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# Psychiatric Advance Directives: A Promising Tool to Enhance Crisis & Recovery Care

Presenter: Marvin Swartz, MD  
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# Psychiatric Advance Directives: A Promising Tool to Enhance Crisis and Recovery Care

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# Learning Objectives

- List the potential benefits of Psychiatric Advance Directives.
- Summarize the origins and rationale for Psychiatric Advance Directives.
- Discuss approaches to overcoming barriers to implementation of Psychiatric Advance Directives.

Poll: Who is responding?

# Case Example

**Ms. Jones is picked up by police after she is found wandering and mute, wearing sandals and a t-shirt in cold weather. They transport her to a crisis facility.**

**In the crisis facility's electronic health record, there is an indication that Ms. Jones has a psychiatric advance directive. The advance instruction gives information about her history, and medication preferences.**

**She also has a health care power of attorney and her sister is her health care agent. The psychiatrist examines Ms. Jones and finds that she is currently lacking capacity based on her inability to attend to his questions and her statements do not seem to be related to reality.**

**The psychiatrist documents that Ms. Jones is currently incapacitated in her medical record. He then calls her sister, who gives him further information about what Ms. Jones would want in terms of treatment. The sister comes to the crisis facility and signs paperwork allowing Ms. Jones to be admitted voluntarily to the hospital.**

**Ms. Jones is relieved by the presence of her sister, whom she trusts to speak for her, and calmly agrees to the hospitalization.**

How Did the PAD Help?

# What are Psychiatric Advance Directives (PADs)?

- Legal documents that allow persons when of “sound mind” to refuse or give consent to future psychiatric treatment.
  - Advance Instructions.
- May authorize another person to make future decisions about mental health care on behalf of the mentally ill person, if they become incapacitated.
  - Health Care Power of Attorney.



## What are some of the benefits of the PAD in this case?

- Authorizes permission to consult with the family in role of Health Care Agent (HCA).
- Authorizes permission to speak with other providers.
- Provides a history and crisis plan via the advance instructions.
- Authorizes admission by the Health Care Agent.
- Avoids involuntary admission.

# Goals of an Advance Directive

- To ensure patients are treated according to their wishes even when they can not speak for themselves.
- Even when the person is unable to communicate coherently, provides a mechanism for:
  - exchange of clinical information.
  - consent or refusal of treatment.
- Appoints a proxy decision maker (Health Care Agent) when a patient is incapacitated.

# Where did ADs come from? (Legal Origins)

- Medical, end-of-life directives:
  - Supreme Court decision (1990) *Cruzan v. Director, Missouri Department of Health*.
  - Required “clear and convincing evidence” of a patient’s wishes in order to withdraw life-sustaining medical treatment.
  - Defined need for written documentation as evidence of incapacitated patients’ treatment preferences.

