

COMMON CAUSE (A REGD. SOCIETY)

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v.

UNION OF INDIA

(Miscellaneous Application No. 1699 of 2019)

In

(Writ Petition (Civil) No. 215 of 2005)

B

JANUARY 24, 2023

[K.M. JOSEPH, AJAY RASTOGI,

ANIRUDDHA BOSE, HRISHIKESH ROY AND

C.T. RAVIKUMAR, JJ.]

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Constitution of India – Right of the person to die with dignity – Advanced directives – Application seeking clarification of the judgment in Common Cause (A Registered Society) v. Union of India (2018) 5 SCC 1: [2018] 6 SCR 1 – In the said writ petition, the Court was concerned with the question as to whether even in the absence of Advance Directives, when a person is faced with a medical condition with no hope of recovery and is continued on life support system/medicines, support system should be withdrawn – Thereafter, the Court proceeded to lay down the directives – Now, application filed seeking clarifications – The reason for approaching the Court again is the actual working of the directions, insurmountable obstacles are being posed – Keeping in view the concerns of the parties, the directions contained in paragraphs 198 to 199 are modified/ deleted – Miscellaneous application disposed of.

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CRIMINAL ORIGINAL JURISDICTION : Miscellaneous Application No.1699 of 2019 in Writ Petition (Civil) No.215 of 2005.

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Arvind P. Datar, Sr. Adv., Dr. Dhvani Mehta, Ms. Rashmi Nandakumar, Ms. Shreya Shrivastava, Advs. for the Petitioner.

K. M. Nataraj, A.S.G., Gurmeet Singh Makker, Mohd. Akhil, Adit Khorana, Shailesh Madiyal, Udai Khanna, Vinayak Sharma, Anirudh Bhat, Sanjay M Nuli, Nakul Chengappa K.K., Chitransh Sharma, Anuj S. Udupa, Dr. R. R. Kishore, Advs. for the Respondent.

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The Order of the Court was passed by

K. M. JOSEPH, J.

(1) This is an application filed by Indian Society of Critical Care Medicine seeking clarification of the judgment reported in *Common Cause*

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- A *(A Registered Society) v. Union of India and Another* (2018) 5 SCC 1.

(2) A Constitution Bench came to be constituted on the basis of a Reference made to it by a Bench of three learned Judges. In the backdrop of certain earlier decisions of this Court, in particular, this Court was engaged with the question as to whether the Court should issue suitable directions or set in place norms to provide for what is described as Advance Directives. This Court also was concerned with the question as to whether even in the absence of Advance Directives, when a person is faced with a medical condition with no hope of recovery and is continued on life support system/medicines, life support system should be withdrawn. The Court went on to dwell on the right of a person to die with dignity.

- C Thereafter, this Court has proceeded to lay down the directives as follows:

D “198. In our considered opinion, Advance Medical Directive would serve as a fruitful means to facilitate the fructification of the sacrosanct right to life with dignity. The said directive, we think, will dispel many a doubt at the relevant time of need during the course of treatment of the patient. That apart, it will strengthen the mind of the treating doctors as they will be in a position to ensure, after being satisfied, that they are acting in a lawful manner. We may hasten to add that Advance Medical Directive cannot operate in abstraction. There has to be safeguards. They need to be spelt out. We enumerate them as follows:

- E 198.1. *Who can execute the Advance Directive and how?*

198.1.1. The Advance Directive can be executed only by an adult who is of a sound and healthy state of mind and in a position to communicate, relate and comprehend the purpose and consequences of executing the document.

- F 198.1.2. It must be voluntarily executed and without any coercion or inducement or compulsion and after having full knowledge or information.

198.1.3. It should have characteristics of an informed consent given without any undue influence or constraint.

- G 198.1.4. It shall be in writing clearly stating as to when medical treatment may be withdrawn or no specific medical treatment shall be given which will only have the effect of delaying the process of death that may otherwise cause him/her pain, anguish and suffering and further put him/her in a state of indignity.

