situation.

If the time comes when I can no longer communicate, this declaration shall be taken as a testament to my wishes regarding medical care. If it is the opinion of two independent doctors that there is no reasonable prospect of my recovery from severe physical illness, or from impairment expected to cause me severe distress or render me incapable of rational existence, then I direct that I be allowed to die and not be kept alive by artificial means such as life support systems, tube feeding, antibiotics, resuscitation or blood transfusions: any treatment which has no benefit other than a mere prolongation of my existence should be withheld or withdrawn, even if it means my life is shortened.

I accept basic care however and I request aggressive palliative care, drugs or any other measures to keep me free of pain or distress, even if they shorten my life.

I have the following wishes about specific treatments or investigations:

.....
.....
.....
.....

My other wishes/personal statement:

.....
.....
.....
.....
.....

I wish the following person to be consulted in the event of uncertainty about my wishes:

Name.....

Address.....

.....

.....

.....

Telephone.....

MY SIGNATURE.....

DATE.....

Witness 1 (name).....

Signature of witness.....

Address of
witness.....

.....

.....

Witness 2 (name).....

Signature of witness.....

Address of
witness.....

.....

.....

Reviewed: date:.....

My signature.....

Reviewed: date:.....

My signature.....

Example 2.....

THIS LIVING WILL is made on the *[insert day]* day of *[insert month]* *[insert year]*.

I: *[Insert your name]*

Of: *[Insert your full address]*

Born on: *[Insert your date of birth]*

Being of sound mind make this Advance Directive now as to my medical care and treatment directed to my family, my doctors and any other medical personnel, institution or authority in the event that I shall be unable to make my views known at any time.

I DIRECT as follows:

My life shall not be artificially prolonged and no life sustaining treatment shall be administered, if at any time my attending doctor, consultant or surgeon and one independent medical practitioner certify in writing that in their opinion:

- a) I have a terminal, incurable or irreversible injury, disease or illness; or
- b) I am permanently unconscious, comatose, in a persistent vegetative state with no reasonable chance of recovery; and
- c) I am no longer able to make decisions regarding my medical treatment.

In the above circumstances I wish to be permitted to die naturally and to only receive such medical treatment as will alleviate any pain or distressing symptoms so as to make me more comfortable even if this has the effect of shortening my life.

EXCEPTING as follows:

[Please specify one of the following -

If I am suffering from one of the above conditions and I am pregnant I wish to receive such medical procedures as will prolong my life or keep me alive by artificial means until such time as my child has been born.

OR

No exceptions specified

APPOINTMENT OF PROXY

I appoint *[Insert proxy's name]* of *[Insert proxy's full address]* as my proxy to be involved in all decisions about my medical treatment if I am physically or mentally unable to make my views known. The wishes of *[Insert proxy's name]* should be respected at all times and I confirm that he/she is fully aware of my wishes.

IN WITNESS of which I have set my hand to this my living will on the day month and year first above written.

SIGNED by the above named in our presence and by us in his/her

Maker of Living Will

Signed: *[Person making living will sign here]*

Proxy

Signed: *[Proxy sign here]*

First Witness

Signed: *[First Witness sign here]*

Name: *[Insert first witness name]*

Address: *[Insert address of first witness]*

Occupation: *[Insert occupation]*

Second Witness

Signed: *[Second Witness sign here]*

Name: *[Insert second witness name]*

Address: *[Insert address of second witness]*

Occupation: *[Insert occupation]*

<http://www.publicguardian.gov.uk/>