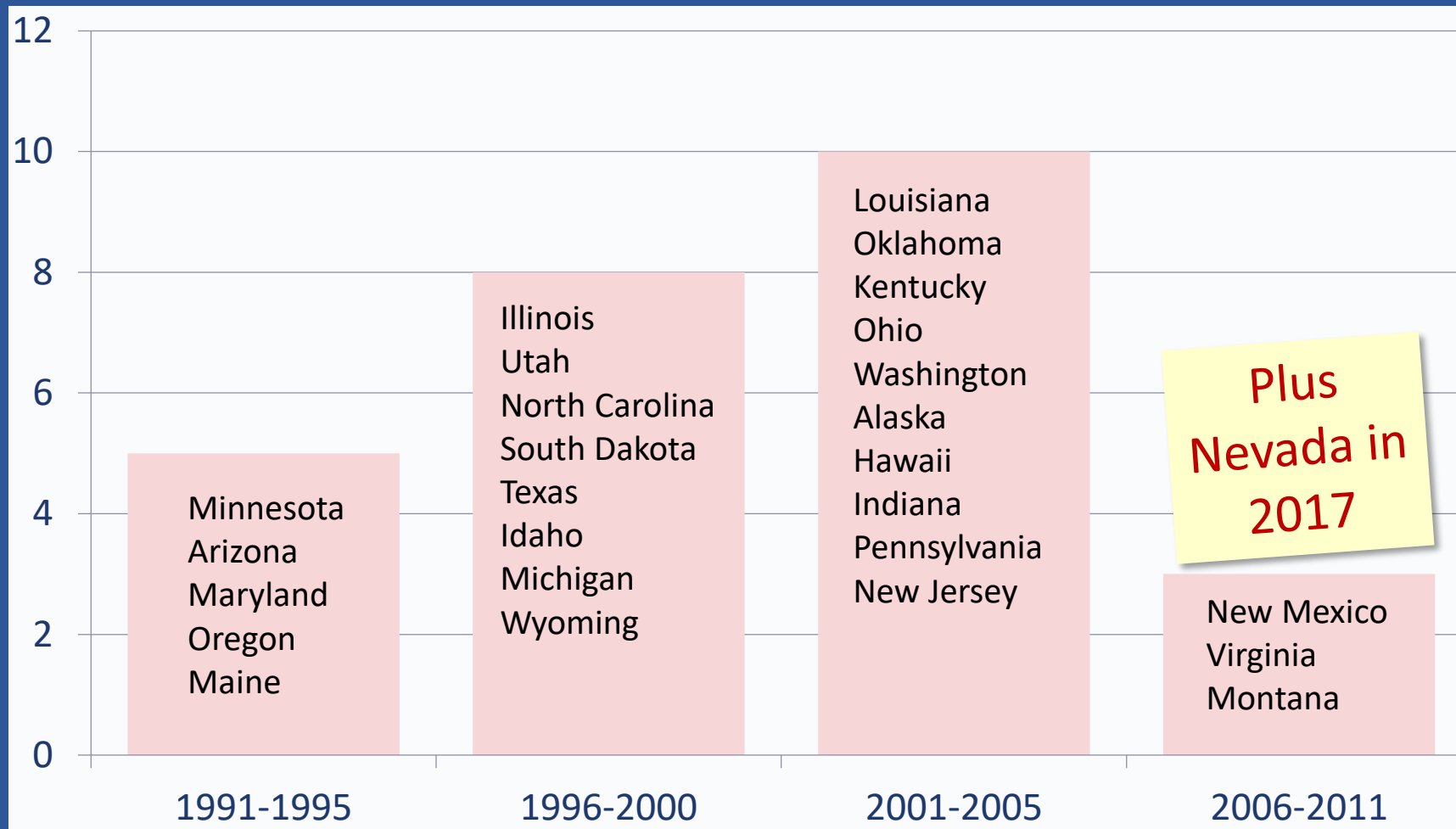
# Where did ADs come from? (Legal Origins)

- Patient Self-Determination Act of 1991:
  - Helped to implement medical advance directives and end-of-life “living wills”.
  - Requires hospitals receiving federal funds to:
    - Ask patients if they had an advance directive on admission.
    - Document advance directives and follow them.
    - Have a written policy for implementing advance directives.

