

Advance Decisions – points of note

August 2009

We recommend discussing an Advance Decision with your family and healthcare professionals.

If you have been diagnosed with a specific life threatening illness you will be discussing your treatment with your health team. By discussing the matter in advance with the health team you will be well versed in the types of treatment which are available and the situations which might arise in relation to your care. You can then put in place an Advance Decision covering your particular situation which can be used if you lose the capacity to make decisions in the future. Discussing matters in advance should also ensure that the medical team are happy with the proposals in your Advance Decision and therefore more likely to action them.

If you wish to cover the general position you may consider it more effective to appoint an Attorney under a Personal Welfare Lasting Power of Attorney to deal with the issues. Your thoughts and wishes can then be discussed fully with the Attorney in advance and you can give the Attorney written guidance. This is preferable to an Advance Decision which might not cover the particular illness or circumstances with which you are faced in the future.

Once an Advance Decision has been made certain actions should be taken:-

- You should notify your GP and/or consultant of its existence and provide a copy for them to keep with your medical notes.
- You should notify your family/carers of the existence of the document and its contents.
- You should lodge the original document safely, for example with your Will, Enduring Power of Attorney or Lasting Power of Attorney, and make sure that the family/carers/medical professionals know where the original is.
- You should be wary when making a later Personal Welfare Lasting Power of Attorney as giving your Attorney the right to make decisions about life sustaining treatment in the Lasting Power of Attorney will revoke the Advance Decision.

When a healthcare professional is faced with a person who lacks the capacity to make a decision about their medical treatment and they are aware of an Advance Decision they will have to consider various points:-

- Whether the Advance Decision is still valid. In order to do this they will try and find out whether you have acted in a way that contradicts the Advance Decision, whether you have withdrawn it, or whether you have conferred the power to make decisions regarding life sustaining treatment on a Personal Welfare Attorney.
- If the Advance Decision is still valid then the medical staff will also consider whether it covers the particular circumstances of your case. They may consider that you would have changed your Advance Decision if you had known more about the medical circumstances you are faced with, particularly if new treatments have become available since your Advance Decision was made.

In any event any decision made by healthcare professionals will be made in your “best interests”.

Continues

The requirements to make an Advance Decision

What are the requirements to make an Advance Decision?

- You must be aged 18 or more
- You must have the mental capacity to understand the decisions that you are taking
- No pressure or influence must be exercised on you whilst you are making the decision
- The decision must not have been modified or amended in any way since it was made.

What if the Advance Decision includes a refusal to receive life sustaining treatment?

If the Advance Decision includes a refusal to receive life sustaining treatment there are the following additional requirements:

- It must be in writing
- It must be signed by the person who made it
- Your signature on the Advance Decision must be witnessed by an independent person.
- It must clearly state that the decision will apply even if your life is at risk

Is there is a standard form of Advance Decision?

There is no standard form of Advance Decision as each person's requirements will be different.

For further information please contact:



Ann Cory
Associate, Probate & Trust
Tel: 01722 427517
ann.cory@wilsonslaw.com



Alison Morris
Solicitor, Probate & Trust
Tel: 01722 427636
alison.morris@wilsonslaw.com