198. 2. *What should it contain?*

- H 198.2.1. It should clearly indicate the decision relating to the

circumstances in which withholding or withdrawal of medical treatment can be resorted to. A

198.2.2. It should be in specific terms and the instructions must be absolutely clear and unambiguous.

198.2.3. It should mention that the executor may revoke the instructions/authority at any time.

198.2.4. It should disclose that the executor has understood the consequences of executing such a document. B

198.2.5. It should specify the name of a guardian or close relative who, in the event of the executor becoming incapable of taking decision at the relevant time, will be authorised to give consent to refuse or withdraw medical treatment in a manner consistent with the Advance Directive. C

198.2.6. In the event that there is more than one valid Advance Directive, none of which have been revoked, the most recently signed Advance Directive will be considered as the last expression of the patient's wishes and will be given effect to.

198.3. *How should it be recorded and preserved?* D

198.3.1. The document should be signed by the executor in the presence of two attesting witnesses, preferably independent, and countersigned by the jurisdictional Judicial Magistrate of First Class (JMFC) so designated by the District Judge concerned.

198.3.2. The witnesses and the jurisdictional JMFC shall record their satisfaction that the document has been executed voluntarily and without any coercion or inducement or compulsion and with full understanding of all the relevant information and consequences. E

198.3.3. The JMFC shall preserve one copy of the document in his office, in addition to keeping it in digital format.

198.3.4. The JMFC shall forward one copy of the document to the Registry of the jurisdictional District Court for being preserved. Additionally, the Registry of the District Judge shall retain the document in digital format. F

198.3.5. The JMFC shall cause to inform the immediate family members of the executor, if not present at the time of execution, and make them aware about the execution of the document. G

198.3.6. A copy shall be handed over to the competent officer of the local Government or the Municipal Corporation or Municipality or Panchayat, as the case may be. The aforesaid authorities shall nominate a competent official in that regard who shall be the custodian of the said document. H

- A 198.3.7. The JMFC shall cause to hand over copy of the Advance Directive to the family physician, if any.
- 198.4. *When and by whom can it be given effect to?*
- 198.4.1. In the event the executor becomes terminally ill and is undergoing prolonged medical treatment with no hope of recovery and cure of the ailment, the treating physician, when made aware about the Advance Directive, shall ascertain the genuineness and authenticity thereof from the jurisdictional JMFC before acting upon the same.
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- 198.4.2. The instructions in the document must be given due weight by the doctors. However, it should be given effect to only after being fully satisfied that the executor is terminally ill and is undergoing prolonged treatment or is surviving on life support and that the illness of the executor is incurable or there is no hope of him/her being cured.
- C
- 198.4.3. If the physician treating the patient (executor of the document) is satisfied that the instructions given in the document need to be acted upon, he shall inform the executor or his guardian/close relative, as the case may be, about the nature of illness, the availability of medical care and consequences of alternative forms of treatment and the consequences of remaining untreated. He must also ensure that he believes on reasonable grounds that the person in question understands the information provided, has cogitated over the options and has come to a firm view that the option of withdrawal or refusal of medical treatment is the best choice.
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- 198.4.4. The physician/hospital where the executor has been admitted for medical treatment shall then constitute a Medical Board consisting of the Head of the treating department and at least three experts from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years who, in turn, shall visit the patient in the presence of his guardian/close relative and form an opinion whether to certify or not to certify carrying out the instructions of withdrawal or refusal of further medical treatment. This decision shall be regarded as a preliminary opinion.
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- H 198.4.5. In the event the Hospital Medical Board certifies that the instructions contained in the Advance Directive ought to be carried out, the physician/hospital shall forthwith inform the jurisdictional Collector about the proposal. The jurisdictional

Collector shall then immediately constitute a Medical Board comprising the Chief District Medical Officer of the district concerned as the Chairman and three expert doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years (who were not members of the previous Medical Board of the hospital). They shall jointly visit the hospital where the patient is admitted and if they concur with the initial decision of the Medical Board of the hospital, they may endorse the certificate to carry out the instructions given in the Advance Directive.