# Spread of PADs

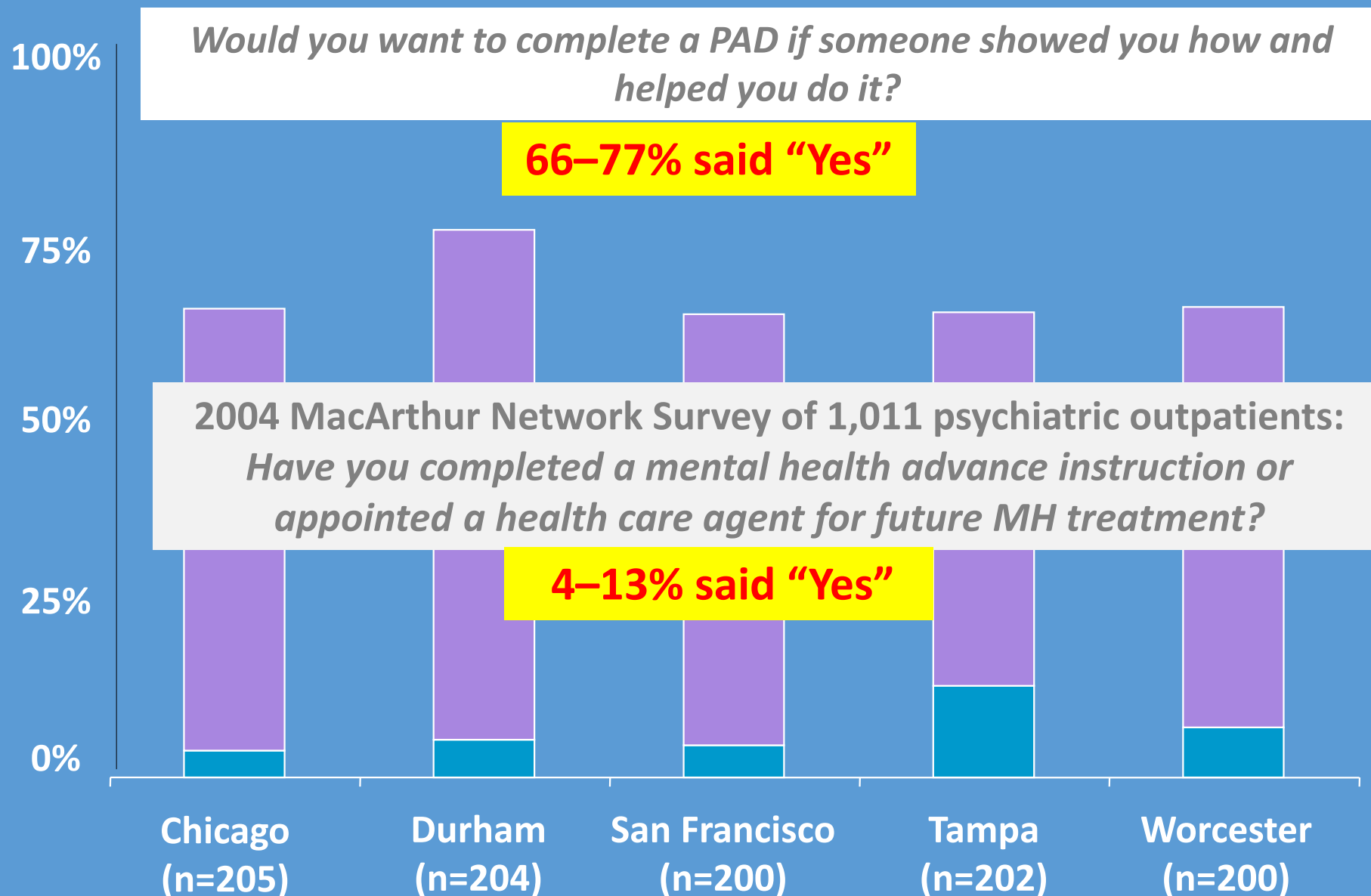
- In 1990s states began to adapt advance directives for mental health purposes in hopes of strengthening patient self-determination and reducing use of involuntary commitment.
- PADs generally differ from end-of-life advance directives in that they are ‘self-binding’.
- Once ‘incapacitated’ the patient can not change his/her mind about treatment preferences.
- In late 1990s NC passed PADs statute, eventually separating provisions into two parts:
  - Advance Instructions for Mental Health Treatment (NC GS §122C-77)
  - Health Care Power of Attorney (NC GS §32A-25.1).

# Increasing Interest in PADs in the US: New PAD Laws in 27 states since 1991



Do Patients want to complete PADs?

# PAD prevalence... and latent demand





# Why are Psychiatric Advance Directives important?

- Allows families/proxies to speak directly with providers during crises.
- Allows families/proxies help make decisions during crises.
- Supports patient autonomy and empowerment in mental health care.
- May reduce involuntary treatment.
- May improve continuity of care.
- Honoring PADs is a Condition of Participation in Medicaid and Medicare for treatment facilities!

# Code of Federal Regulations

## Title 42 - Public Health

### 42 CFR Part 482

Volume: 5

Date: 2017-10-01

Original Date: 2017-10-01

Title: PART 482 - **CONDITIONS OF PARTICIPATION FOR HOSPITALS**

Context: Title 42 - Public Health. CHAPTER IV - CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES (CONTINUED). SUBCHAPTER G – STANDARDS AND CERTIFICATION.

