



AUSTRALIAN MEDICAL ASSOCIATION
(SOUTH AUSTRALIA) INC.

ABN 91 028 693 268

30 January 2013

Hon Jack Snelling MP
Minister for Health
GPO Box 255
ADELAIDE SA 5001

sam.runnel@sa.gov.au

Dear Minister

Advance Care Directives Bill 2012

I write in relation to the *Advance Care Directives Bill 2012*, which was passed in the House of Assembly in November 2012 and is to be debated in the Legislative Council this year. We offer the following comments on the Bill for your consideration as the Bill is debated in the Legislative Council.

These comments are further to our feedback in our letter dated 16 November 2012, and the briefings and meetings attended by the AMA(SA) subsequent to the Bill's passage through the House of Assembly. They are also subsequent to the advice received from the Minister's office on 18 January, 2013, that amendments that had been discussed had been approved and would be tabled in Parliament.

The AMA(SA) considers that the *Advance Care Directives Bill* offers significant key benefits, including:

- It supports patient autonomy by making it easier to complete and apply ACDs. In particular, the Bill aims to protect individuals who have specified a refusal of treatment, and aims to protect health practitioners who comply with these wishes.
- It creates a single form of ACD to replace the current confusion that exists between the application of Enduring Power of Guardianship (*Guardianship and Administration Act 1993*), Medical Power of Attorney and Anticipatory Directions (*Consent to Medical Treatment and Palliative Care Act 1995*).
- It resolves issues regarding s 17(2) of the *Consent to Medical Treatment and Palliative Care Act* which has been interpreted to provide for medical practitioners to be legally compelled to provide treatment to patients in the terminal phase of an illness even if they believe it to be of no benefit to the patient.

Euthanasia and End of Life Care

The AMA(SA) notes that it is specified that this Bill does not provide for euthanasia. The Association does not consider that this Bill advances or legalizes euthanasia, nor would the Association support the introduction of amendments to the Bill which would advance or legalise euthanasia. The AMA does not support euthanasia. More information on the federal AMA's position on euthanasia can be found in the federal AMA position statement on *The Role of the*

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your AMA

your voice

your profession

Medical Practitioner in End of Life Care – 2007 (available at <https://ama.com.au/position-statement/role-medical-practitioner-end-life-care-2007>).

AMA(SA) feedback on the Advance Care Directives Bill

As mentioned above, subsequent to the introduction of this Bill in the House of Assembly, the AMA(SA) provided feedback on the Bill to the Minister for Health and Department of Health and Opposition. In our feedback we indicated our general support of the Bill but raised a number of issues for clarification or amendment. These were, in summary:

- We emphasized that health practitioners acting in good faith and consistent with good medical practice in urgent situations in which there is uncertainty should be protected, for example, if resuscitating a patient in an urgent situation in which there is doubt.
- We requested the removal of a section of the Bill requiring a health practitioner who refuses to comply with an ACD on conscientious grounds to find/refer to a practitioner who would comply.
- We raised a potential issue regarding a possible increase in deaths requiring notification to the Coroner, with particular reference to palliative care situations.
- We emphasized the importance of support for implementation if this Bill becomes law.

We also raised some other questions, for consideration, for example, the treatment of iatrogenic conditions. The Government and Minister subsequently provided a number of clarifications to the AMA(SA) and we understand the Government to be introducing some key amendments to the Bill in response to the concerns we raised. In summary we understand that these amendments will:

- Mean that medical practitioners who are acting in urgent situations in which there is uncertainty will be protected, for example, if they resuscitate a patient. This is an extremely important provision.
- Protect health practitioners who believe in good faith that they are acting in accordance with an advance care directive but may have misinterpreted a provision.
- Mean that medical practitioners are not required to find another practitioner to comply with a directive to which they themselves have a conscientious objection, bringing the Bill into line with current professional standards.
- Allow for the correction of iatrogenic complications.

The AMA(SA) welcomes these amendments, which address the key issues we have raised regarding the Bill. With these important amendments, the AMA(SA) supports the Bill.

We believe that the Bill now reflects a reasonable balance between the need for respect for patient autonomy, and the need for medical practitioners to be protected when practising good medical care in good faith; both in resuscitating patients in urgent situations if there is uncertainty, but also in protecting medical practitioners if they do not provide treatment which they believe is futile.

We understand and appreciate parliamentary members' interest in achieving the right balance in this Bill, but urge great caution in considering possible additional amendments, due to the potential for unintended consequences to result.

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We would be happy to respond to any questions you may have regarding the AMA(SA)'s views in this matter, and would ask to be included in any further consultations regarding the Bill. We believe that the Bill significantly improves the framework for medical and health care decision-making in SA, rectifying some of the problems with existing legislation.

