Advance Decisions and Lasting Power of Attorney

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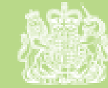


Mental Capacity Act 2005

Code of Practice

What is an advance decision to refuse treatment?

9.1 It is a general principle of law and medical practice that people have a right to consent to or refuse treatment. The courts have recognised that adults have the right to say in advance that they want to refuse treatment if they lose capacity in the future – even if this results in their

Advance Decision

Can be general - advance expression of wishes

Can be specific – advanced refusal of treatment

Can only be made by capable patient aged 18 or over

Can be revoked by words or subsequent conduct e.g. acceptance of blood products after date of AD

Advance Decision

Ensure not suicidal in ideation

Ensure relevant to clinical scenario

Only valid if postdates LPA

Must be signed and witnessed and specific if refusing life-sustaining treatment

Lasting Power of Attorney

- Is a specific form for each LPA type
  - Or set out in the statutory form
    - Signed* by both parties
    - Name people to notify (or state not)
    - Witnessed – no pressure, comprehends etc
    - Must be an individual >18 (not a job title)

- Do not need legal advice
- Must be registered, over 18
- Can be specific, with restrictions, with other LPA's

Lasting Power of Attorney

- Property and affairs LPA
- Personal welfare (medical) LPA
- Enduring PA
- Office of public guardian
- Must follow statutory principles

- LPA after AD trumps AD regarding specific treatment
- LPA regarding life-sustaining treatment – must be expressly stated
- Only relevant if patient lacks capacity
- No effect for mental treatment under MHA

Advance Decisions

- ‘Facilitates autonomy’
- ‘Euthanasia by the backdoor’
- ‘Practicalities’

Advocates vs. Sign-Posts

Unlike contemporaneous decisions 'cannot advocate'

Humans immensely adaptable to physical infirmity

Are respecting their choice not their decision

Lord Donaldson: 1991 Re J (A minor) (wardship: medical treatment)

Gelbman BD et al. *J. Medical Ethics* 2008. 34:640-1

Quality of Life Based Decisions

AD's are Euthanasiast

- Ending ones life because of an expected QOL is suicidal
- Euthanasia by omission
- Self destructive choices do not warrant respect

  - Gormally L. The Linacre Centre. 2003

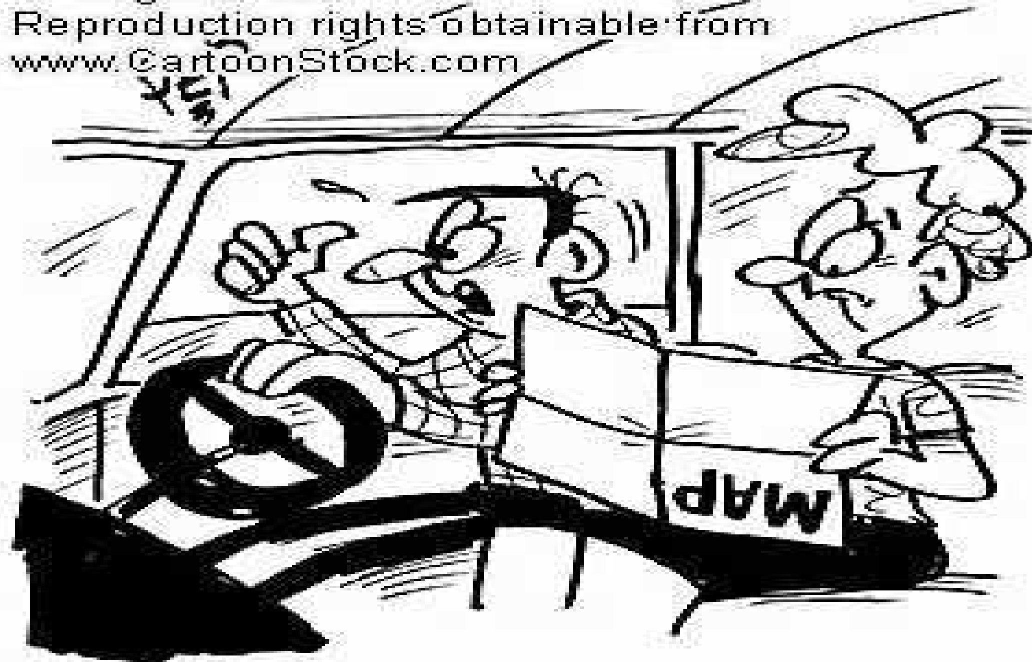
Quality of Life

- QOL is dependant on outcome
- Outcome not always obvious or objective
- No evidence that QOL predictable at time of acute illness