This rule set forth final requirements for Patients' Rights in hospitals, provides strong patient protections, provides flexibility to providers.... **These standards support and protect patients' rights in the hospital setting; specifically, the right to be free from the inappropriate use of restraint and seclusion** with requirements that protect the patient when use of either intervention is necessary.

This standard supports the patient's **right to make decisions regarding his or her care and to formulate advance directives** and have hospital staff and practitioners who provide care in the hospital comply with these directives, in accordance with § 489.102 (Requirements for providers). This standard also supports the **patient's right to have a family member or representative of his or her choice and his or her physician notified promptly** of the patient's admission to the hospital.

Federal Register / Vol. 71, No. 236 / Friday, December 8, 2006 / Rules and Regulations

Bottom line: DHHS Centers for Medicare & Medicaid Services 42 CFR Part 482 Final rule: **REQUIRES HOSPITALS—INCLUDING PSYCHIATRIC FACILITIES—TO IMPLEMENT AND COMPLY WITH ADVANCE DIRECTIVES.**

# Two Parts to Psychiatric Advance Directives

- Advance Instructions:
  - Similar to a living will.
  - Documents wishes, consent or refusal of future care.
- Health Care Power of Attorney:
  - Appoints another person to make decisions during crises.
  - May be designed with limited or broad powers.
- In North Carolina you can have either or both.
- In some states, the process involves only one document.

# Instructional Directives

- Usually permits individual to plan for, consent to, or refuse:
  - Hospital admission.
  - Medications.
  - Electroconvulsive treatment.
  - Other treatments for mental illness.
- Takes effect in the event individual loses ability to make decisions (is “incapable”).

# Making an Instructional Directive

- Any adult “of sound mind” can make.
- Signed in presence of two witnesses:
  - Not a relative.
  - Not person’s doctor, mental health provider or other staff.
  - Not staff of a health care facility in which the client is a patient.
- Must be notarized.
- Present to doctor and other mental health treatment providers.

## What should a doctor or staff do with the Instructional Directive?

- Must make a part of medical record.
- Must act in accordance with instructional directive when patient is determined to be “incapable”.
- May notify all other providers to follow instructional directive.

# What does “incapable” mean?

“...in the opinion of a physician or eligible psychologist the person currently lacks sufficient understanding or capacity to make and communicate mental health treatment decisions.”

# Must clinicians always honor the instructions?

- Clinicians may disregard instructions:
  - If not consistent with “generally accepted community practice standards.”
  - When treatments requests are not feasible or unavailable.
  - When treatment requests would interfere with treating an emergency.
  - Instructions may be over-ridden by involuntary inpatient commitment.
  - Conflicts with other law.



# Health Care Power of Attorney (HCPA)

- Allows a patient to appoint someone to make treatment decisions when patient is “incapable” or “incompetent”.
- Can be combined with instructional directive (but are two different forms in North Carolina).
- Any capable adult may execute.

# Who can serve as the Health Care Power of Attorney?

- Any competent adult 18 or older.
- Individual usually cannot be providing health care to the consumer.
- Person can often name several people to serve if one unavailable.

# When does Health Care Power of Attorney take effect?

- When patient is found to be “incapable” and continues during period of incapacity.
- Usually determined by physician or psychologist.
- Finding that patient is “incapable” must be in writing.

# What powers does the Health Care Power of Attorney have?

- Can make whatever treatment decisions the patient could usually make;
  - Unless the patient limits the authority of the Health Care Power of Attorney.
  - Patient can instruct health care power of attorney on decision about medications, Electroconvulsive Treatment, hospital admission, other.

# Why aren't Psychiatric Advance Directives in the mainstream--yet?

- Many patients, clinicians and families have not been sold on the benefit of PADs yet and there is a lack of focused advocacy for them.
- About half of states have these specific laws.
  - Remaining states allow psychiatric advance directives under medical advance directives.
- Advance directives may be difficult to complete for some patients.
- Help in completing advance directives may not always be available.
- Health systems and providers need guidance in putting PADs into practice.
- Providers need education about PADs and putting assessment of capacity into routine practice.

