



Psychiatric ADVANCE DIRECTIVES

An emerging tool for achieving the balance between self-determination and the need for involuntary treatment is the Psychiatric Advance Directive (PAD). The concept is to allow those with recurring episodes of disabling mental illness, while in a stable phase, to explicitly provide anticipatory legal directives for consent to particular treatment or preferences relative to specific treatment components. In some circumstances these PADs also explain past treatment histories, successful and unsuccessful, with particular medications, approaches, and strategies. While the legal force of PADs varies greatly from state to state, the treatment preferences and tips would seem to be helpful regardless of their legal effect.



POLICY

Courts and judges should encourage the use of PADs and, within the parameters of their state law, incorporate the provisions of an individual's PAD into relevant court orders. Provisions of a PAD may be considered presumptive consent to specific interventions but should not override appropriate emergency interventions or clear psychiatric and medical best practices.

While there may be legal or court case related benefits to the use and recognition of PADs, the focus should be on the clinical and therapeutic advantages. The more that people with mental health disorders perceive that they have a meaningful voice in their treatment, in advance or contemporaneously, the more likely they are to comply with and benefit from that treatment. Improved treatment outcomes obviously benefit the individual but also improve overall justice and behavioral health system efficacy and efficiency. Ideally, the increased use of PADs will decrease the reliance on involuntary civil commitments and may also promote increased diversions from the criminal justice process.

PROMISING PRACTICES

There is insufficient research into PADs to allow for the articulation of evidence-based practices, but there are a number of promising practices that have emerged.



Templates If PADs are to become more widely used and recognized, their content and format need to be more consistent. Templates that track state law and other requirements are more likely to produce directives that are accepted and facilitate familiarity with what provisions may be included and where to find them in the document.



Authentication Seemingly small technical requirements can sometimes prove to be huge obstacles. Requiring PADs to be notarized can be one of those obstacles. If the directive has limited legal effect or only creates a legal presumption, the need for formal notarization may not be necessary. PADs should be witnessed, and preferably include the affirmation of a treatment professional, but further legal authentication is likely unnecessary and may discourage their use.



Collaborative Development One therapeutic benefit of a PAD is simply in its development. Engaging in a conversation about what a person with mental illness prefers or suggests might be effective in a crisis is in itself a component of effective treatment. Ideally, this conversation is a routine part of discharge and transition planning from every significant crisis intervention.



Legal Effect and Revocation Especially as the use of PADs is emerging, treatment professionals have concerns about liability when they rely (or don't rely) on their provisions. If, as recommended here, the focus is on the clinical and therapeutic benefits of PADs, their legal effect should be procedural rather than substantive, i.e., treatment professionals should be prompted to inquire about PADs, but failure to strictly adhere to their provisions should not create legal liability, and that standard should be explicitly stated.

As to revocation, several states provide that revocation may be easily accomplished, but the effect of that revocation is delayed some number of days and is not immediate. This avoids or at least minimizes the conflict that arises when the subject of the PAD asserts their revocation during a crisis intervention.

PSYCHIATRIC ADVANCE DIRECTIVES

NEXT GENERATION: INNOVATION, TECHNOLOGY, NEW PRACTICE

An intriguing twist on the PAD model is its European cousin, the Joint Crisis Plan (JCP). The JCP “is a type of psychiatric advance statement that describes how to recognize early signs of crisis and how to manage crises.”¹ Collaboratively developed by treatment providers and their patients, these plans appear to achieve the desired therapeutic benefits of PADs described above, and more. A recent study of the effects of JCPs in Switzerland found six benefits:²

1. The most common benefit reported by participants and especially by professionals was that JCP is a supportive and reassuring tool when crisis occurs.
2. Patients and professionals reported that families perceived these same benefits.
3. The JCP helps ensure the transmission of information and makes crisis management easier.
4. The JCP reduces the sense of urgency, especially for patients for whom the intensity and variability of symptoms are important and disturbing. Furthermore, it prevents hospitalizations.
5. The JCP makes communication about illness easier and helps patients and professionals share their expertise about how to manage it.
6. In addition to facilitating communication about illness, the JCP empowers therapeutic relationships and partnerships because it allows the consideration of patients' preferences and choices about treatments to manage illness.

Jurisdictions should consider the design and demonstrated benefits of JCPs as they evaluate the contours of their PAD provisions and procedures.

GETTING STARTED

Just as it took decades for medical advance directives to become broadly used and institutionalized, it will take time for PAD use to become generalized. Courts and treatment professionals should collaboratively review their state law and current practices for compatibility with the promising practices discussed above. As of 2021, 27 states had some form of statutory recognition and guidance relative to PADs, but the approaches are anything but consistent.

RESOURCES

SAMHSA, [A Practical Guide to Psychiatric Advance Directives](#)

[National Resource Center on Psychiatric Advance Directives](#)

Swartz et.al., [Implementing Psychiatric Advance Directives: The Transmitter and Receiver Problem and the Neglected Right to Be Deemed Incapable](#)

Lequin et. al., [The Joint Crisis Plan: A Powerful Tool to Promote Mental Health](#)

¹ Lequin et. al., [The Joint Crisis Plan: A Powerful Tool to Promote Mental Health](#)

² Ibid.

This document was developed under the Mental Health Initiative: Phase II Grant #SJI-20-P-054 from the State Justice Institute and approved by the Task Force Executive Committee. The points of view expressed do not necessarily represent the official position or policies of the State Justice Institute.