198.4.6. The Board constituted by the Collector must beforehand ascertain the wishes of the executor if he is in a position to communicate and is capable of understanding the consequences of withdrawal of medical treatment. In the event the executor is incapable of taking decision or develops impaired decision-making capacity, then the consent of the guardian nominated by the executor in the Advance Directive should be obtained regarding refusal or withdrawal of medical treatment to the executor to the extent of and consistent with the clear instructions given in the Advance Directive.

198.4.7. The Chairman of the Medical Board nominated by the Collector, that is, the Chief District Medical Officer, shall convey the decision of the Board to the jurisdictional JMFC before giving effect to the decision to withdraw the medical treatment administered to the executor. The JMFC shall visit the patient at the earliest and, after examining all aspects, authorise the implementation of the decision of the Board.

198.4.8. It will be open to the executor to revoke the document at any stage before it is acted upon and implemented.

198.5. *What if permission is refused by the Medical Board?*

198.5.1. If permission to withdraw medical treatment is refused by the Medical Board, it would be open to the executor of the Advance Directive or his family members or even the treating doctor or the hospital staff to approach the High Court by way of writ petition under Article 226 of the Constitution. If such application is filed before the High Court, the Chief Justice of the said High Court shall constitute a Division Bench to decide upon grant of approval or to refuse the same. The High Court will be free to constitute an independent committee consisting of three doctors from the fields of general medicine, cardiology, neurology,

- A nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years.
- 198.5.2. The High Court shall hear the application expeditiously after affording opportunity to the State counsel. It would be open to the High Court to constitute Medical Board in terms of its order to examine the patient and submit report about the feasibility of acting upon the instructions contained in the Advance Directive.
- B 198.5.3. Needless to say that the High Court shall render its decision at the earliest as such matters cannot brook any delay and it shall ascribe reasons specifically keeping in mind the principles of “best interests of the patient”.
- C 198.6. *Revocation or inapplicability of Advance Directive*
- 198.6.1. An individual may withdraw or alter the Advance Directive at any time when he/she has the capacity to do so and by following the same procedure as provided for recording of Advance Directive. Withdrawal or revocation of an Advance Directive must be in writing.
- D 198.6.2. An Advance Directive shall not be applicable to the treatment in question if there are reasonable grounds for believing that circumstances exist which the person making the directive did not anticipate at the time of the Advance Directive and which would have affected his decision had he anticipated them.
- E 198.6.3. If the Advance Directive is not clear and ambiguous, the Medical Boards concerned shall not give effect to the same and, in that event, the guidelines meant for patients without Advance Directive shall be made applicable.
- F 198.6.4. Where the Hospital Medical Board takes a decision not to follow an Advance Directive while treating a person, then it shall make an application to the Medical Board constituted by the Collector for consideration and appropriate direction on the Advance Directive.
- G 199. It is necessary to make it clear that there will be cases where there is no Advance Directive. The said class of persons cannot be alienated. In cases where there is no Advance Directive, the procedure and safeguards are to be same as applied to cases where Advance Directives are in existence and in addition there to, the following procedure shall be followed:
- H 199.1. In cases where the patient is terminally ill and undergoing prolonged treatment in respect of ailment which is incurable or

where there is no hope of being cured, the physician may inform the hospital which, in turn, shall constitute a Hospital Medical Board in the manner indicated earlier. The Hospital Medical Board shall discuss with the family physician and the family members and record the minutes of the discussion in writing. During the discussion, the family members shall be apprised of the pros and cons of withdrawal or refusal of further medical treatment to the patient and if they give consent in writing, then the Hospital Medical Board may certify the course of action to be taken. Their decision will be regarded as a preliminary opinion.