# Addressing Consumer/Patient Barriers

Use for Voluntary Admission?

# Advance directives and the Greek myth of Ulysses

On his 10-year voyage back to Ithaca from the Trojan War, Ulysses was warned by Circe to take precautions if he wanted to hear the Sirens' transfixing song, or there would be "no sailing home for him, no wife rising to meet him, /no happy children beaming up at their father's face."

Ulysses accordingly ordered his men to stop their ears with beeswax and bind him firmly to the mast and instructed them that if he gestured to be set free, they should stick to the original agreement and bind him tighter still.



"Ulysses Contract"



## Facilitated Psychiatric Advance Directives: A Randomized Trial of an Intervention to Foster Advance Treatment Planning Among Persons with Severe Mental Illness

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H. Ryan Wagner, Ph.D.

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Mimi Kim, Ph.D.

**Objective:** Studies show a high potential demand for psychiatric advance directives but low completion rates. The authors conducted a randomized study of a structured, manualized intervention to facilitate completion of psychiatric advance directives.

**Method:** A total of 469 patients with severe mental illness were randomly assigned to a facilitated psychiatric advance directive session or a control group that received written information about psychiatric advance directives and referral to resources in the public mental health system. Completion of an advance directive, its structure and content, and its short-term effects on working alliance and treatment satisfaction were recorded.

**Results:** Sixty-one percent of participants in the facilitated session completed an advance directive or authorized a proxy decision maker, compared with only 3% of control group participants. Psychiatrists rated the advance directives as highly

consistent with standards of community practice. Most participants used the advance directive to refuse some medications and to express preferences for admission to specific hospitals and not others, although none used an advance directive to refuse all treatment. At 1-month follow-up, participants in the facilitated session had a greater working alliance with their clinicians and were more likely than those in the control group to report receiving the mental health services they believed they needed.

**Conclusions:** The facilitation session is an effective method of helping patients complete psychiatric advance directives and ensuring that the documents contain useful information about patients' treatment preferences. Achieving the promise of psychiatric advance directives may require system-level policies to embed facilitation of these instruments in usual-care settings.

# EXCERPTS FROM A pad (UNFACILITATED)

✓ I do not consent to the administration of the following medications:

- ① Haldol, prolepin - locks my jaw even w/ Cogentin RX + Trazine, mellaril + elavil
- ② Lithium or Tegretal - ↑ liver Fx tests & kidney dysfunction
- ③ Codiene - hallucinations
- ④ Tegam - locks my jaw
- ⑤ Dipakote - acid destroys lining of stomach & intestines, of Celiac Spine weakness
- ⑥ Serroquel - makes me high or manic
- ⑦ prozac - makes me manic
- ⑧ meds suspended in alcohol
- ⑨ see over
- ⑩ episodes are to be managed @ home

Conditions or limitations: All questions

where my special foods are prepared by me or health care aide as no hospital can afford my expensive diet & cost effectiveness of medicine (which does not cover USP standard no generic meds & which I need or I'll react in a psychotic break 5x + 5x) can be spared unnecessary hospital stays, in the event of MI or CVA = Regional ICU where my team of doctors can treat me is hospital of choice - not Duke or Unstead or UNC. My son & my church

Church are to be notified ASAP if I am hospitalized. DO NOT Notify son or his family as they are hostile relatives

\*No meds other than IPR drugs are to be given w/ notification of

Abusive Treatment @ Regional Hospital has occurred in the past by Dr. , where abusive treatment has occurred. psych ward, so I would want a legal Aid Attorney to see me ASAP

X I do not consent to being admitted to a health care facility for mental health treatment.

# Facilitated PAD medication instructions:

A. I agree to administration of the following medication(s):

I agree to Zyprexa because it treats my manic-depression, brings me back to reality, clears blurriness, helps me think clearly.

B. I do not agree to administration of the following medication(s):

I do not want Lithium or Tegretol because it could compromise my kidney functioning and liver function tests were once affected. Depakote



# Facilitation of Psychiatric Advance Directives by Peers and Clinicians on Assertive Community Treatment Teams

Michele M. Easter, Ph.D., Jeffrey W. Swanson, Ph.D., Allison G. Robertson, Ph.D., M.P.H., Lorna L. Moser, Ph.D., Marvin S. Swartz, M.D.

