

**AFE BABALOLA UNIVERSITY ADO
EKITI, EKITI NIGERIA**

College of Law

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Course Title:

LPB 514 Health Law II

Topic:

**Medical Law and Reproductive
Rights**

Lecturer:

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OUTCOME

At the end of this module you will be able to:

- Understand **Advanced Directives** (AD)
- Discuss the circumstances when AD are valid and applicable.

**Advanced
Directives/Decisions
(AD)**

**What do you understand
by:**

**Advanced
Directives/decisions**

UNDERSTANDING AD

- ❑ An advance decision (AD) is
 - a statement (decision)
 - made by an adult
 - with capacity

About a treatment he/she would wish **to refuse** in the event of loss of capacity.

- ❑ An AD cannot dictate that treatments are given
- ❑ A request for specific forms of treatment should be taken into account in deciding what treatment would be in that ***person's best interest***.

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Conditions for a valid AD

When will an AD be effective?

Conditions for a valid AD

□ ***AD is effective only if the patient was:***

1. Over 18 or 21 years and competent at the time when the decision was made.
2. AD is relevant only when the patient lacks capacity to consent to the treatment (if a patient has signed an AD refusing to consent to blood transfusion, but at the time he is competent and consents, then the AD should be ignored)
3. The AD only allows '***negative***' ***decisions-*** decision to refuse treatment **-an AD cannot be use to compel a physician to provide treatment.**
4. If the AD rejects life-saving treatment it must be in writing, signed and witnessed by a third party

**WHAT FORM SHOULD AN AD
TAKE?**

Conditions for a valid AD Contd.

- ❑ **Generally** there is no particular format for an AD.
- ❑ **Exception-** where it refers to refusal to life-sustaining treatment the AD must be in writing and witnessed
- ❑ The treatment to be refused must be specified.

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Conditions for a valid AD Contd.

If the doctor does not consider the request in a valid AD to be in the patient's best interest could he ignore it?

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Conditions for a valid AD Contd.

- ❑ **If a person makes a valid AD, then it must be followed even though the doctor may not consider the course of action to be in the patient's best interest**

(otherwise the doctor could be liable for battery)

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**WHAT ARE THE
CONDITIONS FOR A VALID
AD?**

Conditions for a valid AD Contd.

- ❑ An AD to refuse treatment must state **precisely** what treatment to be refused
- ❑ A statement given a general desire not to be treated is not enough
- ❑ It could guide the clinician about what the person wants especially when this is supported by the views of the family

AD- ETHICAL ISSUES

- People's attitudes towards death is marked by their ethical or religious believes
- ***One of the ethical dilemmas*** is that personal identity, and therefore values, may change with the onset of diagnoses of terminal disease, life-threatening illness, dementia and similar health conditions

3. AD - Assessment

4. Bimbo is 75 years old. She was diagnosed with multiple infarct-dementia 7 years ago. She was once a professional, successful woman of repute but over the past 7 years her memory has declined to the extent that she no longer recognises members of her family. Seven months ago she had a stroke and, consequently, she is now bed bound, doubly incontinent and has difficulty in swallowing.

Over the past 3 months there has been minimal improvement in her condition and now she developed bronchopneumonia.

You, as a qualified physician in charge with Bimbo, decide that it would be best to start intravenous antibiotics and fluids. You discuss with Bimbo's family and they are adamant that Bimbo would not wish to continue living in her current state. Her daughter says that her mother has felt so strongly about this that she has left an AD

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AD – Assessment Cond.

She gives you a piece of paper which states *‘If as a result of my illness, I become unable to perform my any basic task myself, then I will not wish to receive any form of life-sustaining treatment.’* It is signed Bimbo and dated 5 years ago.

You tell the family that antibiotic treatment is likely to cure Bimbo’s pneumonia but she is likely to die without it.

They all say that you should respect their mother’s wishes and that all treatment should be withdrawn Except from pain relief.

Identify the legal issues and discuss making reference to AD.

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Terms: explained

- **Dementia**- is a medical condition which might involve an impairment or disturbance of the functioning of the brain.

- A person is unable to make a decision for self if is **Unable to** :
 - **understand** the info relevant to the decision (lack of sufficient comprehension)
 - **Retain** that info
 - **Use/weigh that info** as part of the process of making the decision (*Bolton Hospital NHS Trust v. O 2003 1FLR 824*)
 - **to communicate** his/her decision

ETHICS

□ Definition-

- From the Greek word 'ethos'
- Cannot unequivocally be defined
- **'a system of accepted believes which controls behaviour'**
- Moral principles of conduct
- Rules of conduct-distinguishing what is right from what is wrong
- Rules of conduct that are not product of legislation
- Ethics is:

... 'a code of behaviour accepted voluntarily within the profession, as opposed to statutes and regulations imposed by legislations'

(Knigh, B. 1982 *Legal Aspects of Medical Practice*, New York Church Hill Livingstone 1.)

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MEDICAL ETHICS

□ In reference to medical practice

- Is the code of conduct guiding and regulating the practice of medicine

□ Functions, Essence and main aim of ethics

The 3 Rs:

- **Restrict**
 - **Rule**
 - **Regulate**
- **Restrict-** ethics restrict practitioners by limiting them
 - **Rule-** stipulate what can be done
 - **Regulate-** specify standards which must be observed by practitioners

ETHICAL ISSUES AND ADVANCED DIRECTIVES

- 'A **competent** person, fearing incompetence, might, quite properly, seek to determine how she or he will be treated in the future when **incompetent.**'
(Gremmen et. al 2008)
- They want their deaths, if possible, to express and confirm the values they believe are most important.

ETHICAL ISSUES AND AD Contd.

- ❑ In case of Alzheimer's patients, although their body remains the same the loss of memory or connection with relatives/friends means that a '***new person has come into being***'.
- ❑ There has been such a change of personality and personhood that the 'competent person' is no longer empowered to speak on behalf of the incompetent. (Buchanan, A. and Brock, C. 1990 *Deciding for Others: The Ethics of Surrogate Decision Making*, Cambridge University Press 152-189)

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SUMMARY: ETHICAL ISSUES AND AD

- There are many and varied debates over ADs
- In reality very few people do try and make ADs
 - Perhaps because they do not want to think about death or illness; or
 - Many are happy for decisions concerning their medical treatment to be made by their physicians and their families, **should they become incompetent**
- *Authorities on ADs have sought, however, to develop an approach towards ADs **based on an ethic of care.***

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