199.2. In the event the Hospital Medical Board certifies the option of withdrawal or refusal of further medical treatment, the hospital shall immediately inform the jurisdictional Collector. The jurisdictional Collector shall then constitute a Medical Board comprising the Chief District Medical Officer as the Chairman and three experts from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years. The Medical Board constituted by the Collector shall visit the hospital for physical examination of the patient and, after studying the medical papers, may concur with the opinion of the Hospital Medical Board. In that event, intimation shall be given by the Chairman of the Collector nominated Medical Board to the JMFC and the family members of the patient.

199.3. The JMFC shall visit the patient at the earliest and verify the medical reports, examine the condition of the patient, discuss with the family members of the patient and, if satisfied in all respects, may endorse the decision of the Collector nominated Medical Board to withdraw or refuse further medical treatment to the terminally-ill patient.

199.4. There may be cases where the Board may not take a decision to the effect of withdrawing medical treatment of the patient or the Collector nominated Medical Board may not concur with the opinion of the hospital Medical Board. In such a situation, the nominee of the patient or the family member or the treating doctor or the hospital staff can seek permission from the High Court to withdraw life support by way of writ petition under Article 226 of the Constitution in which case the Chief Justice of the said High Court shall constitute a Division Bench which shall decide to grant approval or not. The High Court may constitute an independent committee to depute three doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry

- A or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years after consulting the competent medical practitioners. It shall also afford an opportunity to the State counsel. The High Court in such cases shall render its decision at the earliest since such matters cannot brook any delay. Needless to say, the High Court shall ascribe reasons specifically keeping in mind the principle of “best interests of the patient”.
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200. Having said this, we think it appropriate to cover a vital aspect to the effect the life support is withdrawn, the same shall also be intimated by the Magistrate to the High Court. It shall be kept in a digital format by the Registry of the High Court apart from keeping the hard copy which shall be destroyed after the expiry of three years from the death of the patient.

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201. Our directions with regard to the Advance Directives and the safeguards as mentioned hereinabove shall remain in force till Parliament makes legislation on this subject.”

- D (3) The applicant has approached this Court within a short period.

The reason for approaching this Court all over again appears to be that in the actual working of the directions, insurmountable obstacles are being posed. For instance, it is pointed out that this Court has provided in paragraph 198.3 that in the case of an Advance Directive which is devised by a person, it should not only be in the presence of two attesting witnesses who are preferably independent witnesses, but also it should have countersigned by a Judicial First Class Magistrate. It is pointed out that this clause has led the very object of this Court issuing directions being impaired, if not completely defeated.

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- There are other aspects which have been highlighted in the application.
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(4) The respondent, viz., the Union of India, has filed a counter affidavit. We find from the contents of the counter affidavit that the stand of the Union of India was that it opposed the application.

- (5) As we have noticed, this is an application seeking clarification. Ordinarily, be it an application lodged in this Court blessed as it is with powers under Article 142 of the Constitution of India, we would have thought that the application should not receive further consideration. However, we notice that there has been a subsequent development. The development is in the form of orders evidencing an attempt being made by the respondent also to evolve/agree to certain changes. Several rounds of discussions, it would appear, have taken place between officers of the respondent-Union who not unnaturally includes medical experts.
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According to the applicant, the difficulties which are being encountered have been voiced by a large number of Doctors and it becomes absolutely necessary for this Court to revisit the directions so that this Court puts in place a mechanism which effectively carries out the object of this Court laying down the principles in the paragraphs which have already been adverted to.