**Objective:** Psychiatric advance directives (PADs) provide a legal mechanism for competent adults to document care preferences and authorize a surrogate to make treatment decisions. In a controlled research setting, an evidence-based intervention, the facilitated psychiatric advance directive (FPAD), was previously shown to overcome most barriers to PAD completion. This study examined implementation of the FPAD intervention in usual care settings as delivered by peer support specialists and nonpeer clinicians on assertive community treatment (ACT) teams.

**Methods:** A total of 145 ACT consumers were randomly assigned, within teams, to FPAD with facilitation by either a peer (N=71) or a clinician (N=74). Completion rates and PAD quality were compared with the previous study's standard and across facilitator type. Logistic regression was used to estimate effects on the likelihood of PAD completion.

**Results:** The completion rate of 50% in the intent-to-treat sample (N=145) was somewhat inferior to the prior standard (61%), but the rate of 58% for the retained sample (those who completed a follow-up interview, N=116) was not significantly different from the standard. Rates for peers and clinicians did not differ significantly from each other for either sample. PAD quality was similar to that achieved in the prior study. Four consumer variables predicted completion: independent living status, problematic substance use, length of time served by the ACT team, and no perceived unmet need for hospitalization in crisis.

**Conclusions:** Peers and clinicians can play a crucial role in increasing the number of consumers with PADs, an important step toward improving implementation of PADs in mental health care.

*Psychiatric Services in Advance* (doi: 10.1176/appi.ps.201600423)

# Summary of key findings across studies

- Large latent demand but low completion of psychiatric advance directives among public mental health consumers in the USA
- Patients face significant barriers to PAD completion
- Structured facilitation (F-PAD) can overcome most barriers to PADs: Most patients who are offered facilitation complete legal PADs
- Completed facilitated PADs tend to contain useful information and are consistent with clinical practice standards

## Summary of key findings (cont.)

- Even though PADs are designed legally to determine treatment during incapacitating crises, they can have an indirect benefit of improving engagement in outpatient treatment process.
- Completed PADs can provide short-term benefits by increasing consumers' autonomy and working alliance with clinicians
- PADs can help prevent crises as well as reduce the use of coercion when crises occur.

## Summary of key findings (cont.)

- Implementing F-PAD in usual care remains a challenge
- Need for system-wide implementation efforts. As yet, PADs remain a promising idea with little implementation in usual care.
- Peer specialist facilitators on ACT teams are a potentially important resource for facilitating PADs

