

Advanced Care Directives: revisions to the law

A recent article on The Advertiser (11 July 2019) spoke about the laws governing Advanced Care Directives, the binding refusals of health care that may be recorded in an Advanced Care Directive and the impact of these refusals on the medical care of people who had attempted suicide.
Serious concerns had been raised by health practitioners, particularly paramedics and medical staff in emergency health care settings, about the difficult and conflicted position they were placed in when attempting to care for patients who had attempted to take their own lives with an Advanced Care Directive refusing life-saving medical treatment in place.

What is an Advanced Care Directive ?

An Advanced Care Directive is a legal document whereby you can record your wishes and directions in relation to medical, health and lifestyle decisions in the event you are unable to make these decisions for yourself. You may also record your refusal to undergo certain forms of treatment.

If these directions are in Part 4 of your Advanced Care Directive, your refusal is binding on any health care professional caring for you (the exceptions being where there is evidence you had changed your mind about the medical treatment or there was uncertainty surrounding the wishes expressed in your Advanced Care Directive).
Your refusal being binding on health practitioners is a critical feature of an Advanced Care Directive as it provides you with autonomy, certainty and peace of mind and also certainty for the health care professionals caring for you.

Refusal of Medical Treatment

It is particularly common for people preparing an Advanced Care Directive to document their refusal to treatments that could be given in an emergency setting including: cardio-pulmonary resuscitation ("CPR"), major surgery and assisted ventilation. In addition, treatments that may be given during times of critical illness such as receiving ongoing artificial nutrition and multiple medications are also commonly refused.

Uncertainty relating to Medical Treatment

These binding directions created a serious grey area for health professionals in circumstances where a patient with an Advanced Care Directive recording refusal of life saving treatment had then unsuccessfully attempted to take their own life ending up in a clinical setting requiring the very treatment they had previously, and validly, refused.
As a result, health professionals were being placed in the difficult position of having to balance the obligation to uphold the binding directions of their patient with potentially being guilty of unprofessional conduct for non-compliance with the directions in an Advanced Care Directive or even being found to have participated in the criminal offence of euthanasia.

New Advanced Care Directive Law

In response to the above concerns, the State government revised the law in this area to create an additional exception to the obligation to comply with a binding refusal of health care as recorded in Part 4 of an Advanced Care Directive.
As of 11 July 2019, in circumstances where a person has made a binding refusal of treatment in their Advanced Care Directive and that person then attempts to commit suicide, the previously refused treatment can be given only if that treatment relates to the suicide attempt.
For example: if CPR had been refused in an Advanced Care Directive and that person was taken to hospital having suffered a heart attack, health professionals would not be able to perform CPR.

Conversely, if that person was taken to hospital following a suicide attempt that caused CPR to be necessary, health professionals would now be able to perform CPR without breaching their professional obligations.
The revision of the law in this area provides greater certainty and clarity regarding the extent of the power to refuse treatment in an Advanced Care Directive and allows health professionals to focus on providing emergency clinical care without fear of jeopardising patient safety, a finding of unprofessional conduct or committing a serious criminal offence.

To find out more about this new law, contact Andersons Solicitors' Wills and Estates Team.

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