A Study on the Dilemmas and Countermeasures of Advance Directives in China

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Abstract: Advance directives, as an important medical decision-making method to safeguard patients' autonomy and the dignity of life, have become increasingly significant with the intensification of population aging and the tension of medical resources. Research has found that the practice of advance directives in China faces difficulties in terms of the subjects, content, procedures, and implementation, such as the limited scope of the subjects who can make advance directives, unclear medical measures, inconsistent ways of obtaining advance directives, and lack of guaranteed implementation effectiveness. This paper analyzes the causes of these difficulties and proposes corresponding solutions, it aims to improve China's advance directives system, create a favorable social atmosphere, promote the practical development of advance directives, and better protect patients' autonomy and the dignity of life and promote the rational use of medical resources.

Keywords: Advance directive; Review; Improvement measures; Patient rights

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1 Introduction

The term "living will" was first proposed by American lawyer Kutner in 1969. He argued that since the law already allows people to make wills regarding the distribution of property while they are of sound mind, people should also have the right to make and sign documents about medical decisions in advance.

A living will is similar to a will, but it has its particularity. It is not related to personal property rights, but closely related to personal life rights.

In 2013, a large number of experts and scholars, represented by Luo Diandian, established the Living Will Promotion Association in Beijing and launched the living will text "My Five Wishes." Its contents include:

(1) What medical services I want or do not want;

(2) Whether I want to use or not use life - sustaining treatment;

(3) How I want others to treat me;

(4) What I want my family and friends to know;

(5) Who I want to help me.

Registrants can make autonomous arrangements for their end - of - life matters by choosing "yes" or "no" for each item under each wish. This has greatly promoted the development of living wills.

2 The application predicaments of the living will system in China

2.1 Subject-related difficulties

In China, the subjects who can make advance directives are limited. They must be individuals with full civil capacity, aged 18 or above. Minors and those with limited or no civil capacity are excluded. Currently, the criterion is civil capacity, not medical decision-making capacity. Only patients themselves can make advance directives under Chinese law. The rights of medical agents are not defined. In some countries like Australia and the US, medical agents can make decisions for patients. In China, though close relatives' advance directives are considered in Shenzhen, their effectiveness is unclear, lacking clear standards and procedures, which may lead to disputes.

2.2 Content dilemma

2.2.1 The core content of the advance directive is stipulated

In Article 78, Paragraph 1 of the Regulation, an advance directive is effective if the person clearly states their intentions regarding three medical measures: intubation, CPR, and life support systems. These measures must be clearly defined to avoid negative impacts on end-of-life quality. The person must make clear choices about all three measures for the directive to be valid. However, the author argues that the term "intubation" is not precisely defined as emergency endotracheal intubation, which is the intended meaning in this context.

2.2.2 The criteria for determining the applicable subjects have ambiguity.

A living will is legally valid once properly established but only executable under specific conditions. Article 78 specifies that it can be executed when the patient is in a terminal illness or incurable condition at the end of life. The main controversy regarding its execution lies in withholding treatment. In practice, withholding treatment is mainly considered in five situations: advanced cancer, brain death or deep coma with no recovery possibility, multiple organ failure with no recovery possibility, extremely severe burns, and severe birth defects in newborns.

3 Procedural difficulties.

3.1 The channels for obtaining advance directives are not unified.

Large hospitals and specialized palliative care institutions provide more professional advance directive advice and services than primary or non-specialized ones. In China, organizations like the Beijing and Shenzhen Associations for the Promotion of Advance Directives

disseminate knowledge and offer services such as “My Five Wishes.” Non-professional organizations can only do limited publicity. While professional websites and social media release related information, the complex and non-standardized Internet information makes it hard to verify its authenticity.

3.2 Lack of retraction and revision requirements

At present, there is a lack of unified national legislation on advance directives in China. Only the “Shenzhen Special Economic Zone Medical Regulations” have made preliminary provisions on advance directives, and their effectiveness is limited to the Shenzhen area. The provisions on the modification and revocation mechanisms are relatively vague. In terms of legal application, there are some similarities between advance directives and wills, but there are also many differences. Wills involve property rights, while advance directives involve the right to life and health. Therefore, the legal provisions on the modification and revocation of wills cannot be fully applied to advance directives. In practice, the ambiguity of which law to apply to the modification and revocation of advance directives makes it difficult for judicial practice to accurately judge and deal with related issues.

4 Analysis of the causes of difficulties

4.1 The profound influence of the Chinese “filial piety” culture

In clinical practice in China, whether incurable end-of-life patients accept or which medical care plan they accept is largely not a choice made by the patients themselves. This behavior pattern is deeply rooted in China’s traditional culture. “Among all virtues, filial piety comes first” is an important part of China’s excellent traditional culture and holds a high status in a society that values rites and laws. The Analects of Confucius, Book I, Learning, says, “Filial piety and fraternal duty, are they not the root of humaneness?” In Confucian classics, “filial piety and fraternal duty” are highly positioned. For family ethics and general social relationships, they are the basic principles for handling personal social relationships. The Book of Rites, Doctrine of the Mean, says, “The humane person is the one who is close to others, and the most important thing is to be close to one’s relatives.” Confucius believed that for an individual, “benevolence” is the highest code of conduct, which should be universally followed in practice. To practice this principle, one must start with the people and things around them, which is “filial piety.” Mencius perfected the Confucian doctrine of “filial piety” on this basis. Mencius, Book VI, Gaozi II, says, “The way of Yao and Shun is nothing but filial piety and fraternal duty.” Mencius admired the way of the sage-kings, and he believed that “filial piety and fraternal duty” are the highest manifestations of personal virtue. It can be seen that in a society deeply influenced by Confucian culture, “filial piety culture” occupies a very important position.

