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Covid-19: Government to issue new guidance on DNAR orders after legal challenge

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The government has announced it will publish new national guidance for England on “do not attempt resuscitation” orders, amid concern that blanket bans on cardiopulmonary resuscitation were being imposed by some healthcare providers during the covid-19 pandemic.

The move comes after a threat of legal action against the government from Kate Masters, the daughter of a man who successfully fought to establish that patients have a right to be consulted on resuscitation. In May Masters launched a High Court challenge against the health secretary for England, Matt Hancock, over the government’s failure to issue clear national guidance to ensure that patients’ rights in relation to DNARs were protected.¹

Hancock initially maintained that the matter was for local health bodies to oversee but has now responded as the case was being prepared for court. He promised to publish guidance for patients and families on DNAR decisions for the first time on the NHS website, alongside updated information for NHS staff to provide clarity on making DNAR decisions.

Masters’s father David Tracey took University Hospitals Cambridge NHS Foundation Trust to the High Court and Court of Appeal after his wife, Janet, who had terminal lung cancer, had a DNAR notice put in her records at Addenbrooke’s Hospital without consultation.

Since this case in 2014 the law has been clear that article 8 of the European Convention of Human Rights requires that DNAR decisions are taken in consultation with a patient or their family and that patients know in advance how decisions will be made and what to do in a disagreement.

Masters, represented by the legal firm Leigh Day, provided evidence that the article 8 rights of patients were being systematically violated, citing examples of DNARs being made without consultation and concerns that delegating resuscitation policies to a local level was leading to blanket DNAR orders.

Masters said she was pleased that the government had responded to the “unacceptable” situation.

She said, “My dad fought for people to have the right to be involved in a DNACPR decision. It is hard for them to do this without knowing the process and their legal rights. It’s a fundamental omission. It is not the sole responsibility of clinicians to do this.

“Matt Hancock has reassured me that what I have asked him to do is now in hand, and following his commitment to provide patient facing information on DNACPR decisions on the NHS website I have decided to not proceed with my legal action.”

But she added, “I do not rule out taking this further in the future if it is not addressed appropriately or in a timely manner.”

Davina Hehir, director of policy and legal strategy at the charity Compassion in Dying, said the guidance must help patients and families understand what DNAR means, how decisions are made, and that they have a right to be involved in discussions about these decisions. “It must also include clear guidance for healthcare professionals on proper protocol and how to have sensitive, honest conversations with patients and families,” she added.

A spokesperson for the Department of Health and Social Care for England said, “We have made clear that it is completely unacceptable for DNACPR orders to be applied in a blanket fashion to any group of people. The government has taken consistent action on a number of fronts to prevent this from happening, and NHS England is currently creating patient facing guidelines on how to challenge a DNACPR and access support.”

¹ Dyer C. Covid-19: Campaigner calls for national guidance to stop DNR orders being made without discussion with patients and families. *BMJ* 2020;369:m1856. doi: 10.1136/bmj.m1856 pmid: 32381552