(6) Having heard Shri Arvind Datar, learned senior counsel, appearing for the applicant, assisted by Dr. Dhvani Mehta and Ms. Rashmi Nandakumar, learned counsel, Dr. R. R. Kishore, learned counsel, as also Mr. K. M. Nataraj, learned Additional Solicitor General appearing on behalf of respondent-Union of India, we are of the view that the directions contained in paragraphs 198 to 199 require to be modified/ deleted as hereinafter indicated:

Para	Existing Guidelines	Modifications	
Para 198.2.5	It should specify the name of a guardian or close relative who, in the event of the executor becoming incapable of taking decision at the relevant time, will be authorised to give consent to refuse or withdraw medical treatment in a manner consistent with the Advance Directive.	It should specify the name of a guardian <u>(s)</u> or close relative <u>(s)</u> who, in the event of the executor becoming incapable of taking decision at the relevant time, will be authorised to give consent to refuse or withdraw medical treatment in a manner consistent with the Advance Directive.	D E F G
Para 198.3.1	The document should be signed	The document should be	H

A	by the executor in the presence of two attesting witnesses, preferably independent, and countersigned by the jurisdictional Judicial Magistrate of First Class (JMFC) so designated by the District Judge concerned.	signed by the executor in the presence of two attesting witnesses, preferably independent, <u>and attested before a notary or Gazetted Officer.</u>
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D	Para 198.3.2 The witnesses and the jurisdictional JMFC shall record their satisfaction that the document has been executed voluntarily and without any coercion or inducement or compulsion and with full understanding of all the relevant information and consequences.	The witnesses and the <u>notary or Gazetted Officer</u> shall record their satisfaction that the document has been executed voluntarily and without any coercion or inducement or compulsion and with full understanding of all the relevant information and consequences.
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H	Para 198.3.3 The JMFC shall preserve one copy	Deleted.
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of the document in
his office, in
addition to
keeping it in
digital format. A

Para The JMFC shall **Deleted.** B
198.3.4 forward one copy
of the document to
the Registry of
the jurisdictional
District Court for
being preserved. C
Additionally, the
Registry of the
District Judge
shall retain the
document in
digital format. D

Para The JMFC shall The executor shall
198.3.5 cause to inform
the immediate inform, and hand over a
family members of copy of the Advance E
the executor, if Directive to the person
not present at the or persons named in
time of execution, Paragraph 198.2.5, as
and make them well as to the family
aware about the physician, if any. F
execution of the
document.

Para A copy shall be A copy shall be handed G
198.3.6 handed over to the
competent officer
of the local
Government or the
Municipal
Corporation or
Government or the H

A Municipality or Municipal Corporation or
Panchayat, as the Municipality or
case may be. The Panchayat, as the case
aforesaid authorities shall nominate a
nominate a competent official
B in that regard who may be. The aforesaid
shall be the authorities shall
custodian of the nominate a competent
said document. official in that regard
C who shall be the
custodian of the said
document.
D

The executor may also
choose to incorporate
their Advance Directive
as a part of the digital
health records, if any.

F Deleted.
Para The JMFC shall
198.3.7 cause to hand over
copy of the
Advance Directive
to the family
G physician, if any.
Para In the event the
198.4.1 executor becomes
terminally ill and
is undergoing
H In the event the executor
becomes terminally ill

prolonged medical and is undergoing A
treatment with no
hope of recovery prolonged medical
and cure of the treatment with no hope of
ailment, the recovery and cure of the B
treating physician, when
made aware about the ailment, and does not
the Advance have decision-making
Directive, shall capacity, the treating C
ascertain the genuineness and
genuineness and physician, when made
authenticity thereof from the aware about the Advance
jurisdictional JMFC before acting Directive, shall D
upon the same. ascertain the genuineness
and authenticity thereof
with reference to the E
existing digital health
records of the patient,
if any or from the F
custodian of the document
referred to in Paragraph
198.3.6 of this G
judgement.

Para The instructions No change.
198.4.2 in the document
must be given due
weight by the

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A doctors. However,
it should be given
effect to only
after being fully
satisfied that the
B executor is
terminally ill and
is undergoing
prolonged
treatment or is
surviving on life
support and that
C the illness of the
executor is
incurable or there
is no hope of
him/her being
cured.