# **NORTH CAROLINA DEPARTMENT OF THE SECRETARY OF STATE ADVANCE HEALTH CARE DIRECTIVE REGISTRY**

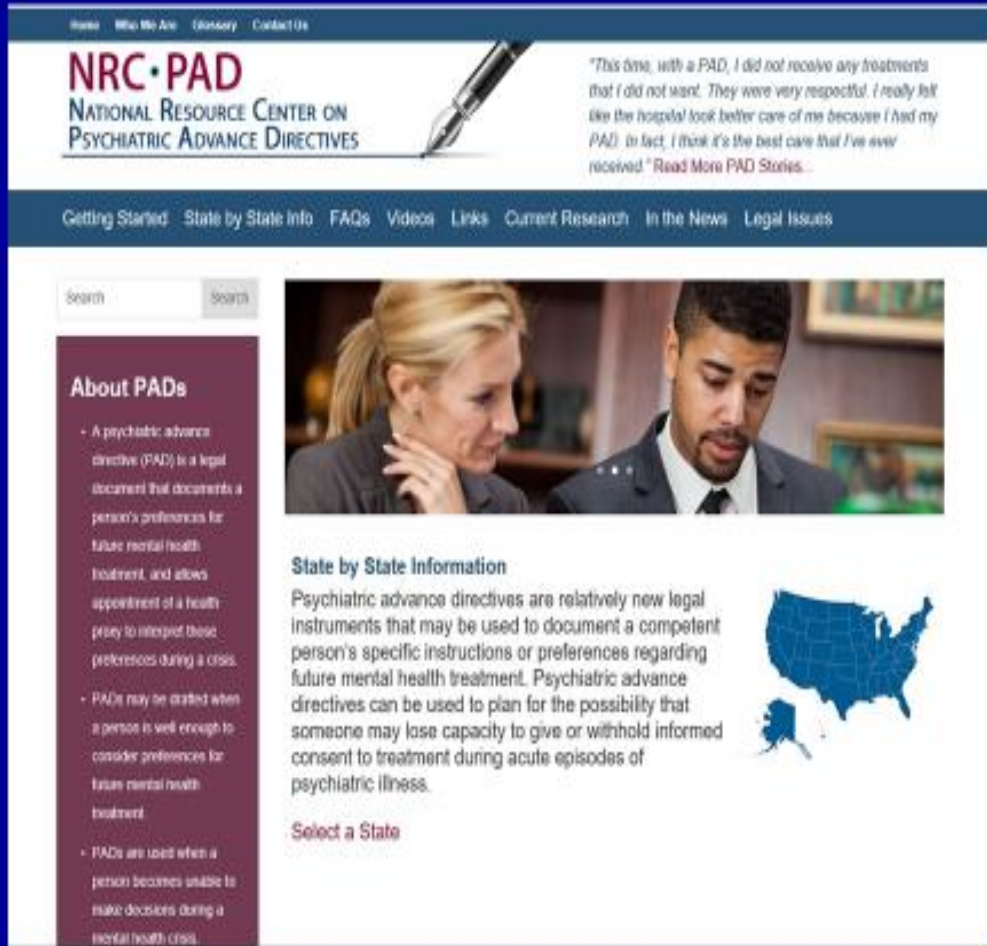


**Welcome to the North Carolina Advance Health  
Care Directive Registry! We are pleased to offer  
this service of registering your Advance Health  
Care Directives online for easy accessibility**

**Internet: [WWW.SOSNC.COM](http://WWW.SOSNC.COM)**



# Other Resources on PADs



The screenshot shows the homepage of the National Resource Center on Psychiatric Advance Directives (NRC-PAD). The header includes navigation links: Home, Who We Are, Advisory, and Contact Us. The main banner features the NRC-PAD logo, a pen icon, and a quote: "This time, with a PAD, I did not receive any treatments that I did not want. They were very respectful. I really felt like the hospital took better care of me because I had my PAD. In fact, I think it's the best care that I've ever received." Below the banner is a navigation bar with links: Getting Started, State by State Info, FAQs, Videos, Links, Current Research, In the News, and Legal Issues. The main content area has a search bar and a sidebar titled "About PADs" with bullet points: "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 these preferences during a crisis.", "PADs may be created when a person is well enough to consider preferences for future mental health treatment.", and "PADs are used when a person becomes unable to make decisions during a mental health crisis." The main content area also features a photo of a man and a woman, a section titled "State by State Information" with a map of the United States, and a "Select a State" button.

**NRC-PAD**  
NATIONAL RESOURCE CENTER ON  
PSYCHIATRIC ADVANCE DIRECTIVES

"This time, with a PAD, I did not receive any treatments that I did not want. They were very respectful. I really felt like the hospital took better care of me because I had my PAD. In fact, I think it's the best care that I've ever received." Read More PAD Stories...

Getting Started | State by State Info | FAQs | Videos | Links | Current Research | In the News | Legal Issues

Search

**About PADs**

- 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 these preferences during a crisis.
- PADs may be created 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.

**State by State Information**

Psychiatric advance directives are relatively new legal instruments that may be used to document a competent person's specific instructions or preferences regarding future mental health treatment. Psychiatric advance directives can be used to plan for the possibility that someone may lose capacity to give or withhold informed consent to treatment during acute episodes of psychiatric illness.

