

Assisted Decision-Making Quick Reference Guide	Enduring Powers of Attorney	Advanced HealthCare Directives (AHD)
<u>Supporting Decision-Making</u> • Objective: Maximise relevant person's (RP) capacity to uphold their rights and safeguard their autonomy Actions may include: • Understanding the RP's decision support needs • Ensuring access to appropriate, relevant information • Considering environmental factors • Providing ongoing support where appropriate Considerations may include: • The complexity of the decision to be made • When the decision must be made <i>Scope to build longer-term decision-making capacity?</i> <u>Capacity:</u> • Understand info and facts relevant to the decision • Retain that info long enough to make a voluntary choice • Use / weigh up that info in their decision-making • Communicate the decision by any means <u>Preparing to assess capacity</u> • You understand the scope and context • RP understands reason for assessment • RP gives informed consent • You use available information to prepare appropriate lines of enquiry <u>Assessing Capacity</u> • A functional approach (time and issue specific) • Begin with a presumption of capacity <u>When?</u> • If doubt re capacity after appropriate support • There is no decision support arrangement in place or the decision is outside the scope of an arrangement • Making/varying/revoking a CDMA • Making/rescinding/notifying an EPA	• Legal instrument in a particular format, executed in a prescribed manner • Decisions re personal welfare (healthcare but not treatment), property, money • Make and register at any time, with capacity. Activate when capacity lost • May be varied / revoked while donor has capacity. May be rescinded if they regain capacity • May have more than one attorney but specify how decisions are to be made • The DSS will have a new role monitoring and supervising attorneys and will maintain a register of EPAs which doctors can search. • Attorneys have reporting obligations. • An attorney cannot consent to or refuse treatment on behalf of the donor. An AHD is needed to plan treatment decisions. • Must notify the DSS. Approved? DSS issue certified copy and register it • RMP may be asked to assess RP's capacity <u>9 guiding principles</u> 1. Presume capacity 2. Support the relevant person 3. Unwise decision does not equal lack of capacity 4. Only intervene when necessary 5. Minimise intervention and respect the person's rights 6. Give effect to the person's will and preferences 7. Consider the views of others 8. Consider likelihood of recovery and urgency 9. Obtaining, using, storing, sharing information www.decisionsupport.ie www.medisec.ie / info@medisec.ie / 01 661 0504 	Person sets out their wishes re medical and healthcare treatment in case they are unable to make these decisions in the future. Can appoint someone they know and trust as their designated healthcare representative (DHR) to act on their behalf within the scope of the AHD. A DHR can agree to, or refuse treatment on the donor's behalf, based on the AHD. An AHD must be written and signed by the donor, two witnesses, and by the DHR, if there is one. People do not have to tell the DSS when they have made an AHD, but it is recommended. If the format prescribed by the DSS is used, the DSS will review it to make sure it meets the legal requirements. AHDs can be varied or revoked so long as the donor has capacity. <i>Refusing treatment</i> A person aged 18 with capacity is allowed to refuse treatment even if that refusal is unwise, not based on sound medical principles and may lead to death. Refusal of treatment in an AHD is binding if: • The donor lacks capacity • The treatment to be refused is clearly identified • The circumstances where the refusal is intended to apply are clearly identified and applicable 'Basic care' includes warmth, shelter, oral nutrition and hydration and hygiene measures and cannot be refused under an AHD. <i>Requesting treatment</i> Requests for treatment under AHDs are not legally binding but shall be considered. If a request is not followed, a healthcare professional has 7 days to explain to the DHR. <i>Safeguards</i> No civil or criminal liability will attach to a doctor who: • complied or purportedly complied with what they reasonably believed was a valid and applicable AHD • Did not comply with a refusal of treatment if they reasonably believed an AHD was not valid / applicable or had no grounds to believe the AHD existed • Did not comply with a refusal of treatment in an AHD if they had grounds to believe an AHD existed but had no access to it and could not reasonably delay taking appropriate medical action

