

Review

Advance directives in cancer care: A psycho-oncological perspective on legal reform in China

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Abstract: Background: Cancer patients face severe psychological challenges, manifesting as anxiety, depression and emotional distress throughout their treatment choices, palliative care transitions and end-of-life situations. These psychosocial burdens become worse because they cannot control the medical procedures which affect them. Advance Directives (ADs) serve as essential instruments that protect patient control of their medical decisions, minimize decisional uncertainty and guarantee medical care follows the patient's individual worth and personal values. **Objective:** This paper evaluates the relationship between ADs and psycho-oncology through evidence showing their success in decreasing psychological distress in cancer patients and their families. The article examines how ADs function in specific cancer-related situations, such as end-of-life care, palliative treatment, mental health crises and cognitive decline from terminal illness. **Methods:** The research examines international ADs through policy review and a framework evaluation across American, German and UK systems, assessing their effects on patient care quality together with ethical and emotional outcomes. Regarding literature selection, this article uses "Advance Directives", "Psycho-Oncology" and "Autonomy" as keywords in Google Scholar and Web of Science Core Collection for document search. The author verified the abstract and keywords of all searched articles and included only articles that are related to the topic. **Findings:** The absence of nationwide AD legislation in China creates psychological distress for cancer patients because families and clinicians frequently disregard patient choices, which results in moral distress and conflicts. **Conclusion:** The implementation of ADs represents a vital necessity to enhance the quality of psychological care for patients with cancer within China. A culturally appropriate AD framework would enable cancer patients to gain control while decreasing their psychosocial distress and following international human rights standards. The author advocates the implementation of ADs within psychosocial assessments and cancer care protocols to overcome patient autonomy barriers in both systemic and cultural contexts.

Keywords: advance directives in cancer care; psycho-oncology & patient autonomy; end-of-life care in oncology; psychosocial stress in cancer patients; mental health crises in cancer

1. Introduction

Treatment decisions, along with the unpredictable progression of cancer and end-of-life choices, create substantial psychological distress for patients with cancer. Research in psycho-oncology shows loss of decision-making power generates worse depression, anxiety and emotional suffering among patients [1–5]. The distress experienced by patients leads to decisional regret and avoidance of advance care planning while increasing emotional burden on families, which affects their mental well-being and quality of life [6–9]. The legal capacity of a person to make decisions becomes compromised when they experience severe or persistent psychological distress, which impairs their understanding, memory and ability to weigh

information for informed choices [10,11].

Advance Directives (ADs) function as legal documents which enable people to express their medical preferences ahead of time [12], thus providing cancer patients with decision control, emotional relief and respect for their values and preferences. The implementation of ADs leads to improved mental well-being and dignity alongside patient-centered care in psycho-oncology through their ability to decrease uncertainty and enhance autonomy.

ADs serve as essential instruments for mental health support in cancer patients, beyond their legal function of supporting autonomy. Advanced cancer patients experience intense psychological distress, grief-related emotions and future care-related existential anxiety [13]. ADs effectively reduce the levels of depression along with decisional conflict by helping patients take proactive medical decisions, which leads to better emotional stability [14–16]. Additionally, ADs serve to decrease both family care burden and caregiver emotional distress [14–17]. When patients fail to document their treatment preferences, their family members face increased anxiety, guilt and treatment-related conflicts [18]. By clarifying patient preferences, ADs help reduce family emotional stress and enhance communication between doctors and patients in oncology care [19].

The right to make unforced independent choices regarding one's life (namely the concept of autonomy) [20,21] represents the core basis for using ADs. In oncology settings, the right to make independent choices about medical decisions becomes essential for patients who lose their ability to communicate their preferences. The U.S. together with U.K. and Germany have created legal systems which validate ADs as enforceable documents to maintain medical choices consistent with patient preferences. However, China does not have a national AD law, which exposes cancer patients to psychological suffering, ethical dilemmas and inconsistent medical choices.

The lack of legal AD regulations in China creates additional stress for cancer patients because of their uncertain situation. Even though the ethical guidelines support respecting patient wishes, they do not have legal enforcement power, which enables medical practitioners and families to make decisions against patient choices, leading to patient emotional distress [22,23]. The implementation of an AD framework in China would safeguard cancer patients' psychological health by upholding their treatment preferences throughout palliative care, mental health crises and end-of-life treatment.

This paper argues that legalizing ADs in China is essential to reducing psychological burdens in cancer patients, improving mental well-being and ensuring ethical, patient-centered medical decision-making. It explores how ADs function within psycho-oncology alongside international legal guidelines to show the ethical and psychosocial elements of such directives when they improve patient self-directed choices.

Furthermore, this paper investigates the main barriers preventing AD implementation in China while analyzing the legal policy gaps, cultural challenges and system barriers that impede its adoption. It bases its proposed policy framework for AD legalization in China on global best practices to make psycho-oncological care consistent with human rights-based healthcare reforms. Its findings contribute

knowledge to psycho-oncology investigations, legal scholarship and policy development to establish a healthcare system in China that respects autonomy.

2. Overview of advance directives

2.1. Definition and background: The existing geographical gap worldwide

Although there is no unified definition in the current literature, an AD can be defined as a “statement in which a competent person makes an advance decision in matters concerning their health and welfare, which is to be implemented in the event that the person becomes incompetent (loses capacity) in the future” [12]. When defining an AD as a statement, this definition clarifies the legal nature of an AD, which refers to a document. It means the oral form of ADs is not allowable. Two modalities, namely living will and durable power of attorney, can be derived from this definition. A living will refer to a statement in which an individual expresses which medical treatments and interventions s/he would prefer when s/he is not capable of making a decision, while durable power of attorney is a document in which the individual appoints a trusted person to make healthcare decisions in his/her representation if s/he becomes incompetent [24,25]. ADs enable patients to exercise their autonomy in medical decision making, particularly during end-of-life care phases [26]. They are important because they can keep patients’ voices central to the decision-making process, and in turn create a dying experience that is responsive to their values and wishes [27].

