

Pennsylvania Psychiatric Society

Executive Summary¹

Act 194 of 2004 – Mental Health Advance Directives

(The following is not intended as legal advice in any particular situation that may be encountered)

Act 194 of 2004 allows a person to consent, in advance of need, to specific mental health treatments against the event that at the time of need the person is too incapacitated to make mental health decisions. It also allows a person to appoint an agent to make decisions at that time, and it allows a person to specifically refuse consent to specific treatments.

The following summarizes the new duties and constraints that apply to all practicing psychiatrists, in both the inpatient and outpatient settings. Additional and important detail appears in a full analysis, developed for PPS members by Robert Hoffman of the Harrisburg office of Wolf Block Schorr and Solis-Cohen. It is available on our website (www.papsych.org) or by contacting the PPS office.

As a psychiatrist you must:

- Ask whether or not each patient has a mental health care advance directive.
- Inform patients about mental health care advance directives at discharge, as part of discharge planning.
- Place a copy of each patient's advance directive and any amendments or revocations, upon receipt, into the medical record.
- Document your determination, in the person's medical record, any time you make a determination about a person's capacity or incapacity to make mental health decisions, and notify the person and/or the person's agent of that determination.
- Treat a patient whose advance directive is operational in a manner consistent with the terms of the directive. However, you do not have to provide any treatment the patient has requested or has consented to if you believe it is contrary to accepted clinical practice and medical standards, and you should not do so.
- Make reasonable attempts to transfer to another provider any patient with whose advance directive you feel you cannot comply. In that interim period, you may not provide any treatment to which the patient has not consented in the advance directive, unless you find that the patient now has capacity. You do not, however, have to provide care you believe is professionally inappropriate.

You may not:

- Provide any treatment for which the patient (or the agent) has not provided general consent in the advance directive, either specifically or generally as to recommendations of the treating physician, if the patient lacks capacity, unless the patient is subject to involuntary commitment. It is important to note, however, that the effect of involuntary commitment remains somewhat unclear.
- Refuse to treat a patient, or refuse to accept as a patient, any person solely because he or she has (or does not have) an advance directive.

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OTHER POINTS

- Generally, the advance directive will go into effect when a psychiatrist and a second mental health provider, both of whom have examined the patient, decide that the person is “unable to make mental health decisions.” No court action is required. Decisions about a person’s capacity should be noted in the record. The standard is different than the dangerousness standard that is still in effect for involuntary commitments. A person can also specify some other event that would trigger the advance directive.
- Whether the advance directive automatically takes effect when a person is involuntarily committed, and how the consents and prohibitions in it will apply during involuntary treatment, are uncertain. This will be an evolving area of the law, likely dependent on future decisions by the courts. **You should carefully read the Society’s longer analysis of the law.** We expect facilities to study this area of the Act closely, and you may receive further guidance from facilities where you practice.
- The Act’s effect on emergency treatment is also unclear, but generally a patient’s known preferences should be honored even during emergencies if feasible. Again, we recommend that you read the full analysis.