Assisted Decision Making: Keep in mind a 3:2:1 structure 3 tiers of decision-making support arrangements for people who lack capacity / 2 arrangements for people planning ahead / 1 other key change: abolition of Wardship		
Assisted Decision-Making Agreement (ADMA)	Co-Decision-Making Agreement (CDMA)	Decision-Making Representative (DMR)
RP can make their own decision	RP cannot make certain decisions on their own	RP lacks capacity with support. Court may appoint a DMR
Formal written, signed, witnessed agreement appointing a Decision-Making Assistant	Formal written, signed, witnessed agreement appointing a Co-Decision-Maker	Done by Court order. If possible, DMR is known to and trusted by the RP. If not, Court may appoint from DSS panel of experts. (Panel experts will be paid, potentially from estate.) To the Circuit Court, mostly. High Court: organ donation / withdrawal of life sustaining treatment.
Decision-Making Assistant helps RP with decisions within scope of the agreement. Can access relevant information and records. May involve contacting a bank, utility or healthcare provider. May attend meetings / appointments. Helps the RP understand and weigh up their options, and to communicate their decision.	Co-Decision-Maker helps the RP to gather and understand information, weigh up options and to make and communicate decision. Co-Decision-Maker must be over 18, and provide 2 character references. Co-Decision-Maker has reporting obligations.	DMR has reporting obligations. DMR may access confidential information to make decisions but may only access information needed for that purpose and may only use it for that person. E.g could include medications, treatments, social supports / health / social care services used by the RP
Assistant has legal status to help with decisions within the scope of the ADMA	Co-Decision-Maker must be involved in decisions within the scope of the agreement	A DMR Order is a substitute decision-making arrangement. The DMR is responsible for decisions under the Order.
Personal welfare (including healthcare), property, money matters	Personal welfare (including healthcare), property, money matters	Personal welfare (healthcare), property, money matters
Can have more than one ADMA	Can have more than one CDMA	
Can have more than one assistant per ADMA	Only one Co-Decision Maker per agreement	The Court may appoint more than one DMR and will decide if they make decisions together or separately.
Must be notified to the DSS	Must be notified to the DSS	Must be notified (and copied) to the DSS by the Court
DSS can approve/decline	DSS can approve/decline	
Approved? DSS issue certified copy	Approved? DSS issue certified copy and register it	
Declined? RP can provide more info / seek review	Declined? RP can provide more info / seek review	
Certain notice parties must be told and given copies e.g. spouse, adult children	Certain notice parties must be told and given copies e.g. spouse, adult children, other decision supporters	Certain notice parties must be told and given copies of the Court application e.g. spouse, adult children, other decision supporters
No scope for objections	Scope for objections (leads to review process)	
Maximum duration: 3 years. Can be replaced.	Lasts as long as the RP needs it.	RP's capacity must be reviewed by the Court within 3 years of the making of a DMR Order
No register maintained by the DSS	Register maintained by the DSS	Register maintained by the DSS
DSS has no role in monitoring	DSS reviews after 1 year, and then at least every 3 years	Court monitors arrangements. DSS monitors DMR decisions.
GPs can ask to see a certified copy	GPs can search the register for good reason	GPs can search the register for good reason
Can be varied at any time – assistant must agree	Can be varied after six months, and thereafter once a year with agreement of RP and Co-Decision Maker.	Only the Court can vary a DMR
Can be revoked at any time	Can be revoked at any time by RP or the Co-Decision Maker. Cancellation must be written, signed and witnessed. Cancellation leads to removal from the register.	DMR may be ended: • On application by the RP/ their representative / another person with a genuine interest • if the RP regains capacity • if the DMR is unwilling / unable to continue • if the stated period of the Order has expired
RMP may witness (cannot be related to RP or party to the agreement)	RMP may be asked to assess RP's ability to make decisions with the support of the Co-Decision-Maker	RMP may be asked to assess RP's capacity using Court approved template report

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