Select a State

<https://www.nrc-pad.org/>

<https://naminc.org/our-work-support/psychiatric-advance-directives/>

<http://www.crisisnavigationproject.org/>

<http://www.bazelon.org/our-work/mental-health-systems/advance-directives/>

<https://www.mentalhealthamerica.net/psychiatric-advance-directive>



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## Learn

What is a PAD? >

How do I use this app? >

What should I know about PADs? >

# The app is easy to use!



Download on the  
App Store



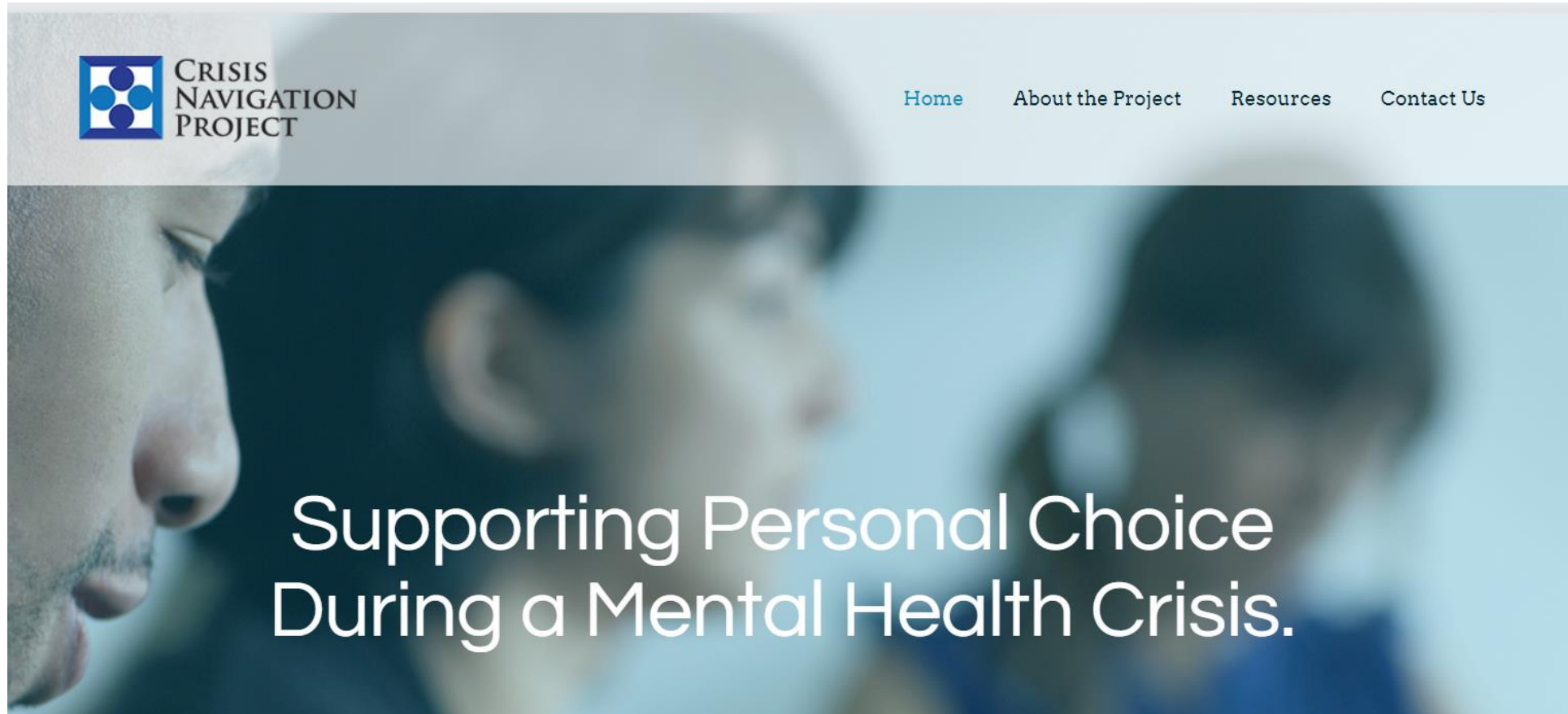
GET IT ON  
Google Play



Guide your care with choices YOU make.



# Crisis Navigation Project in North Carolina



THANKS!

Questions?

Contact: [marvin.swartz@duke.edu](mailto:marvin.swartz@duke.edu)