The importance of ADs remains significant, but their acceptance rate and the way they are understood differ between various cultural backgrounds and national traditions. For example, in France, ADs remain unknown and underutilized by both patients and healthcare professionals. A few recent efforts have been made in recent attempts to increase awareness and understanding of the use of ADs at the Comprehensive Cancer Centers, indicating that education and resources regarding this necessity still need further improvement [28]. The low rate of AD use demonstrates the importance of active medical involvement in discussing end-of-life preferences, including cancer-related matters with patients.

ADs have a complicated and varied legal landscape worldwide. In the United States, how living wills and Do-not-resuscitate (DNR) orders are interpreted is critical to protecting patient safety and autonomy because these documents tell healthcare providers how to respect the wishes of patients at the critical moment [29]. However, such situation is hampered by lack of unified European legal framework on ADs. A study in 2021 indicated that 15 of the 28 European Union (EU) countries have specific regulations requiring binding nature of ADs [30]. It implies that almost half of the EU countries do not have dedicated legislation on advance decision issues, thus leaving doubt as to the level of patient protection in this area. This geographical gap exists even within a country, like the Chinese settings, in which there has been no general regulation on ADs applicable to all Chinese cities, but a specific regulation can be found in Shenzhen where living will be legally binding [31].

As a result, ADs are critical to allowing a person to make advance decisions about their healthcare, especially for vulnerable ones during end-of-life situations, such as cancer-related situations. It is important both for patients and for healthcare providers to understand all the modalities of ADs, namely living will and durable power of attorney. With such changing landscapes in healthcare, research and continued dialogue about ADs will be indispensable as we face the problems of and embrace the possibilities of ADs, ensuring that patient autonomy is baked into the core of any such decisions. This is fundamental for eliminating the geographical gap above, recognizing ADs just as informed consent is recognized under national and international laws.

2.2. Scope of application

The scope of application of ADs has been discussed and gradually expanded in the literature, including end-of-life care for elderly, emergency situations, psychiatry, pregnancy, and healthcare at sea.

The elderly can live longer due to advances in medicine, which sometimes benefit from advances in technology [32]. This has caused an aging problem that many nations are facing. Nonetheless, living longer does not always mean living well because they can suffer from diseases for longer periods of time, such as chronic diseases [33]. If the elderly suffer from oncological diseases, they may be psychologically affected. What the elderly normally want at the final stage of life is to live with quality and dignity, not with quantity. This is the reason why ongoing discussion on the development of ADs exists in many jurisdictions.

ADs are applicable not only to the elderly in end-of-life care, but also to people in urgent situations, who suddenly become unconscious due to, for instance, oncological emergencies, traffic accidents, heart attacks or any other factor that may suddenly cause unconscious state. However, some of these people would have rejected certain medical interventions if they could communicate their preferences to doctors. For example, some people, if competent, would have rejected blood transfusions through advance decisions due to religious convictions, although it would be lifesaving [34].

The application of ADs has been extended to persons with mental illness. The current literature names this kind of ADs as Psychiatric Advance Directives (PADs) [35]. PADs are documents that allow persons, when competent, to indicate their preferences regarding mental health treatments for a future moment when they become incompetent due to mental illness [36]. PADs are desirable for patients at risk of developing depression, anxiety, or other mental health disorders associated with cancer, because they can document preferences for mental health treatments while they are incapacitated. This extension of application can also be seen in certain jurisdictions where ADs are legalized, such as the Portuguese one, where the legalization of ADs occurred in 2012 with Law no 25/2012, but the application of PADs has been legally allowable only since 2023 with the entry into force of Law no 35/2023.

The linkage between ADs and pregnancy has been defended in recent literature. A recent study holds that ADs can serve the same function for a pregnant patient

who is incapacitated at a time when there are life threatening circumstances [37]. Defending the application of ADs to pregnancy implies that, in case of conflict between the right to life of the unborn and women's right to refuse life support, maternal autonomy prevails over the interests of the unborn. However, such a discussion presupposes recognition of the interests of the unborn; otherwise, there would not be any conflict between the two sides. Indeed, in common law systems, such as in the Canadian one, a case law, *Li v Canada* (Public Safety and Emergency Preparedness), 2016 FC 451, held necessary to consider the best interest of the unborn. This judicial decision offers significant worth to the ongoing debate about maternal freedom against unborn child protection. Further studies are needed to determine the borderline to which we should prevail maternal autonomy over the interests of the unborn.

In addition to the situations above, recent research proposes the applicability of ADs at sea and discusses legal and moral issues that can appear when applying ADs in maritime settings [38]. This research, an academically unique study exploring the applicability of ADs at sea, advocated the need for ADs to be applied at sea because healthcare exists in certain situations at sea, proposing important solutions to address legal and ethical dilemmas surrounding ADs at sea by giving supporting arguments. The applicability of ADs at sea is also significant for cancer patients, especially when they urgently become incompetent on ship and doctors on board need to decide if they follow the *pro vita* principle or respect the wishes contained in ADs.

