

***Advance Directives in Mental Health: Theory, Practice and Ethics* by Jacqueline M. Atkinson**

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Jacqueline Atkinson, the Professor of Mental Health Policy at the University of Glasgow, has put together a compendious volume on advance directives in mental health. This relatively slim volume can be highly commended as a relatively up to date authoritative text, and I am sure that it should be on the bookshelves of every department that has an interest in mental health law and not just within the UK. The book provides good coverage of relevant law in the USA (as shown by Table 5.1, which records in summary form the legal provisions relating to all 50 states), as well as some discussion of other jurisdictions, such as Australia, Canada and New Zealand. And, of course, this is not a book solely for lawyers since it contains information and arguments that will be of interest and concern to many others, from clinicians to ethicists to users of mental health services.

The book is divided into three main sections. The first is concerned to set the scene and outline the context, describing how the idea of advance directives emerged in general and in mental health in particular. This includes a look at mental health legislation in various countries, and the connection between it and advance directives. The second section turns to consider a number of important underpinning philosophical themes relevant to advance directives. We find a discussion of the central notion of autonomy, which many might see as the main point of advance directives, as well as consideration of the related issues of personhood, rationality and responsibility. The final section turns to practical matters: research, how to implement advance directives, clinical experience of them, attitudes and other approaches to advance care planning. Each of the fifteen chapters covers its territory in a laudably clear and concise manner.

This is a timely book, certainly in England and Wales where the *Mental Capacity Act 2005* (MCA)¹ recently came into effect, and where the amendments made to the *Mental Health Act 1983* by the *Mental Health Act 2007* will be in force in a few months time. Sadly, the book was obviously written a little too early to capture the details of either the MCA or the 2007 amendments², although it helpfully makes reference to the *Adults with Incapacity (Scotland) Act 2000*. That the book is not as current as we might like should not, however, detract from the usefulness of its discussions. Even if it does not capture the details of the latest legislation, Atkinson is up to the mark when it comes to the issues and arguments. It is almost impossible to come up with an issue in connection with advance directives in mental health that is not touched upon. In short, there is much to commend.

If I had a criticism it would be more to do with style. Atkinson writes very clearly, but it is perhaps an unavoidable effect of the way in which she captures the literature that some sections become a little too much like reading a whole lot of journal papers all at once. If concentration slips for a second, it is quite hard to recall the wood from the trees. Chapter 12, for instance, scarcely has a paragraph that does not contain numerous percentages as the results of one study after another are reported in some detail. By the end of the chapter I was really quite bemused and unsure whether the percentages were good or bad. Still, to pull off the right balance, with enough detail and a clear overview, would be a tall order.

1 In particular sections 24-26 which deal with advance decisions to refuse treatment.

2 In particular section 58A(5) which accords recognition to a valid and applicable advance decision in relation to electro-convulsive therapy (other than in an emergency).

Rather than criticize, however, I shall focus the rest of my comments on three issues and offer some opinions in the hope of enlarging the debates that Atkinson has already captured so well.

First, the whole issue of autonomy needs to be considered further. Atkinson correctly reflects the spirit of the age in placing autonomy as the guiding principle of medical ethics. Advance directives seem indeed to be mainly about trying to respect autonomy. None the less, as Atkinson recognizes,

'Even within a society which values autonomy, choices and actions are both constrained and caused by external factors. If we add to this the external forces that shape physical, psychological and moral development then it would seem that no one is truly autonomous' (p. 83).

But perhaps this line of thought needs to be pushed further. For instance, a closer examination shows not that we lack autonomy, but that the other side of the same coin is dependency.