Additional information about the AMA's position on advance care directives and advance care planning, including references, and some further comments regarding the Bill, is included in an information paper at the close of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Hooper', with a stylized flourish at the end.

Joe Hooper
LLB(Hons), BSc(Nursing), Dip Applied Science
Chief Executive Officer

Enc. AMA(SA): Further Comments, Including Implementation Aspects
The Role of the Medical Practitioner in Advance Care Planning - 2006

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AMA(SA): FURTHER COMMENTS, INCLUDING IMPLEMENTATION ASPECTS

AMA Position on Advance Care Directives and Advance Care Planning

The AMA(SA) supports advance care planning, including the development and implementation of advance care directives (ACDs), as important to patient self-determination. ACDs benefit patients by providing them with a means of informing health care decisions, including the withholding and/or withdrawing of life-sustaining measures, in the event of losing decision-making capacity in the future. ACDs also benefit surrogate decision-makers (SDMs), medical practitioners, and other health care providers by alleviating the stress and anxiety they may face in trying to make treatment decisions that reflect the person's wishes.

More information on the AMA's position on advance care planning and advance care directives can be found in the federal AMA position statement *The Role of the Medical Practitioner in Advance Care Planning - 2006* (available at: <https://ama.com.au/position-statement/role-medical-practitioner-advance-care-planning-2006>). The AMA has also provided submissions to the Advance Directives Review (2007) and *National Framework for Advance Care Directives* (2011).

Reasonable Enquiries

We note that medical practitioners are required to make 'reasonable enquiries' regarding the existence of an advance care directive, and emphasise the importance that a reasonable approach to this is taken, particularly in the absence currently of an overarching system for storing advance care directives and making them easily accessible, and considering the practical difficulties that may occur in an emergency situation.

Health Practitioners/Medical Practitioners

We also note that the Bill refers to 'health practitioners' rather than 'medical practitioners'. We understand this to be because the Bill intends to cover a broad range of areas, including lifestyle areas, and is not merely restricted to medical decisions. We would emphasise, however, the importance of medical practitioners maintaining a leadership role in health care delivery and the interpretation and implementation of decisions of a medical nature, particularly with regard to critical decision-making.

Implementation

Support for implementation would be crucial to the introduction of this new legislation, to ensure that its positive objectives are fulfilled. The AMA(SA) calls for comprehensive, appropriately resourced and practically-focussed implementation support for this new legislation, if enacted. We propose further that the AMA(SA) should be a central participant in implementation strategy and delivery.

Necessary support would include:

- Adequate resources for the education of consumers and health practitioners
- Good design of the formal ACD document

Patients may complete ACDs many years prior to their application, without specific medical advice about what to write that will be medically useful in an emergency (i.e. "aspirational" wishes such as "I do not want to suffer"), so there must be support for ACDs by the implementation of initiatives which can convert previous vague documented wishes into clinically relevant instructions for medical practitioners acting in emergencies. These might be the implementation of Clinical Care Plans such as those developed by the SA Health End of Life Working Group, or a supported Advance Care Planning system, similar to the Respecting Patient Choices program.

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Concern has been expressed about people creating advance care directives including medical instructions without medical advice. However, circumstances, including medical treatment options, may change, and an individual cannot predict and account for every relevant future health care scenario.

The AMA commends the approach proposed, in line with the National Framework for Advance Care Directives, of promoting ACDs that record values, life goals and preferred outcomes of care rather than listing medical interventions consented to or refused. The AMA strongly agrees that outcomes-based ACDs have the potential to reduce problems associated with healthy adults writing medical directions for an unknown future, unanticipated new treatments, and medical directions being too specific, too non-specific or ill-informed.

If such outcomes-based ACDs are to be effective, however, they may require translation into a Clinical Care or Treatment plan prepared and documented by a medical practitioner and retrievable when required. A Clinical Care Plan written by medical practitioners should be consistent with the person's ACD - patients, family members, and/or SDMs could be included in developing the plans. In effect, the plan is the practical implementation instrument of the ACD.

It is useful to treat ACDs as different and separate from Clinical Care Plans written by medical practitioners. Such plans may provide instructions regarding resuscitation, clinical care, and hospital transfers that are consistent with the ACD. The development of such plans can benefit patients by providing greater certainty in the clinical setting for those with ACDs (as well as those without ACDs) and by supporting junior and less experienced staff in hospitals, as well as locums and nurses in aged care facilities, when there are urgent medical emergencies such as cardiac arrest. The AMA has proposed that, in addition to the national framework established for ACDs, that a standard framework for Clinical Care and Plans to assist in the implementation of ACDs (and resuscitation decisions where an ACD does not exist) also be developed.

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