

## **ADVANCE DECISION/ADVANCE STATEMENT (LIVING WILL)**

The information below is drawn from guidance provided by Age UK.

The Mental Capacity Act 2005 (in force from 1<sup>st</sup> October 2007) provides a legal framework to give people the power to make their own decisions and to make clear what actions carers and family can take. It puts the law on Advance Decisions (or Living Wills) on a clear statutory basis for the first time.

The rules relate particularly to advance decisions to refuse treatment, including refusal of life-sustaining treatment.

### **Introduction**

When you are ill, you can usually discuss treatment options with your doctor and then jointly reach a decision about your future care.

However, you may be admitted to hospital when unconscious or unable, (on a temporary or on a permanent basis), to make your own decisions about your treatment or communicate your wishes. This may happen, for example, if you have a car accident or a stroke, or perhaps develop dementia. To use the technical term, you would '**lack mental capacity**' to make an informed decision and/or communicate your wishes. One exception to this is if you have made an **advance decision** refusing treatment. If this decision is valid and applicable to the circumstances, medical professionals providing your care are bound to follow it.

The term 'Living Will' could be used to refer to either an Advance Decision or an Advance Statement. The former is a decision to refuse treatment and is legally binding whereas the latter is any other decision about how you would like to be treated.

### **Definitions:**

#### **ADVANCE DECISION**

An advance decision to refuse treatment is the only type of living will that is **legally binding**.

It can only be made by someone over the age of 18 who has the mental capacity to make the decision; this means that they must be able to understand, weigh up and retain the relevant information in order to make the decision to refuse treatment. They must also be able to communicate that decision.

An advance decision to refuse treatment must indicate exactly what type of treatment you wish to refuse and should give as much detail as necessary about the circumstances under which this refusal might apply. It is not necessary to use precise medical terms, as long as it is clear what treatment is to be refused in what circumstances. An advance decision does not need to be in writing, unless it is a decision to refuse life-sustaining treatment.

An example of an Advance Decision is shown, which you could use to adapt to your specific wishes. It is suggested that you have the Decision witnessed and signed by people who have no interest (financial or otherwise) in your death.

## **ADVANCE STATEMENT**

This is a general statement of your wishes and views, and allows you to state your preferences and indicate what treatment or care you would like to receive should you, in the future, be unable to decide or communicate your wishes for yourself.

It could reflect your religious or other beliefs, and any aspects of life which you particularly value, and can include non medical things such as your food beliefs or preferences or whether you would prefer a bath to a shower. It helps those involved in your care know more about what is important to you.

It must be considered by the people providing your treatment when they determine what is in your best interests, **but they are not legally bound to follow your wishes.** Advance Statements can also be used to let people treating you know you would like to be consulted at a time a decision has to be made, if you are unable to make that decision yourself.

## **LASTING POWERS OF ATTORNEY**

Alternatively, you could consider creating a Lasting Power of Attorney, which would allow you to choose who should make decisions about your treatment if you are not able to do so yourself.

For more information, we suggest you contact Age UK on 020 7831 4928 53 Leather Lane, London EC1N 7TJ or look up the Age UK website, [www.ageuk.org.uk](http://www.ageuk.org.uk)

(This paper written for the benefit of patients of Somerton House Surgery, 2011) AM