- Bernat JL. Neurocritical Care 2005. 2:198-205
- Rodgers J et al. Anaesthesia. 1997;52:1137-43
- Maynard SE et al. ICM 2003. 29: 1589-93

AD’s a Matter of Interpretation

- The individual
- The relatives
- The physicians



AD's a Matter of Interpretation

- Temporal relationship
  - To illness
  - To medical management
  - To current QOL

AD's a Matter of Interpretation

- 'can be expressed in *broad terms* in non-scientific language'
- Paternalism
- Expressed AD based on poor reasoning
- ??? Legally commensurate competence required

  - Re MB (CA) Med. Law Review 1997 8: 217-28
    - Re B [2002] 2 All ER 449
    - Re C [1994] 1 All ER 819

AD's a Matter of Interpretation

- Medico-Legally easier to follow than ignore post October 07

- Unlawful for a treating doctor to knowingly ignore a AD

Daily Mail

WIN A VILLA IN THE SUN

Why have Posh and Becks dropped their lawsuit over claims they only stay married to make money?

Consultants' fury as new 'living wills' law forces them to withdraw life-saving treatment

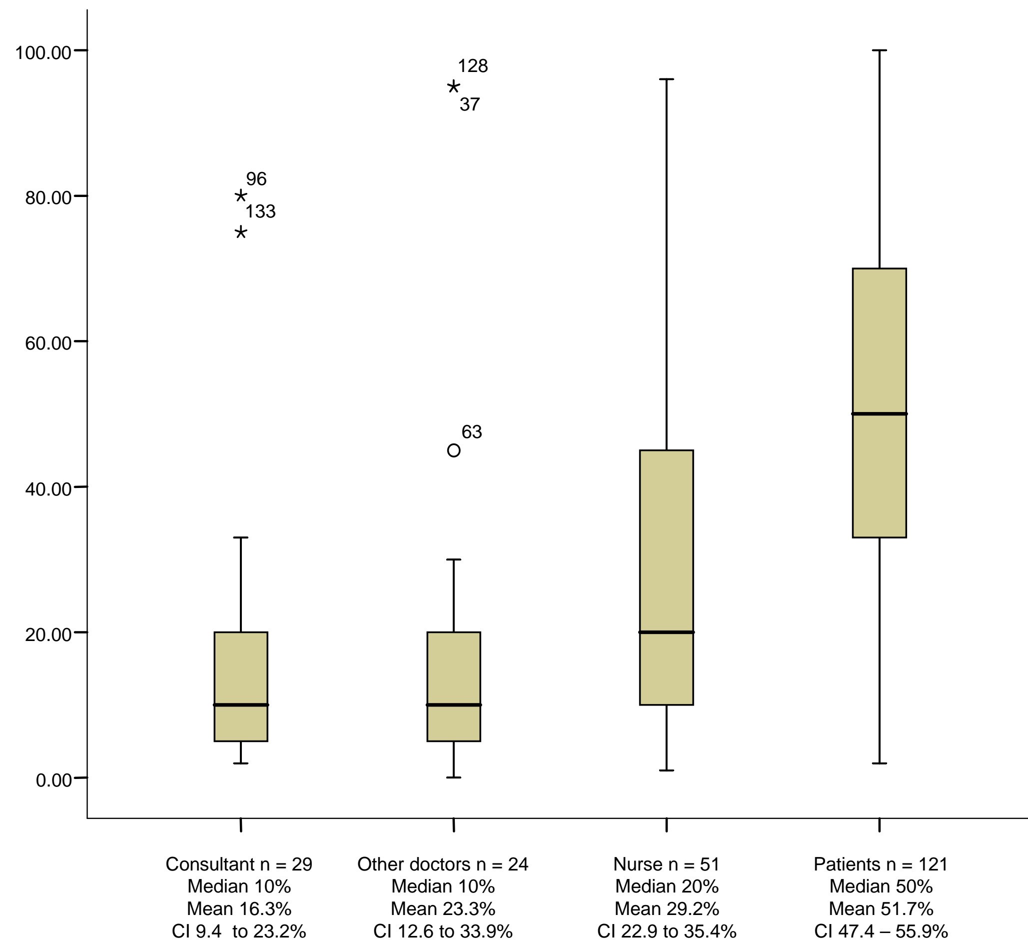
JAIL THREAT TO DOCTORS WHO DENY RIGHT TO DIE