In addition to their general applicability, ADs are particularly relevant for cancer patients. For instance, through ADs oncology patients can choose their preferred palliative care and end-of-life treatments, which helps decrease their distress regarding extended suffering from aggressive treatments [39,40]. This is especially important for patients with existential anxiety and depression due to their diagnosis. Patients who create advance treatment preferences enable better management of uncertain clinical outcomes and care changes, leading to improved mental health and quality of life.

By summarizing the situations in which ADs are applicable, we can see their scope of application continues to expand, which implies that doctrine and legislators constantly pay attention to advance decision-making and recognize that respect for the wishes contained in ADs falls within the scope of fundamental rights in internal laws or human rights in international law.

3. The human rights dimension of advance directives

3.1. Autonomy as a human right

Autonomy is the linchpin of discussion regarding human rights and the mainstay of human dignity and individual freedom. Autonomy, that entails self-governance and self-determination [41], is a prerequisite for achieving universal human rights. A proper human rights framework exists beyond legal definitions and agreements to become a system that generates goodwill between governments and individuals to protect rights according to various scholars [42].

The issue reaches its peak intensity regarding artificial intelligence (AI) when assessing autonomy in its broader sense. Human dignity has been interpreted to have

central arguments that underscore the de-instrumentalization of persons and support of vulnerable populations [43]. Interpreting the importance of preserving our freedom from the often-risky innovations that may pose a danger to our personal rights, is essential in this age of routinely evolved technologies. However, this highlights the requirement for a human rights structure which safeguards both personal freedoms while acknowledging that the state plays a fundamental part in supporting autonomy conditions.

Moreover, recognizing individual uniqueness requires respecting individual autonomy according to the connection between human rights and pluralism [44]. The undertaking of this perspective follows a received view of human dignity and rights that recognizes individual differences of humans rather than just collective constructs. Societies following policies of autonomy build pluralistic structures because they respect the freedom of various beliefs and practices to peacefully coexist.

The Kantian basis of autonomy is the point from which both moral principles and the concept of human dignity derive from the value of rational nature [45]. From this interpretation other concepts are embodied, such as the de-universalization of maxims, the intrinsic worth of individuals, and the locus of the highest moral obligation being found in the realization that all individuals possess autonomy and dignity. This idea strengthens autonomy as an intrinsic moral principle because it requires defense to maintain human dignity.

Overall, autonomy as an aspect of human rights delivers its claim to enhance human dignity and freedom. The literature generally agrees that a full account of reasoning about autonomy must be based on both legal and moral bases to ensure that people are allowed to exercise their rights in a full and respectful way in a world that is growing ever more complicated. Human dignity together with freedom relies on basic human rights principles that include autonomy. The ability to freely choose decisions while having complete awareness about life matters represents autonomy, which serves as a fundamental requirement for rights and freedoms realization.

3.2. Advance directives as an extension of autonomy

This article defends respecting patient autonomy, whether consent occurs in the present (informed consent) or in the future (AD). ADs should be intrinsically linked to the principle of autonomy, allowing individuals to express their medical treatment preferences in advance, specifically in the absence of their ability to communicate with them, such as cancer-related emergencies. Given that healthcare is changing around the world across jurisdictions, the concept of ADs as an extension of autonomy is even more relevant. For example, patient's rights were integrated into the healthcare practice gradually in Turkey where interactions between healthcare professionals and patients until very recently were dominated by paternalism, which was often reflected in a patient-physician relationship. Nevertheless, 1998 witnessed the advent of the Regulation of Patient Rights in Turkey, which spearheaded such a change in the direction of a more patient-centered activity. The recent Ministry of Health initiatives to increase patient autonomy suggest that ADs may have an important role in improving communication between patients and healthcare

providers in Turkey [46].

The present literature demonstrates how ADs represent an autonomy extension. For example, some scholars provide research revealing the knowledge gap of Advance Care Planning (ACP) and ADs among hemodialysis patients in Taiwan [47]. Their study shows only 13.2% had an AD, and 85.3% had not discussed prognosis with healthcare providers. This highlights a lack of involvement in conversations about ADs that should be encouraged by healthcare professionals to enable their patients to take control over the healthcare through making autonomous choices of care. The findings of this research indicated that increasing patients' awareness and understanding of ADs would be an important strategy for protecting patients' autonomy in medical decision-making.

The problem of chronic mental illnesses in individuals makes ADs even more necessary. For example, patients suffering from psychological diseases like bipolar disorder, schizophrenia or even cancer-related psychological diseases somehow face fluctuations in their ability to make autonomous decisions about disease treatment. However, in certain situations these patients can communicate their treatment preferences during periods of competence. For these patients, ADs serve as a mechanism for such patients to state their wishes in advance and ensure that their wishes contained in ADs are respected [36]. This is an important step in assuring that the preferences and wishes of the mentally ill patient are respected in the healthcare settings.

ADs serve as essential components of psycho-oncological care in clinical practice for cancer patients beyond their legal requirement. Patients who document their treatment choices in advance maintain control of their care through ADs even when they experience periods of incapacity. ADs enable patients to maintain their autonomy as well as minimize decisional conflicts and reduce treatment-related anxiety and end-of-life emotional distress [48,49]. Consequently, ADs serve as a vital tool for enhancing both the legal and psychological aspects of cancer care.

With the arguments above, I defend that the linkage between autonomy and ADs should not be interrupted, and ADs should be included in the dimensions of autonomy. Whether it is current consent or future consent, it should be respected if it is a valid consent, which represents a complete respect for patient autonomy.