I can make autonomous choices about where to go for this year's holiday. Now, there is an obvious sense in which my choices are externally constrained by just the sort of factors Atkinson alludes to: I can neither go to the moon, nor to stay on the luxury yacht of Mohamed Al Fayed. Even setting aside, however, the external constraints implied by these extraordinary possibilities, the autonomous choices that I *can* make are also dependent ones. My autonomy is exercised through my dependency. I can choose between Tunisia or Croatia because I can rely upon – and I have to rely upon – the many people and organizations who have set up holidays in these areas. Without them I have little chance of going to Croatia this summer; I might as well hope for a call from Mr Al Fayed. The point is that it is not *either* autonomy *or* dependency. It is inextricably both.

The nuanced position is not that my dependency is an external constraint; it actually contributes to my autonomy. It is the means by which I have the level of autonomy that I do. In which case, given that we have agreed that autonomy is central to advance directives, it follows that central to our consideration of advance directives should be the notion of dependency. Now this might seem counter-intuitive, because our normal way of thinking is to suggest that advance directives are there to guard against just the sort of dependency that comes with ill health. The point is, however, that our autonomous choices – if they are to be truly realistic – must also contain an innate recognition of our dependency. Perhaps this might feed into the 'autonomy of authenticity rather than autonomy as sovereignty (or self-governance)' (p. 88), which Atkinson mentions at the close of Chapter 6.

This leads to one further point about autonomy, which is that its position as the central principle of medical ethics is coming under increasing scrutiny. One way in which this can be seen to be the case is in the re-emergence of interest in virtue ethics as a way to deal with dilemmas. The question then becomes what would the virtuous person do in this situation? Although the answer from the virtuous doctor might often be that the person should be shown respect, the principle of autonomy does not inevitably win the day. Perhaps it is equally valid to suggest that compassion, honesty, integrity, bravery, steadfastness, practical wisdom and so on, should be guides to moral decision-making. In which case, once again, the standing of the advance directive has to be seen in a broader context.

The second, related, issue I shall discuss is that of personhood. Atkinson discusses this in Chapter 7, which focuses on:

'...the continuity of persons through time since this is central to the concept of advance directives' (p. 91).

The chapter makes reference to the views of philosophers such as Locke and Parfit who have emphasized the importance of consciousness as the means by which personal identity is maintained. Atkinson then gives an account to Nozick's theory of the 'closest continuer', according to which 'the properties and

characteristics of the original give rise to the properties and characteristics of the closest continuer' (p. 93). Such characteristics can include personality traits and physical properties. Identity is maintained by the similarities that link the characteristics of the original to the individual that emerges.

The chapter then turns to consider a paper concerning advance directives in mental illness by Savulescu and Dickenson, which appeared in *Philosophy, Psychiatry, & Psychology* in 1998, and the responses to it. All this is well and good, but the discussion of the literature is relatively thin at this point. For instance, one might have expected to read something of Dworkin's distinction (from *Life's Dominion*) between 'critical' interests (those that shape our lives as a whole, perhaps well thought out at the time of completing an advance directive) and 'experiential' interests (those that can be demonstrated in the immediate present, but perhaps unforeseen at the time the advance directive was completed). Another important text would be Jennifer Radden's *Divided Minds and Successive Selves: Ethical Issues in Disorders of Identity and Personality* (Cambridge, MA: MIT Press; 1996). In discussing advance directives or 'Ulysses contracts' elsewhere, Radden makes the following point:

'Our ability to entertain second thoughts – to reconsider, adapt, and change direction in the light of a new piece of information or a telling experience – is deeply bound up with what makes us autonomous human beings and is as essential to the full and complete exercise of our freedom as is our ability to bind ourselves with a plan'.³

It is also worth highlighting those theories of personhood that entertain the thought that we are more than simply our consciousness or memories. The notion of the person as a situated embodied agent, for instance, acknowledges that the person is, indeed, a physical being, but stresses the situatedness of our lives. We are embedded in a multilayered and complex context. Put simply, this means that, once again, our autonomous wishes are not the only pebbles on the beach. We are also situated in a field of ethical, legal, spiritual, social, historical, cultural, familial, psychological concerns (to name but a few). So our advance directives need to be considered in such a context. They might even need quite sensitive interpretation in the light of the complicated nexus of relationships that help to co-create our narratives.

