

MIDNIGHT LAW

Guidance in managing adult patients who present with an ADRT (England and Wales)



SITUATION

A patient with pneumonia is hypoxic and is refusing escalation of treatment. A relative advises that the patient has an Advance Decision to Refuse Treatment (ADRT) refusing any form of respiratory support above oxygen administered via simple facemask.

CONSIDERATIONS

1. An ADRT is valid and applicable only if:
 - The patient was 18 years old or above at the time the ADRT was made, and
 - The patient had capacity at the time the ADRT was made.
 - Consider what evidence there is to support this.
 - Is there any suggestion of coercion?
 - The scope of the ADRT covers the particular circumstances of the patient's admission.
 - The treatments being refused are specified.
 - The circumstances when the ADRT would apply are specified.
 - The decision has remained consistent over time (actions inconsistent with the ADRT – for example subsequently appointing an LPA for the same decisions can mean that it is no longer legally binding).
 - There is acknowledgement that life refusing treatment may lead to death
 - In the case of refusal of life-sustaining treatment, the ADRT must also
 - say that it applies even if the patient's life is at risk; and
 - be in writing, and
 - be signed by the patient in the presence of a witness, and
 - be signed by the witness in the presence of the patient.
2. The effect of a valid and applicable ADRT is the same as a current refusal of that treatment by a patient with capacity to make that decision.
3. The treating clinician should make all reasonable efforts to be satisfied of the existence of the ADRT.
4. No liability is incurred as a result of withdrawing or withholding treatment that is refused by a valid and applicable ADRT.
5. But in case of any doubt about the existence, validity or applicability of the ADRT, the Court of Protection can be asked to rule on the question, and there is no liability incurred for appropriate treatment in the meantime.

GUIDING PRINCIPLES

- All adults are presumed to have capacity to make decisions regarding medical treatment.
- If there is reasonable doubt that a patient has capacity for a decision about treatment, then emergency treatment can be administered in their best interests, unless there is an Advance Decision to Refuse Treatment (ADRT).
- An ADRT is legally binding if it is valid and applicable to the situation.

KNOW THE LAW

Mental Capacity Act 2005

FURTHER READING

NHS Surrey Heartlands ICB v JH [2023] EWCOP 3

Re PW (Jehovah's Witness: Validity of Advance Decision) [2021] EWCOP 52



The Faculty of
**Intensive
Care Medicine**

June 2025 / Version 1.0
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