3.3. Comparative study and lessons for China

The policies regarding legal recognition and enforcement of ADs display varied approaches across jurisdictions because of distinct legal, cultural and ethical traditions prevailing in each region. ADs are regarded in many countries as an essential instrument to protect human dignity and autonomy, particularly in end-of-life care or palliative care, sometimes aligned with the psychosocial aspects of cancer patients. The following sub-sections will discuss international approaches to ADs, including jurisdictions that have established ADs as a legal right, and consider the lessons China can learn from foreign fundamental rights practice and AD laws, studying the creation of a legal framework that may correspond to the Chinese socio-cultural and legal environment.

3.3.1. Comparative analysis of jurisdictions

In the US, ADs have been legally recognized for several decades and, more recently, by federal legislation which strengthened it. In fact, 1990 was an important moment in legislation with the Patient Self Determination Act, which requires healthcare institutions to disclose to patients their right to decision-making in healthcare, including execution of ADs. ADs in the US are typically categorized into two forms: living wills and durable powers of attorney. The US recognizes ADs because it upholds an established tradition which values personal autonomy and self-determination. Court cases, like *Cruzan v. Director, Missouri Department of Health* (1990), have reinforced the validity of ADs as legally backed up by the constitutional right to refuse unwanted medical treatment. Even though the challenges are being removed and there are obvious great benefits, gaps remain in awareness and adherence among healthcare providers in the US [42,50].

On the other hand, the EU devotes its focus to both human dignity and autonomy. ADs have been adopted as components of fundamental rights and dignity by a number of European countries. Taking Germany as an example, due to a new law on ADs in 2009, §1901a.1 of the German Civil Code expresses ADs as the legally binding ones. The legislation guarantees that healthcare professionals and caregivers respect patient's documented wishes, even if these wishes are at odds with those of family or health professionals. The German legal tradition maintains its respect for personal autonomy which has created this system. Thus, the new German law combines more legal certainty with a liberal orientation on the patient's autonomy and on flexible and adaptable regulations [51]. In many European jurisdictions, ADs are articulated and explained in terms of human rights according to the European Convention on Human Rights (ECHR). Under Article 8 of the ECHR, the right to respect for private and family life has been interpreted to include the right to make autonomous decisions about one's healthcare. This legal disposition gives effect to the right to self-determination and autonomy in competent patients, even if the choice exercised results in death [52].

In the UK, according to the Mental Capacity Act 2005, ADs are legally binding if they fulfil certain criteria, being written, signed and witnessed. The Act is concerned with informed decision-making, which means an individual should have the right to refuse life-sustaining treatment. The Act provides statutory force on the idea of advance decision-making, not only in the form of living will but also through the appointment of a person as an attorney under a durable power of attorney. Those who carry out acts in connection with the care or treatment of a person lacking capacity also get protection under the Act [53], such as the psychosocial aspects of cancer patients.

In terms of regional jurisdictions, we can find regional approaches to AD legislation, such as Australia and Canada. In Australia, given that ADs are regulated at the state and territorial levels, legal frameworks are complicated and variable from one to another state. In Australian Capital Territory, Northern Territory, South Australia, Tasmania and Western Australia, persons can make Common Law Advance Care Directives and/or Statutory Advance Care Directives. The states of Victoria and Queensland have implemented complete AD enforcement legislation

through the Medical Treatment Planning and Decisions Act 2016 and the Powers of Attorney Act 1998 respectively. In New South Wales there is no statutory AD and only common law Advance Care Directive are legally binding. In Canada, although all provinces recognize ADs legislatively, there is no federal legislation. According to provincial laws including Ontario's Health Care Consent Act 1996, individuals possess the authority to create advance care directives and select a substitute decision-maker.

3.3.2. Lessons for China

Research across different nations proves that implementing ADs leads to substantial reductions of psychosocial distress in cancer treatment. For example, the literature on legally binding ADs from the U.S. and Germany shows two essential effects in oncology care settings: ADs support patient autonomy and reduce family members' anxiety while lowering their decisional conflicts [39]. In contrast, the lack of a national AD framework in China generates emotional stress for cancer patients who face uncertain outcomes while producing conflicts between families and health service providers [54–57]. Therefore, the effective implementation of ADs in China depends on integrating psycho-oncological insights which include structured palliative care preference communication and psychological support.

Some critical lessons from international jurisdictions' AD experiences are fundamental for China when it attempts to craft a legal framework for ADs. These lessons revolve around the emphasis of the need for AD legislation to align with personal autonomy, addressing cultural and systemic issues and creating public and professional awareness.

As the first lesson, the most fundamental principle of autonomy should be maintained. Autonomy is a cornerstone of fundamental rights in internal laws and human rights in international laws, and the ground from which AD legislation rises. In particular, ADs are recognized as a means to respect future consent and therefore respect individuals' preferences, even when they are no longer able to express them. Such an embedding would signal China's international human rights norm commitment, specifically regarding Article 7 of the International Covenant on Civil and Political Rights. Since China has an aging population, autonomy in matters of healthcare is relevant because elderly people gradually find themselves confronted to end-of-life care situations [57]. The significance exists not only for the elderly but also cancer patients, especially when aligning with psychosocial aspects. Legalizing ADs for China can give power back to individuals to remain in control of their medical treatment, increasing human dignity and quality of life [31].

The second important lesson calls for establishing a detailed legal framework. This is a lesson that jurisdictions like Germany and the US have consistently identified. The implementation of a nationwide AD law in China will create national AD regulations that enable local jurisdictions to adapt their requirements for flexibility. Such a law should address key issues, such as the requirements for validity, the modalities of ADs, the conditions of revising and revoking ADs, which will be discussed in Section 5 of this article.