Such a way of understanding the person lends weight to the idea of a values history. As Atkinson says, a values history,

'... does not take the place of a clinician having a good, personal understanding of a patient, nor should such a relationship preclude the need for a written values history. It has a specific purpose in guiding decisions when the person is unable so to do. ... explaining important values allows those who have to respond to the advance directive to follow its spirit, even if they cannot always comply with the detail' (p. 184).

This brings me to the final issue I shall discuss. Atkinson mentions the disappointing uptake of advance directives in mental health (as in physical health) and suggests two barriers: the complexity of the task and the feeling that they will not in the end make a difference, given that mental health legislation will often mean they can be overruled. She continues:

'The lack of enthusiasm from different professional groups, but probably especially from psychiatrists, contributes to both the above problems. Clinicians are not actively seeking to promote advance directives, so patients do not know about them and do not get help in making them. This would suggest that at least as much energy must go into educating professionals and motivating them as is needed in promoting advance directives to patients' (p. 187).

³ Radden, J. (2004). *Personal identity, characterization identity, and mental disorder*. In: *The Philosophy of Psychiatry: A Companion* (ed. J. Radden), Oxford and New York: Oxford University Press; pp. 133-146. Actual quote from pp. 139-140.

On the face of it this seems fine and dandy. It does, however, seem to presuppose that advance directives are what we need to make the world a better place. They may well contribute. But there is perhaps a caution required. The worry is to do with the simplicity of the thought that something like a form or written statement will sort out the major problems facing people with mental health problems. Some of those in favour of advance directives are also at the forefront of the user movement. It would be wrong to paint the user movement with a single gloss. But some of those who are active in this movement are more likely to have had bad experiences of mental health treatment than those who do not participate. For this group of activists (where this appellation is neither intended to suggest approbation nor disapprobation) advance directives are understandably very important and it is a matter of some concern, as Atkinson's review of research suggests, that there is little evidence of their effectiveness.

But the apparent lack of interest in going to the bother of devising and drawing up an advance directive might reflect a set of much more mundane facts. Perhaps people just do not feel that they need to. Perhaps they have some confidence that they will be looked after appropriately when it comes to it. Perhaps their previous experience is reassuring. Perhaps, alternatively, they recognize the complexity and do not think it is something they wish to commit time to, given the little difference it might make in the end (and perhaps they consider this to be no bad thing). Perhaps they have confidence that ordinary conversations with professionals amount themselves to a negotiation and agreement on how best to proceed. Perhaps the complexity is a suitably valid reason to conclude that future options are best not judged too far ahead or hypothetically.

Putting forward a list of objections to the very idea of advance directives might seem to place me in the 44% of those English psychiatrists whom Atkinson records did not think we needed advance directives (p. 173). The list of putative objections certainly encourages the thought that Atkinson's research should continue, because there is something here to be understood. But, actually, right towards the end of the book she suggests that the early assumptions about supporting autonomy might need to be placed in a wider framework. Atkinson continues, in a vein with which I can wholeheartedly agree,

'Autonomy does not have to mean being independent. It could include having improved relationships between patients and clinicians, ensuring that communication is enhanced and that there is more appropriate sharing of ideas and making realistic choices, whether to preferred treatment or to the options and consequences of reduced treatment' (p. 187).

My rider to this would be that, even if advance directives might help the process of improving this sort of understanding between clinicians and patients, it is not the only way. Improvements in communication skills training might already be helping. More idealistically, a dose of virtue ethics might help clinicians to act wisely, which has always included the idea that compassionate listening, fidelity and honesty might be helpful to all concerned. All of this might be possible, therefore, without a written advance directive. The idea that health services can be improved by using more forms is in the end self-defeating. But the idea that the notion of an advance directive is itself useful as a way to drive up standards does not seem nonsensical. In some circumstances advance directives will seem imperative and this book helps in our understanding of them.

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