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## Advance Directives

The BMA strongly supports the general concept of patient choice and therefore has also supported the concept of anticipatory decision making. Advance Directives or 'Living Wills' are one category of anticipatory decision making that competent people may choose to employ if there is a likelihood that they will suffer loss of mental capacity. The BMA has classified all types of anticipatory decision-making as "advance statements", including within this term oral and written decisions, advance refusals and advance authorisations of treatment and statements of future desires and intentions as well as firm decisions. The common law has clearly established the legally binding nature of clear and competent advance refusals which address the particular circumstances which later arise.

Advance statements can be specific, general, nominate someone else to decide matters for them or simply list the person's fundamental values as a guide for others to decide. An advance statement could cover matters such as where the individual wants to be cared for - at home or in a specified residential facility or hospice, for example. Advance statements are about patient choice. Choice is more likely to be known and respected if it has been discussed with family and health professionals in advance. From an ethical perspective, the BMA states all patient views - requests, refusals, preferences - should be listened to and given respect.

The onus for ensuring that the advance statement is appropriately drafted and available to whom it is addressed lies with the patient. It is suggested that patients who have drafted an advance statement carry a card or other means indicating that fact as well as lodging a copy with their doctor.

### MAKING A LIVING WILL

Your consultant can advise and help you to draw up your Living Will at the same time as preparing your Will.

Not all members of The Society of Will Writers prepare Living Wills, and if you have any problems, you may call free on 0800 838270 for further information and advice.

The Code of Practice expressed within this leaflet is that of the British Medical Association published in April 1995 and has been endorsed by the Conference of Royal Colleges and the Royal College of Nursing

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First Floor Chambers – Roe House – Boundary Lane – Sth Hykeham – Lincoln – LN6 9NQ



And  
Estate Planning Practitioners

## Advance Directive (Living Will)

A Summary of The BMA's Code of Practice

A Public Information Leaflet

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## **Advance Statements About Medical Treatment.**

The Code is concerned not only with clear instructions refusing some or all medical procedures (Advance Directives), but also with statements which reflect an individual's aspirations and preferences, statements of general belief and aspects of life which an individual values, and with statements which name another person who should be consulted, on the individual's behalf, about medical decisions.

The BMA believes that people should have the opportunity to plan for their future care if they so wish. Whilst making decisions in advance may help to ensure that the care they receive is what they would want in the circumstances, there are disadvantages. The way healthy people feel about illness before they have experienced it may be quite different to how they feel when it happens.

### **The Legal Position**

There is currently no legislation covering advance statements but it is clear, in common law, that competent, informed adults have a legal right to refuse medical procedures in advance and that an unambiguous and informed advance directive (refusal) can be as valid as a contemporaneous decision. However, health professionals may be legally liable if they disregard the terms of an advance directive, if the directive is known to them, is clear unambiguous and is applicable to the circumstances.

Advance statements expressing preferences about treatment decisions or requesting certain treatments are not legally binding. In England and Wales, views expressed by a third party about medical care are also not binding on health professionals. The BMA believes however, that wherever possible, such statements should be taken into account in deciding on the patient's best interests. In all circumstances, a contemporaneous decision by a competent individual overrides previously expressed statements by that person.

### **Scope of Advance Statements**

People cannot authorise or refuse in advance procedures which they could not authorise or refuse contemporaneously. They cannot authorise unlawful procedures, such as euthanasia, nor can they insist upon futile or inappropriate treatment. Although not stated in law, the BMA believes that people should not be able to refuse, in advance, the provision of "basic care". This includes the administration of medication or the performance of any procedure which is solely or primarily designed to provide comfort to the patient or alleviate that person's pain, symptoms or distress.

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## **Format of Statements**

Oral statements are likely to be legally valid if supported by appropriate evidence but there are clear advantages to recording general views and specific refusals in writing. Advance statements are an aid to, rather than a substitute for, open dialogue between patients and health professionals.

There are no specific legal requirements concerning the format of advance statements, but it is recommended, as a minimum that the following information is included: full name, address, name and address of general practitioner, a clear statement of wishes or the name, address and telephone number of a person to be consulted, signature, two witnesses and the date the document was written and reviewed. It is recommended that the document be reviewed at least every five years.

The only minimum requirements for legal validity are that the patient is competent at the time of making the statement, is aware of the implications of the decision and that the circumstances match those in the statement.

## **Summary**

1. The BMA strongly supports the principle of an advance statement. Through advance statements, patients have a legal right to decline specific treatment, including life-prolonging treatment.
2. Patients cannot use advance statements to insist on the provision of certain treatments but they may authorise or refuse treatments.
3. Drafting an advance statement is the patients responsibility. If necessary seek advice from your general practitioner or health professional.
4. It is the patients responsibility to ensure that the existence of an advance statement is known to those who may be asked to comply with its provisions.
5. No person has a legal right to accept or decline treatment on behalf of another adult. The BMA recognises that the nomination of a health care proxy by the patient may be another helpful development in communicating the patients views when the individual is no longer capable of expressing these.
6. It is strongly recommended that patients review their advance statements at regular intervals, and destroy rather than amend the statement.
7. Doctors with a conscientious objection to curtailing treatment are not obliged to comply with an advance statement but must be ready to step aside.