The third lesson for China is recognizing the importance of promoting public awareness and education. In the US and European countries where ADs are

implemented, we witness one of the primary challenges, which is poor awareness among the public. Given that many individuals are unaware of their rights or the process by which they can create an AD, AD usage is low, as highlighted by some scholars [58]. Education programs should provide easy access to medical and legal resources to help diminish the existing awareness gap [59]. To focus on cultural sensitivities, measures to create public awareness in China might have to deal with the Chinese traditional beliefs about death and illness. The normalization of ADs discussion depends on sustained work with community leaders along with healthcare professionals and media outlets for developing better acceptance. On the other hand, the implementation of ADs is only effective if healthcare professionals know their legal and ethical obligations. For example, jurisdictions such as the UK have required professional training on the Mental Capacity Act in order to guarantee compliance and reduce potential disputes. Integrating AD-related training in medical education and professional development programming for China is essential.

Further, digital tools with their related technologies represent one of the essential lessons. As healthcare moves increasingly online, countries have created online AD registries that can be accessed online by healthcare providers in an emergency, such as the “My Health Record” of Australia. The advanced digital infrastructure of China means that ADs could be stored and accessed on a centralized and secure platform. This provides healthcare professionals with easy access to patient wishes during emergency situations, including oncological emergencies, thus enabling patients to update or withdraw their wishes when necessary.

China can draw lessons from the recognition of ADs as a right in the US, Germany, and the UK. To develop human rights protection within international standards, China should prioritize autonomy while implementing a complete legislative system and deal with cultural and systematic barriers. Legalizing ADs would not only ensure human dignity and autonomy of patients but also serve as a reminder to China that it is devoted to human rights protection in healthcare.

Several Asian jurisdictions provide additional proof about this standpoint. Japan supports ACP through official Ministry guidelines without a dedicated AD law while promoting the “Life Meeting” program to enhance healthcare provider respect for patient preferences [60]. The South Korean government passed the Act on Hospice and Palliative Care and Decisions on Life-Sustaining Treatment for Patients at the End of Life (2016) which established both binding Advance Directives and a national registry system. The examples show how formal mechanisms combined with public education lead to increased acceptance and application of ADs in family-centered cultures. China can adopt regional models to overcome its legal and cultural barriers.

4. Arguments for legalization of advance directives in China

4.1. Current legal gap in China

There is a legal gap of ADs in China, which refers to a challenge for patient rights and autonomy. ADs have increasingly been adopted by many jurisdictions as a mechanism to ensure that people can exercise autonomy over medical decisions in circumstances where they may lack decision-making capacity. However, China has

not had clear legislative or regulatory provisions in support of this practice, although a legislation on ADs can be found in Shenzhen [31].

China's legal system indeed recognizes patient autonomy to some extent, as for example the requirement for informed consent is provided by the current Civil Code of the People's Republic of China, but only for decisions made by individuals with capacity. There is no specific provision for future consent in laws applicable nationwide that allow adults to make binding decisions in advance about healthcare in circumstances where they might become incapable, such as for cancer patients in end-of-life care, palliative treatment, psychological health issues related to cancer.

Even though there is no specific law or regulation on ADs, we can find certain bases for the applicability of living will and durable power of attorney in the current Chinese legal framework. For living will, Article 20 of the Chinese Code of Ethic issued by the Chinese Medical Doctor Association on 25 June 2014—"Patients' life-sustaining options must be taken seriously. The wishes expressed by incapacitated patients before they lose their mental capacity must be respected, with patients' rights protected to the fullest extent possible through means such as living wills and surrogate consent"—provides persons with foundation for creating and applying living will. This is the unique foundation in China that regulates generally living will. Nonetheless, this foundation faces challenges of applicability or, even if it is applicable, it is ambiguous as to its scope of application [31,56]. For instance, as its name states, the mentioned Code only requires ethical duty, not legal duty, which implies that healthcare professionals will not be subject to any legal consequences when violating it. Different from what occurs to living will, we can find a legal base, not only ethical base, for durable power of attorney. Voluntary guardianship, regulated by Article 33 of the Chinese Civil Code—"An adult with full capacity for civil conduct may, by consulting in advance with his or her close relatives or other individuals or organizations willing to act as a guardian, determine his or her guardian in writing. When the adult loses all or part of capacity for civil conduct, the guardian shall perform the duty of guardianship of the adult."—can fit into the concept of durable power of attorney [31,56].

Although there are legal and ethical bases for applying ADs in China, the problem is that they are not binding. It implies that healthcare providers, when reading or holding AD documents at hand, may easily reject following the preferences of patients, complying with the *pro vita* principle. One of the reasons for the rejection may stem from fear of being sued in court by family members. The absence of a national legal framework for ADs renders them with no formal means by which to validate, enforce or apply ADs. This implies a precariousness of applicability of ADs in China or, putting it simply, a potential impact on patient autonomy.

In addition to weakening patient rights to self-determination, the lack of nationwide AD legislation in China also creates substantial psychological distress for cancer patients throughout the country. The absence of legally enforceable patient preferences about palliative and end-of-life care allows families and healthcare providers to make decisions against patient preferences, which results in increased anxiety and moral distress and decisional regret [61–63]. International research on oncology shows that patients face these negative results due to the absence of legal

reform regarding this issue. By legalizing ADs, China can provide a clear framework that supports both the ethical and psycho-oncological needs of patients, ensuring that their wishes are respected and that they experience reduced emotional stress during critical care transitions.

