

How do I know if an advance care directive (ACD) is valid?

1. It has been made voluntarily by a capable adult

Competence must be assumed unless there is evidence to suggest otherwise. There must be evidence that the person completing an ACD was incompetent at the time that they made it before its terms can be ignored on those grounds.

An ACD may also be invalid if a person is affected by undue influence or coercion when completing the ACD.

You may assess the competence of the patient at the time of writing the ACD by:

- contacting the witness of the directive, if details are available
- asking the patient's family members about the mental state of the patient when making the directive
- contacting the patient's GP

2. It is clear and unambiguous

Instructions may refer to:

- patient's treatment preferences in relation to both conditions existing at the time the ACD is made as well as future anticipated conditions (including catastrophic injury), and/or
- patient's values, life goals and preferred outcomes of care

3. It extends to the circumstances at hand

It must be clear enough that the instructions in the ACD apply to the clinical circumstances arising. Seeking a second medical opinion may assist in making this decision.

If you believe that the ACD presented to you does not meet one or more of these requirements, you may seek further legal advice about making an application to the Supreme Court for a ruling on the validity of the ACD or guidance on how it might be followed.

Note: An ACD cannot be used to:

- demand unlawful medical interventions such as euthanasia or assisted dying

- demand specified treatment interventions that are deemed inappropriate or futile

More resources:

- NSW Health *Guidelines – Using Advance Care Directives* (March 2005) http://www0.health.nsw.gov.au/policies/gl/2005/pdf/GL2005_056.pdf
- Australian Health Ministers Advisory Committee- Clinical, Technical and Ethical Principal Committee- *A National Framework for Advance Care Directives* (September 2011) http://www.ahmac.gov.au/cms_documents/AdvanceCareDirectives2011.pdf