Do AD's Exist

- 5 to 11% of unanticipated critical illness
- 32% in relapsed haematological malignancy
- 25% in the general public
- 3.6% in the ETHICUS study

- Goodman MD et al. CCM 1998 26: 701-4
- Johnson RF et al. Chest 1995 107: 752-6
- Wallace SK et al CCM 2000 29: 2294-8
- Teno J et al. J.of Am. Geriatric Soc. 1997. 45: 500-7
- Sprung CL et al. ICM 2008 34: 271-7
- Morell ED et al. J. Medical Ethics 2008. 34: 642-7

Cornish Data



8 patients of 160 had an AD

45 did not want CPR

72 wanted CPR even if the chances of success were less than 2%

Do AD's Exist

- 12% drawn up with a physician
- 25% of aware a patient had an AD
- Hidden from physicians

- Teno J et al. J. of Am. Geriatric Society 1997. 45: 500-7
- Kavic SM et al. Connecticut Medicine 2003. 67: 531-4

AD's Save Money

- $65,000 savings
- Despite receiving same or more interventions

- Reilly BM et al Arch. Int. Med. 1994 154: 2299-308
- Chambers CV et al. Arch. Int. Med. 154: 541-7
- Wallace SK et al. CCM 2001 29: 2294-8

Are AD's Followed

- No association between AD and DNR or documented discussions
- Nursing home residents
  - 25% not consistent with AD

Morell ED. J. Medical Ethics 2008. 34: 642-7
Danis M et al. NEJM 1991 324: 882-8

Family Discussions Facilitated

Relatives find end-of-life discussions difficult

Azoulay E et al. Am. J Resp. Crit. Care Med. 2005. 171: 987-994

Welfare Lasting Power of Attorney

- Questions about regarding their
  - Accuracy
  - Interpretation
  - Involvement
  - Documentation
  - Decision making abilities
  - Their supremacy and liability

Decision Making

- No significant trends to improved decision making or interventions
- 60% of surrogates felt it was of no benefit
- Patients prefer physicians and relatives rather than their own AD

- Coppola KM et al. Arch. Internal Medicine 2001. 161: 431-40
- Teno J et al. J. of Am. Geriatric Society 1997. 45: 500-7
- Puchalski C et al. J. of am. Geriatric Society 2000. 48: S84-90

Confronting An AD or LPA

- Is it *applicable and relevant* to current illness
- Is it *recent*
- Did the individual have *capacity and understanding*
- Have regard for the patients *best interests*

JUST SO YOU KNOW...
I NEVER WANT TO LIVE IN A VEGETATIVE STATE, DEPENDENT ON SOME MACHINE.
IF THAT EVER HAPPENS, JUST UNPLUG ME, OK?
OK.

seen at funny-city.com
Hey!

Core Principles

a person must be assumed to have capacity unless established capacity lacking

all practicable steps to facilitate capacity must be attempted

unwise decision does not mean unable to make a decision

an act done must be done, or made, in his best interests

before the act is done, is it done in the least restrictive way with regards to the person's rights and freedom.