



California Q and A

Ten commonly asked questions about PAD's for California

Please note: the following 10 FAQs are designed to provide a quick and accessible guide to what your state's statutes say – or do not say – about PADs. The FAQs do not attempt to provide a complete picture of the law in your state, nor can they take the place of legal advice. The answers were accurate when written in October 2006.

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

Yes. **California's Health Care Decisions Law** allows you to appoint an agent to make decisions about your treatment if you become incompetent to make decisions; write instructions about how you would like your health care to proceed; or both. This law covers all types of health care, including psychiatric treatment. **Disability Rights California** has published a helpful **guide**, which includes the latest version of the statutory **Advance Health Care Directive (AHCD) form**. This form is not mandatory but is highly recommended. Disability Rights California also offers a detailed **Trainer's Manual on the subject of AHCDs**. The state of California maintains a central registry of Advance Directives, which you may wish to use but is not mandatory. Click **here** for more information on that program.

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

Yes. The statute allows you to set out your instructions on any aspect of your health care treatment, which could include advance decisions about psychiatric medications and/or hospitalization. The statutory AHCD form gives a variety of prompts for you to state your instructions in the event of a crisis (for example, you could state that you would prefer to remain in a quiet room). If you wish, you may make advance decisions to refuse medications and/or hospitalization. If you do this, however, note that that state law may require your hospitalization in an emergency, even if you have declined it in your instructions.

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

No. However, the document containing your advanced instructions must be notarized, or signed by two witnesses. Neither witness can be an employee of your health care provider, and one must be a non-relative. If you are a patient in a “skilled nursing facility”, meaning a facility providing skilled nursing care on a long term basis, your form must additionally be signed by a Patient Advocate or Ombudsman.

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

Yes, in one of two ways:

(1) You may appoint an agent (called a “surrogate” in California), using your AHCD. Your agent must be someone other than an employee of your health care or community care provider, unless he/she is also related to you. If you have a conservator under the Lanterman-Petris-Short Act, you must seek the authorization of an attorney before appointing an agent.

(2) If you are already being treated in a health care facility, you may designate a surrogate to act during your current stay, for a maximum of 60 days in total. To do this, you need only inform your health care provider. The person nominated in this way has priority

over any agent you already nominated in an AHCD, but only during that particular period of treatment, or 60 day period in total.

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

Yes, with some exceptions. In general, once you are determined to be incompetent (see below) your agent may make decisions about anything that you could decide on if you were competent. However, your agent cannot consent on your behalf to your commitment to, or placement in, a mental health treatment facility; nor can he/she consent on your behalf to psychosurgery, electroconvulsive treatment (ECT), sterilization or abortion. If you wish, you may use your AHCD to limit your agent's authority to a certain type, or types, of decision.

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 to the extent that he or she can do so, based on your advance instructions and/or on your preferences as known by the agent. If it is not possible to make a decision in that way, your agent must make the decision 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.

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. The California statute allows you to choose when your AHCD must be followed. Your AHCD will be followed when your primary physician determines that you do not understand the benefits and/or risks of a particular mental health care decision.

Alternatively, you may state on your form that your AHCD should be followed at all times, whether or not you are competent to make decisions.

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

Yes. Your providers must decline to follow your AHCD if they would violate professional standards in doing so, or for “reasons of conscience”. In these situations, your provider must assist in trying to find another provider who will follow your AHCD. Additionally, your providers could decline to follow your AHCD if you became subject to compulsory treatment or hospitalization under California law.

10. How long does my PAD remain valid?

Your AHCD is valid as long as you do not revoke it. If you wish, however, you may specify an expiry date for your AHCD.