Moreover, the absence of legal framework produces noticeable difficulties during practical implementation. The absence of national legal support in Beijing palliative care units leads physicians to choose family preferences over patient preferences in ACP discussions with cancer patients [64]. Similarly, a study from Shanghai shows that family members hold primary authority in medical decisions while medical staff avoid direct patient interactions about end-of-life choices because of the lack of binding legislation [65]. The absence of national legal support makes patient autonomy through ADs remain weak even in China's major urban areas.

4.2. Reasons for a national law on advance directives

Not surprisingly, the main reason for a national law on ADs is ensuring patient autonomy. ADs are an instrument to protect autonomy by allowing people to articulate their medical wishes in advance for situations where they may be unable to communicate with others [12]. If these wishes are not legally recognized, they cannot be enforced, so autonomy may be subject to the influence of medical institutions or families. National legislation to acknowledge ADs would strike a formal and resounding chord for autonomy as the bedrock of China's healthcare system by treating people as autonomous persons deserving of a constitutionally protected fundamental right to be treated in accordance with one's own wishes during one's lifetime.

Another reason for a national law on ADs refers to eliminating regional disparities. The extensive geographical and population diversity in China leads to fragmented healthcare practices throughout the nation. Even though there is a legal disposition legalizing living will in Shenzhen city, this is not the case in other Chinese cities. As a result of the disparities, not everyone has an equal right to the protections or, even though one has AD document with binding nature in Shenzhen, the preferences may be affected in other Chinese cities where ADs are not binding. National law would unite AD practices, creating an environment in which all citizens, wherever they are situated, are afforded equal opportunity to benefit from them and enjoy the protection to which they are entitled.

Besides, national law on ADs can provide legal certainty. Without a legal framework that binds ADs, the documents may easily get overridden or disregarded when competing interests or AD validity become unclear. For example, disputes may occur between family members and healthcare providers on whether to honor an informal AD. The recognition of ADs by law would guarantee both their interpretation and enforcement while creating better trust within healthcare institutions.

4.3. Economic advantages

China's healthcare system would experience substantial economic advantages

through the legalization and widespread adoption of advance directives. Studies from jurisdictions like the U.S. and Germany have demonstrated that the practice of early ACP decreases unnecessary aggressive end-of-life treatments because these treatments frequently prove unbeneficial and expensive for patients facing terminal cancer conditions [66–68].

China's healthcare industry stands to gain economic benefits through the implementation of ADs because this strategy could, for instance, reduce Intensive Care Unit (ICU) expense, enhance palliative care delivery, minimize medical disputes, and enable superior resource management. The economic benefits of ADs strengthen ethical arguments because they prove that these directives both protect patient autonomy and create a sustainable healthcare system that operates efficiently.

Therefore, the successful implementation of ADs into China's healthcare system will enable the law to achieve its three main objectives, namely patient autonomy enhancement, psychosocial suffering reduction, and economic efficiency improvement.

5. Proposed framework for legislation

In China, a comprehensive and well-thought-out law is needed to make the enactment of a law to recognize ADs as legally binding documents. The legal framework being proposed here needs to be balanced between individual autonomy and ethical or practical considerations, as well as between individual autonomy and the Chinese culture. Typically, the suggested legislation should clearly outline fundamental elements such as the binding nature of ADs, requirements for validity, psychosocial training and assessment in AD implementation, and other significant aspects like the ambits of application, period of effectiveness, solution resolving the conflict between living will and durable power of attorney, and formality of revocation of ADs. **Table 1** summarizes the proposed legislation structure for ADs in China.

Table 1. Proposed legislation elements for advance directives in China.

Section	Content	Key points
Binding nature of ADs	ADs to be legally enforceable documents	Healthcare providers must comply; penalties for noncompliance; exceptions like emergencies acknowledged
Requirements for validity	Eligibility, Formalization, Content Requirements	Minimum age (18+), mental capacity; written form; two independent witnesses; notarization; optional registration; specific and clear wishes
Psychosocial training and assessment	Mandatory training and assessments integrated	Healthcare workers trained in psycho-oncology communication; psychosocial assessments for emotional/cognitive readiness
Scope of application	Broad situations where ADs apply	End-of-life care, emergencies, mental health crises, pregnancy, maritime settings
Period of effectiveness	Defined renewal cycle for ADs	5 years validity, with renewal upon confirmation (similar to Portugal's model)
Conflict resolution between living will and durable power of attorney	Priority of patient's direct wishes	Living will to prevail over decisions made by appointed agents if conflicts arise
Revocation of ADs	Easier revocation than creation	Written or oral revocation accepted; oral revocation allowed for practicality in emergencies

5.1. Binding nature of advance directives

The proposed law must explicitly establish ADs as legally enforceable documents to provide people with confidence regarding medical care decisions. ADs gain legal enforceability status when recognized by law because this makes them more than advisory documents, according to authors defending this position. [57,69,70]. With such legal authority healthcare providers, families, and institutions must implement these directives, unless they fall within remarkable circumstances rendering them legally unenforceable.

Article 38 of the Chinese Constitution establishes fundamental principles about personal dignity which serve as the basis for ADs. This constitutional provision states that “the personal dignity of citizens of the People’s Republic of China shall not be violated. It is prohibited to use any means to insult, libel or falsely accuse citizens.” Freedom and autonomy over one’s body result from personal dignity. ADs should be explicitly tied to these constitutional principles as an outgrowth of an individual’s decision-making autonomy regardless of situation, even if the individual is not capable of making decisions, such as patients in various psychological and/or oncological contexts in which they cannot communicate with doctors.

