

North Carolina Q and A

Ten commonly asked questions about PAD's for North Carolina

Note: the following 10 FAQs are designed to provide a quick and accessible guide to what your state Statutes say – or do not say – about PADs. The FAQs do not attempt to provide a complete overview of the law in your state, nor can they take the place of legal advice.

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

Yes. The North Carolina General Statutes, Chapter 122C-71 – 79 , provides for PADs and gives a form for filling one out.

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

Yes. You can specify choices about both medications and hospitalization, including your refusal of consent to either. You may also give further background information about how you have reacted to past treatment.

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

No. However, your PAD requires the signatures of two witnesses who attest that you are competent to make the PAD at that time, and the certification of a Notary.

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

Yes. To do this, you must use the State's Health Care Powers of Attorney statute (Chapter 32A-15 – 27) , which is separate from the PAD but specifically allows the agent to make mental health decisions as well as general health decisions.

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

Yes. If you become legally incompetent to make a particular decision about medication or hospitalization, your agent can make that decisions for you, which might include a decision not to accept the treatment being offered.

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 agent must exercise substituted judgment.

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

No. You may have one or the other, or both.

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. In North Carolina, your agent's power to make decisions and/or your advanced instructions go into effect when your healthcare professionals decide you are incapable of making or communicating decisions yourself: Chapter 32A-20 and Chapter 122C-74.

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

Yes. A healthcare provider may decline to follow your PAD if he/she thinks your instructions are inconsistent with general standards; if your instructions call for treatment which is not available; if your treatment is not legal; if you are subject to compulsory treatment under state law; or if it is a life-threatening situation and your instructions are not consistent with "appropriate treatment". For the relevant provision, see Chapter 122C-74.

10. How long does my PAD remain valid?

The “Declaration for Mental Health Treatment” is valid until you revoke it. The North Carolina Statutes say that you may revoke your PAD or appointment of an agent any time, as long as you remain capable of making and communicating health care decisions at that time.