

# POLICY ON A PAGE

# ADRTs and Advance Statements

## 1 DEFINITIONS

### DEFINITION: ADVANCE DECISION TO REFUSE TREATMENT (ADRT)

Advance decisions to refuse treatment (ADRTs) are legally binding instruments under the Mental Capacity Act 2005 (MCA), by which a mentally competent adult can refuse a specific treatment intervention if that person loses capacity in the future. Prior to the introduction of the MCA in 2007, ADRTs used to be referred to as advance directives or living wills, but these terms are no longer in use.

### DEFINITION: ADVANCE STATEMENT

Advance statements (sometimes referred to as Advance Care Plans), although not legally binding, record the patient's wishes and encourage patient participation. They enable Trust staff to make informed decisions about a patient's care and treatment.

Clinical professionals who continue to provide a specific intervention against a patient's wishes as outlined in a validly created ADRT risk criminal prosecution, civil litigation and professional practice proceedings. An exception to this is when treatment is being administered under the Mental Health Act 1983 (MHA).

Where treatment is required under the MHA 1983, a patient's wishes may be overridden if this is considered necessary, although their views should be taken into account as far as possible.

### THIS POLICY WILL ENABLE STAFF TO:

- Understand what ADRTs and advance statements are;
- Understand how to assist patients to create and record ADRTs and advance statements;
- Encourage the use of a standard format for the recording of ADRTs and advance statements, and ensure that a record is kept within the patient's clinical record;
- Ensure that any ADRTs or advance statements are used to support the planning, development and review of care plans.



## 2 CAPACITY

- ADRTs and advance statements will only take effect once the patient loses the capacity to consent or refuse treatment.
- The fact that a patient has an ADRT or advance statement should never mean that staff do not discuss the person's wishes regarding treatment as the presumption is always that the patient has capacity unless there is evidence to the contrary.
- If there is any evidence which points to a possible lack of capacity (in relation to a particular decision – capacity is time and decision specific), Trust staff must conduct a rigorous assessment of capacity.
- If the patient has capacity to consent to or to refuse the treatment proposed, any ADRT does not apply.



## 3 ADRTs

An ADRT can only be made by a patient who is aged 18 or over. The patient must have capacity within the meaning of the MCA at the time that they make the ADRT.

### VALID + APPLICABLE ADRT = LEGALLY BINDING

#### VALID

- The "validity" of an ADRT refers to its format. There is no statutory form.
- Only ADRTs which are refusals of life-sustaining treatment have to have a particular format.
- However, since written ADRTs are much more likely to be clear and unambiguous, all patients should be encouraged to use the Trust's ADRT form set out in the policy.

#### APPLICABLE

- The "applicability" of an ADRT refers to whether or not it is relevant to what is actually happening at the time it is necessary to decide whether or not to follow the ADRT.

A valid and applicable ADRT refusing ECT cannot be overridden by health or social care professionals.

See the policy for how to record and respond to ADRTs.



## 4 ADVANCE STATEMENTS

- These are not legally binding. An advance statement is a statement made by a patient of any age when they have competence or capacity, specifying their preferences and wishes for future treatment and care should they lose capacity in the future.
- As it is a statement of the patient's views, wishes and feelings, it should be taken into consideration by health and social care professionals and carers as part of the "best interests" decision making process at a time when the patient does not have capacity.
- It is preferable for advance statements to be in written form within the Care Plan, but any wishes or preferences expressed by a person should be properly documented and referred to should they lose capacity or competence in future.

See the policy for the advance statement form and for how to record and respond to advance statements.



## 5 GET TRAINING!

- Please read the ADRT and Advance Statements Policy which can be found on the staff intranet
- Training is available and can be booked on the Mental Health Law Services training page.
- Contact Jolene Pont **07748 112673** or at **Jolene.pont@sussexpartnership.nhs.uk**