Valid ADs must be legally mandated for healthcare providers and institutions to comply with, and penalties must be levied in the event of noncompliance. Exceptions to the enforceability of ADs should be clarified in the law. For instance, if an access to AD document implies a period that can affect patient’s lifesaving, healthcare professionals, especially the ones in emergency departments, should avoid wasting the time and comply with the *pro vita* principle. This situation occurs when the law does not require official registration of ADs in a digital platform to which healthcare providers can access easily and quickly. More exceptions may include, for example, situations where ADs conflict with current *Lege artis* or public health concerns.

5.2. Requirements for validity

Certain requirements for validity shall be included in the law on ADs, such as eligibility criteria, formalization and content requirements.

5.2.1. Eligibility criteria

Eligibility criteria should be clearly defined under the law so that ADs are made by someone who can make an informed decision. The criteria should include minimum age and mental capacity.

In terms of minimum age, a person shall be at least 18 years of age or of the age of majority under the Chinese legal framework, even though certain legal scholar criticizes this requirement by understanding that persons under 18 years of age but with enough mental discernment should be competent to create ADs [71,72].

Regarding mental capacity, an individual, when creating an AD, must have mental capacity to understand its nature and consequences. Capacity assessments should be done and appropriately recorded by qualified medical professionals. However, the problem is how to qualify if one person has mental capacity. It seems in the current Chinese legal framework there is no law or regulation regarding the assessment of mental capacity. Hence, the future law shall determine if it is always required formal assessment of a person’s mental capacity by psychiatrists or required

only in exceptional circumstances. In the former case, the law shall define the direction of assessment, providing healthcare professionals with a method by which they can use for assessing mental capacity. Taking the Hong Kong Jurisdiction as a reference, it seems reasonable that formal assessment by psychiatrists to determine mental capacity is not required unless this is exceptionally indicated [73].

5.2.2. Formalization

Regarding formalization, the law shall determine if it is necessary a written form, a signature of witness(es), notarization and/or registration. Standardized formalization procedures protect against fraud and coercion as well as ambiguity during the creation of ADs.

First, written formality shall be required. ADs must be in writing, either handwritten or typed, because they must be clear and lasting.

In addition to written formality, to be valid it is advisable that ADs be signed in front of at least two independent witnesses able to testify the person's mental capacity without any pressure. The witnesses shall not have any financial or personal interest in the AD outcome. This aims at avoiding witnesses deciding in favor of their own interests but against the preferences of patients. For instance, two witnesses, as family members of the patient, reject medical treatment to let the patient die earlier, which enables them to inherit his/her property earlier.

Third, notarization is needed. Notaries are encouraged to take additional authentication steps to stop any form of falsification. For example, family members can falsify an AD document by copying the signature of the patient if notarization is not required.

Fourth, registration in an official institution is advisable. Accessibility and prevention of loss or destruction requires ADs to be registered by a centralized authority or database. The Chinese government can establish an official entity for registration of ADs. This is helpful and useful for patients and healthcare professionals. On one hand, officers in this official entity can teach patients who want to create ADs but do not know how to do it, which can increase the usage rate of ADs in China. On the other hand, healthcare professionals can access ADs easily and quickly by using a pre-define digital platform in which ADs are officially registered, which is especially beneficial in emergencies.

Here, we can discuss whether an AD document not registered in an official entity should be regarded as valid. In my perspective, this kind of ADs should be valid if they meet all legal requirements for validity. This is important for recognizing ADs made in other jurisdictions, such as Hong Kong and Macao jurisdictions where the requirements may differ from the ones in the Chinese jurisdiction. If this is not the case, patient autonomy could be affected from one to another jurisdiction in the Chinese territory.

5.2.3. Content requirements

To ensure enforceability, the law must specify the minimum content requirements of ADs. In addition to the identification of individuals (such as full name, ID number, address) and the signatures of at least two witnesses, healthcare preferences are needed. Explicit statements regarding the preferences should be made by patients, such as refusal of life sustaining treatments or consent of palliative

care. As defended by some legal scholars [25,74], the content of preferences should not be too detailed as the stated situation may not occur in real life and not be too vague as the preferences may become ambiguous. To facilitate this issue, officers of an official registration entity can play an important role as they normally have better experience in elaborating the AD content.

Instead of determining the preferences content regarding medical treatments, certain persons may want to designate an attorney to make a decision in their representation at the moment when they become incompetent to communicate with their healthcare providers. In this case, the consent or signature of this attorney and its notarization are needed to ensure that he/she accepts this role; otherwise, any person could falsify a document stating that he/she had been designated to make a healthcare decision in the name of the patient in concern.

However, to apply this modality the law should clarify that, in addition to living will, individuals can designate an attorney to make a future decision in their representation through ADs. This point is crucial given that patient autonomy can be affected if the law does not clarify and determine the existence of this modality. For instance, this challenge can exist for people who make ADs in Shenzhen, where living will is binding but durable power of attorney not [31]. In Shenzhen, this modality is applicable by applying the voluntary guardianship mechanism regulated by Article 33 of the Chinese Civil Code, but due to the lack of rules regulating its binding nature, it can be rejected by healthcare professionals even though persons designate attorneys to make healthcare decisions in their representation.

5.3. Psychosocial training and assessment in advance directives implementation

To ensure the effective implementation of ADs within clinical oncology and palliative care, psychosocial training and assessment must be integrated into both legal and medical frameworks. ADs are not merely legal instruments. They require proper integration into intense emotional and morally complex decisions where life-and-death choices must be made. The success of these directives requires legal validity together with adequate psychological preparedness and communication abilities from both patients and healthcare providers.