4.2 Limitations of medical level

When analyzing the judgment of disease conditions, patients may make decisions based on their current condition and its expected progression in advance directives. However, medical technology is constantly advancing, and our understanding of diseases is becoming more in-depth. The actual progression of a patient's condition may not match the expectations at the time of making the advance directive. For example, for patients with chronic diseases, the emergence of new treatments or drugs may significantly improve their condition. But if patients have already decided to forgo certain treatments in their advance directives, their opportunity to receive these new treatments will be limited.

5 Paths to promoting the practice of advance directives

5.1 Expanding the scope of subjects who can establish advance directives

The scope of the subjects for the establishment of advance directives should include persons with full civil capacity, specific minors, persons with limited civil capacity among whom are intermittent mental patients, medical agents, and the elderly. To ensure the legality and validity of the decision-making, different restrictions should be met by different subjects when establishing advance directives. It is only by reasonably defining the scope of the subjects that the individual’s autonomy can be better respected, the decision-making burden of family members can be reduced, and the healthy development of the advance directive system can be promoted.

5.2 Refine the content of advance directives.

5.2.1 Refining the content of advance directives.

Taiwan's "Patient Autonomy Act" allows patients to make pre - established medical decisions to accept or refuse life - sustaining treatment, artificial nutrition and hydration. This is an improvement on the previous "Hospice Palliative Care Act", which only covered life - sustaining treatment. The new law is more rational as artificial nutrition and hydration involve medical devices and intrude into the patient's body, similar to life - sustaining treatment. This aligns with the European Court of Human Rights' view in the 2015 Lambert v. France case, recognizing patients' right to refuse these treatments through advance directives.Therefore, artificial nutrition and hydration are of a medical nature in legal terms. They are essentially no different from life-sustaining treatments and should both be included in the broad concept of life-sustaining medical care. Patients also have the right to refuse them through advance medical directives.

5.2.2 Unify the medical criteria for applicable subjects

The key to the application of advance directives lies in determining whether a disease is incurable and whether the patient is in the terminal stage of life. Under current medical standards, if a disease is curable, even if it temporarily reduces the quality of life and dignity, the value of life is higher, and treatment should still be provided. If a disease is incurable, the value of dignity is higher than that of life safety, and advance directives can be applied. The time point to determine incurability is when the advance directive is executed, as medical technology may progress in the meantime. Patients in the terminal stage have different life expectancies. For those with longer life expectancies, life safety takes precedence. For those with shorter life expectancies and no effective medical intervention to improve quality of life, only prolonging life, the value of life safety is lower than that of dignity. They can refuse life-sustaining treatment. Specific disease states, such as

permanent vegetative state and the terminal stage of Alzheimer's disease, can also apply advance directives. For patients with technically incurable diseases and in the terminal stage, their own judgment is used. For patients with “realistically incurable” diseases or not in the terminal stage, an objective standard is used to judge the degree of dignity impairment. It needs to be combined with medical assessment, public values and ethical criteria to comprehensively judge whether the impairment of patient's dignity reaches a “serious” degree, and only then can the advance directive system be applied.

5.3 Add content related to the operational procedures of the advance directive system

5.3.1 Create a dedicated system for storing information on advance directives

Mainland China has yet to establish a pre - directive registration mechanism. The limited ways for doctors to obtain pre - directives may fail to safeguard patients' autonomy and right to life. Thus, it is crucial to build a pre - directive registration mechanism. Pre - directive information can be entered into hospital or medical insurance systems, and emerging means like WeChat and Alipay can also be used to preserve pre - directives to ensure their accuracy and timeliness. However, it should be noted that the registration of a pre - directive does not affect its validity. Registration is merely for the convenient and accurate retrieval of the pre - directive.

5.3.2 Establish a procedure for the modification and revocation of advance directives

The content of advance directives should reflect the true wishes of the patient, who can change or revoke them at any time without having to apply to the original notary office. The procedures for amending and revoking advance directives should be simple and consistent with those for witnessed advance directives. Complicated procedures are not conducive to their popularization. Amendments or revocations can be made through the witnessing method stipulated in Article 78 of the regulation. It is also important to note that amending or revoking effective advance directives does not require the person who made the directive to have full civil capacity, because dealing with one's own rights does not involve others. Even the opinions of people with mental illness should be respected.

6 Conclusion

The advance directive system in Mainland China is still in its early stages. Shenzhen has made a start, but much remains to be done. Despite academic research, implementation is difficult due to limited medical cases, lack of judicial precedents, and public aversion to discussing death. Only a few people make advance directives. The medical and legal communities need to work together to learn from practice and deepen the system. This also highlights that individuals have different views on the right to health and dignity when facing incurable diseases. We have the right to fight for survival and also the right to a peaceful death.

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