Advance Care Planning (ACP) in New Zealand: does the law matter?

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Advance Care Planning

• a process designed to support competent individuals who wish, in conjunction with health care professionals and often with family/whānau/significant others, to make plans for their future health care
Key features of ACP

- **process** not an event or document or plan per se
- based in **relationships**
- involves **shared planning** and **shared decision-making**
- intended to **guide future** health care provision and decisions
- based on **accurate information**
- **patient centred**: incorporates and respects the patient’s beliefs and values
- ideally results in an agreed **plan** which is documented and appropriately accessible
The law and ACP: decision-making

• Competent patient
  - contemporaneous (current) decisions
  - advance decisions

• Incompetent patient
  - by legally authorised “proxy” decision makers (EPOA) under PPPR Act
  - by providers (doctors) under Right 7(4) of Code of Rights
ACP and legal frameworks for decision-making on behalf of incompetent individuals

• ACP → advance decisions/plans

• Advance decisions/plans
  (1) care and treatment preferences
  (2) decision-maker preferences
ACP and advance directives

• “Advance directive” means a written or oral directive - (a) by which a consumer makes a choice about a possible future health care procedure; and (b) that is intended to be effective only when he or she is not competent”

• “Choice” means a decision – (a) to receive services; (b) to refuse services; (c) to withdraw consent to services:”
ACP advance decisions/plans = advance directives
Advance decisions/directives

- Have legal status – dependent on validity
- Binding if valid “negative” advance directive i.e. refusing treatment
- Recognised value but not necessarily binding if “positive” advance directive
Impact of the law on ACP and ACP on the law

• Advance decisions/plans (advance directives) more likely to be valid (and also able to be scrutinised for validity)
ACP and legal frameworks for decision-making on behalf of incompetent individuals

- ACP → advance decisions/plans
- Advance decisions/plans
  1. care and treatment preferences
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ACP and legal frameworks for decision-making

Advance decisions/plans
(1) care and treatment preferences
(2) decision-maker preferences
Right 7(4) approach to clinician decision-making on behalf of incompetent individuals

**Required hierarchy of priorities:**
- best interests
- patient's wishes/preferences – including prior expressions (advance directive)
- views of others
Legally authorised proxy decision-makers

- enduring powers of attorney (EPOA)
- powers in relation to personal care and welfare
- only once donor mentally incapable
- limited
- attorney may “have regard to any advance directive”
Another impact of the law on ACP and ACP on the law

- Better selection and preparation of proxy decision-makers (EPOA) and family / whānau and significant others for their roles in decision-making
Yet another impact of ACP

- Reducing need for decisions on behalf of incompetent patients and improving the quality of the decisions when do need to be made

- Facilitate hearing the patient’s “voice”
Summary:
ACP and NZ law

• NZ law is permissive/supportive of ACP

• It recognises legal status of advance decisions/directives
ACP and NZ law

• Establishes framework for decision-making on behalf of incompetent individuals which (mostly) requires consideration of advance decisions and accommodates patient’s preferences for future decision-makers
Conclusion: the law does matter
Questions?