



The Nord Center

Psychiatric Advanced Directives (PAD's)

About PAD's

- A psychiatric advance directive (PAD) is a **legal document** that documents a person's **preferences for future mental health treatment**, and allows appointment of a **health proxy** to interpret those preferences during a crisis.
- PADs may be drafted when a person is well enough to consider preferences for future mental health treatment.
- PADs are used when a person becomes unable to make decisions during a mental health crisis

Please note: the following 10 FAQs are designed to provide a quick and accessible guide to what Ohio's statutes say – or do not say – about PADs. The FAQs do not attempt to provide a complete picture of the law in Ohio, nor can they take the place of legal advice. These answers are accurate as of September 2019.

Ten commonly asked questions about PAD's

1. Can I write a legally-binding psychiatric advance directive (PAD)?

Yes. Ohio's Declarations for Mental Health Treatment statute allows you to write instructions (a "declaration") about how you would like your future mental health treatment to proceed in the event of a crisis. Additionally, Ohio's Durable Power of Attorney for Health Care statute allows you to appoint an agent to make health care decisions for you, including mental health decisions, in the event of a crisis. A suggested form for either or both purposes is available [here](#). Additionally, a workbook to assist you in creating a PAD is available [here](#).

2. Can I write advance instructions regarding psychiatric medications and/or hospitalization?

Yes. You may write instructions about any type of mental health care, including drug treatment, electroconvulsive therapy (ECT) and admission to a psychiatric facility for a specified number of days. You may also document treatment refusals.

3. Does anyone have to approve my advance instructions at the time I make them?

No. However, your document must be signed by two adult witnesses who know you personally and who must attest that you appeared to be “of sound mind” and not under duress when you created the document. Employees or owners of your treatment provider, your named agent (if you appoint one), and relatives of yours, cannot act as witnesses.

4. Can I appoint an agent to make mental health decisions for me if I become incompetent?

Yes, as outlined above.

5. If I become incompetent, can my agent make decisions for me about medications, and/or hospitalization?

Yes. The general rule is that your agent can make any decision that you could have made if you were able to, including a decision to refuse treatment. This rule is subject to limitations, however – see question 9 below.

6. Does my agent have to make decisions as he/she thinks I would make them (known as “substituted judgment”), or does he/she have to make them in my “best interests”?

Your agent must exercise substituted judgment. If your wishes are unclear to your agent, he/she must act in your best interests.

7. Is there any rule that says that I can only make advanced instructions, only appoint an agent, or that I must do both?

No. You may do one, the other, or both, using the suggested form.

8. Before following my PAD, would my mental health care providers need a court to determine I am not competent to make a certain decision?

No. All that is required is that either your attending physician, or a psychiatrist plus another physician, examine you and determine that you so not have capacity to make your own treatment choices at that time.

9. Does the statute say anything about when my mental health providers may decline to follow my PAD?

Yes. The statute says that the provider is only obliged to follow the PAD so far as it is “consistent with reasonable medical practice, the availability of treatments, and applicable law”. If you become subject to involuntary treatment law, this will usually take priority over the PAD.

10. How long does my PAD remain valid?

Your PAD remains valid for three years, or until it is validly revoked. You may revoke the appointment of your agent at any time, but may only revoke or change your declaration (instructions) as long as you remain competent.

Source: National Resource Center on Psychiatric Advance Directives, 2021