

Indiana Q and A

Ten commonly asked questions about PAD's for Indiana

Please note: the following 10 FAQs are designed to provide a quick and accessible guide to what your state's Statutes say – or do not say – about PADs. The FAQs do not attempt to provide a complete picture of the law in your state, nor can they take the place of legal advice. The answers were accurate when written in October 2006.

1. Can I write a legally-binding psychiatric advance directive (PAD)?

Yes. Title 16, Article 36 of the Indiana Code allows you to use a PAD to document preferences about, and consent to: (1) admission to hospital, (2) the use of restraint, (3) seclusion, (4) electroconvulsive therapy (ECT) and/or (5) mental health counseling. In order to do this, you must also appoint a health care agent if you have not done so before. This person known in Indiana as a "health care representative". There is no standard form, although your documentation must meet the formal requirements described under question 3 below. Note that the sections of the Code dealing with PADs do not apply to a person who is committed under Indiana's involuntary treatment laws.

2. Can I write advance instructions regarding psychiatric medications and/or hospitalization?

Yes, as described above. Note, however, that you may not use your document to refuse treatment or hospitalization, only to provide advance consent or to indicate preferences. Although your mental health care provider is legally bound to follow your PAD, the statute also states that your attending physician is "not precluded from treating a patient in a manner that is of the best interest of the patient or another individual".

3. Does anyone have to approve my advance instructions at the time I make them?

Yes. Your treating psychiatrist must sign your instructions, indicating that your treatment choices are "appropriate" and that you were competent at the time the instructions were created. Additionally, your instructions must include (1) your name; (2) the name of your treatment program; (3) the name, address and telephone number of your mental health care provider; (4) your signature; (5) the date; and (6) the name, address and telephone number of your health care agent.

4. Can I appoint an agent to make mental health decisions for me if I become incompetent?

Yes, in fact you must, if you wish to create a PAD, because in Indiana it is not possible to write advance instructions without also appointing a health care representative. The appointment of a health care representative must be in writing, must be signed by you and the representative, and must be witnessed by an adult other than the representative. You may specify the purpose for appointing the representative, e.g. for carrying your PAD into effect. Even if you do not make that indication, the statute states that your representative may not act "contrary to your instructions", which would include instructions set out in your PAD.

5. If I become incompetent, can my agent make decisions for me about medications, and/or hospitalization?

Yes, although he/she may not make decisions contrary to your documented instructions, if you have made them, nor may he/she refuse treatment on your behalf.

6. Does my agent have to make decisions as he/she thinks I would make them (known as "substituted judgment"), or does he/she have to make them in my "best interests"?

Your representative must "act in the best interest of the appointer consistent with the purpose expressed in the appointment". This means that if you wish your agent to exercise substituted judgment, you should indicate that in the document appointing him or her. Otherwise, your representative must act in your best interests.

7. Is there any rule that says that I can only make advanced instructions, only appoint an agent, or that I must do both?

Yes. As explained above, you may appoint an agent without writing instruction;, both appoint an agent and write instructions; but not write instructions without appointing an agent.

8. Before following my PAD, would my mental health care providers need a court to determine I am not competent to

make a certain decision?

No. All that is required is that your attending physician considers that you are incapable of making a decision regarding proposed health care, including mental health care.

9. Does the statute say anything about when my mental health providers may decline to follow my PAD?

Yes. The statute states that your PAD may not be followed if your attending physician considers that different treatment is required in your best interests. Again, your instructions will also not apply if you are subject to Indiana's involuntary treatment laws.

10. How long does my PAD remain valid?

The statute does not state how long your instructions and agent appointment remain valid. It can therefore be assumed that they remain valid until revoked. The statute does not say what is required to revoke your instructions; in order to revoke your agent's appointment, however, you must remain competent to consent to health care. It is likely that the same would apply to any instructions you have written.