The essential training about psychosocial aspects exists specifically for medical professionals operating in oncology along with palliative and mental health settings. Healthcare professionals need training which teaches them to conduct end-of-life preference discussions using empathy, non-coercive methods and cultural sensitivity. They need to understand how patients normally experience emotional stages during terminal illness, including denial, fear, anticipatory grief and existential anxiety [75,76]. Inadequate psychosocial preparation of clinicians results in poor handling of AD discussions, which creates inadequate patient documentation along with patient confusion and reduced trust in healthcare services.

In addition, structured psychosocial assessments should accompany the drafting of ADs. These assessments would help determine whether the patient is emotionally and cognitively prepared to engage in advance care planning. For example, a cancer patient experiencing depression or adjustment disorder may have fluctuating

decision-making capacity [77]. In such cases, psychosocial assessments conducted by trained psychologists or psychiatric professionals help verify voluntariness, stability of preferences and absence of coercion. The practice follows international best practices found in the UK and Germany which depend on interdisciplinary assessments to determine mental capacity.

Psychosocial assessments play a vital role in validating that ADs accurately represent permanent patient values instead of transient emotional states [78]. A protected discussion environment enables patients to examine their care objectives, anxieties and values, which results in stronger ethical validity for their directives.

It is also advisable that psychosocial training be institutionalized as part of continuing medical education and professional licensing requirements. This ensures that AD implementation is not reduced to a bureaucratic formality but becomes a patient-centered, ethically grounded practice. Chinese cultural elements require specific attention when discussing ADs because family decisions remain central and death-related taboos exist alongside the importance of filial piety. In particular, the core Confucian values which permeate Chinese culture prioritize family consensus in decision-making while viewing death-related conversations as forbidden because they believe death discussions can accelerate death [79–81]. These beliefs could create psychological and emotional barriers to open ACP discussions, leading to family-supportive approaches instead of autonomy-focused methods.

Therefore, China can establish a comprehensive humane framework for AD implementation through the inclusion of psychosocial training and assessment methods, which respect patient autonomy in both its legal and emotional aspects.

5.4. Other significant aspects

There are other aspects that shall be considered in the law, such as the ambit of application, period of effectiveness, solution resolving the conflict between living will and durable power of attorney, and revocation of ADs.

5.4.1. Ambit of application

The ambit of application refers to the situation in which ADs can be applied when people become incompetent. The clarification of the ambit is necessary because officers in an official registration entity may have doubts about the applicable situations if the law does not clarify it, which can lead to practical difficulties. With the same doubts, healthcare professionals may have difficulties in following, or not, the wishes contained in ADs, creating panic among them about the ambiguity of violating or not patient autonomy. Further, the same doubts may cause difficulties in applying the law by courts.

For that reason, it is necessary to define the ambit of application, clarifying if ADs can be applied only to the elderly in end-of-life care or more than this situation, such as patients in end-of-life care, palliative treatment, psychological health issues related to cancer, emergency situations due to an unexpected incident (e.g., oncological emergencies, traffic accident or heart attack), persons with mental illness, pregnant women or even travelers at sea.

5.4.2. Period of effectiveness

Another significant aspect refers to the period of effectiveness of ADs. It is

certain that a period can change a person's decision, which probably may not be the same as the previous decision. To resolve this challenge, some jurisdictions define a period of effectiveness for ADs. For instance, the Portuguese legal framework, through its Article 7 of Law no 25/2012, 16 July, define a period of five years, renewable under confirmation, for effectiveness since the signature of the owners; the registration entity will notify the owners during 60 days before concluding the period to confirm whether they want to renew the period. It seems the Chinese legislation can follow this mechanism to resolve the challenge mentioned above.

5.4.3. Conflict between living will and durable power of attorney

Besides, if the law allows both modalities of ADs, namely living will and durable power of attorney, it is necessary to provide solution to the potential conflict between them. For example, a person can have a living will and durable power of attorney at the same time, but the wishes expressed in living will conflict with the ones presented by his/her attorney. In this case, we may face challenges in respecting patient autonomy in case of ambiguity to that the law does not provide any solution. Hence, it is necessary to provide a solution for this kind of situation. It seems logical that the wishes contained in living will should always prevail over the ones expressed in durable power of attorney, given that the former represents true wishes of patients who have not revised or revoked them during the period of effectiveness when the latter may involve a wrong decision made by attorneys.

5.4.4. Formality of revocation

Regarding revocation of ADs, the law shall clarify the formality by which people can revoke their AD documents. Should we require the same formality defined for the creation of AD documents, namely the written form? Or should it be acceptable to use an oral form for revocation of ADs? It seems advisable that the formality for revocation is easier than the one for the creation of ADs. This solution is preferable because revocation of ADs only lead healthcare professionals to follow the pro vita principle to save the patient's life, instead of respecting the wishes of patients to let them die in a natural way.

6. Conclusion

ADs ensure both autonomy and psychological health of cancer patients while they receive palliative care at the end of life. The inclusion of ADs within psycho-oncology practice allows patients to maintain control of their medical choices while decreasing their feelings of anxiety and emotional suffering. The worldwide acknowledgment of ADs has not led China to develop a complete legal structure for their implementation. The paper demonstrates the necessity of implementing a legally enforceable AD system in China because it preserves human dignity while promoting patient-centered care approaches and psychiatric support for cancer patients. Furthermore, healthcare professionals should receive specialized training to facilitate discussions on ADs in oncology settings. Moving forward, future legislative initiatives should unite legal and psychosocial elements of ADs to create a comprehensive approach to cancer care. Future research should explore the practical implementation of ADs within China's healthcare system to promote broader

acceptance and efficacy.

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