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**Para
198.4.3**

If the physician treating the patient (executor of the document) is satisfied that the instructions given in the document need to be acted upon, he shall inform the executor or his guardian/close relative, as the case may be, about the nature of illness, the availability of medical care and consequences of alternative forms of treatment and the consequences of remaining untreated. He must

If the physician treating the patient (executor of the document) is satisfied that the instructions given in the document need to be acted upon, he shall inform the person or persons named in the Advance Directive, as the case may be, about the nature of illness, the availability of

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also ensure that	medical	care	and	A
he beliefs on	consequences		of	
reasonable grounds	alternative	forms	of	
that the person in	treatment	and	the	B
question	consequences of remaining			
understands the	untreated. He must also			
information	ensure that he believes			C
provided, has	on reasonable grounds			
cogitated over the	that the person in			
options and has	question understands the			D
come to a firm	information provided, has			
view that the	cogitated over the			
option of	options and has come to a			E
withdrawal or	firm view that the option			
refusal of medical	of withdrawal or refusal			
treatment is the	of medical treatment is			F
best choice.	the best choice.			

Para	The	The hospital where the	
198.4.4	physician/hospital	executor has been	G
	where the executor	admitted for medical	
	has been admitted	treatment shall then	
	for medical		
	treatment shall		H
	then constitute a		
	Medical Board		

A consisting of the Head of the treating department and at least three experts from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years who, in turn, shall visit the patient in the presence of his guardian/close relative and form an opinion preferably within 48 hours of the case being referred to it whether to certify or not to certify carrying out the instructions of withdrawal or refusal of further medical treatment. This decision shall be regarded as a preliminary opinion.

B constitute a Primary Medical Board consisting of the treating physician and at least two subject experts of the concerned specialty with at least five years' experience,

C who, in turn, shall visit the patient in the presence of his guardian/close relative and form an opinion preferably within 48 hours of the case being referred to it whether to certify or not to certify carrying out the instructions of withdrawal or refusal of further medical treatment. This decision shall be regarded as a

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preliminary opinion. A

Para 198.4.5	In the event the Hospital Medical Board certifies that the instructions contained in the Advance Directive ought to be carried out, the physician/hospital shall forthwith inform the jurisdictional Collector about the proposal. The jurisdictional Collector shall then immediately constitute a Medical Board comprising the Chief District Medical Officer of the district concerned as the Chairman and three expert doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the	In the event the <u>Primary</u> Medical Board certifies that the instructions contained in the Advance Directive ought to be carried out, the hospital shall then immediately constitute a <u>Secondary</u> Medical Board comprising <u>one registered medical practitioner nominated by the Chief Medical Officer of the District and at least two subject experts with at least five years' experience of the concerned specialty who were not part of the Primary Medical Board.</u>	B C D E F G H
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A medical profession of at least twenty years (who were not members of the previous Medical Board of the hospital). They shall jointly visit the hospital where the patient is admitted and if they concur with the initial decision of the Primary Medical Board of the hospital, they may endorse the certificate to carry out the instructions given in the Advance Directive. The Secondary Medical Board shall provide its opinion preferably within 48 hours of the case being referred to it.

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Para 198.4.6 The Board constituted by the Collector must beforehand ascertain the wishes of the executor if he is in a position to communicate and is capable of

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The secondary Board must beforehand ascertain the wishes of the executor if he is in a position to communicate and is

understanding the	capable of understanding	A
consequences of		
withdrawal of	the consequences of	
medical treatment.		
In the event the	withdrawal of medical	
executor is		
incapable of	treatment. In the event	B
taking decision or		
develops impaired	the executor is incapable	
decision-making		
capacity, then the	of taking decision or	
consent of the		
guardian nominated	develops impaired	C
by the executor in		
the Advance	decision-making capacity,	
Directive should		
be obtained	then the consent of the	
regarding refusal		
or withdrawal of	<u>person or persons</u>	D
medical treatment		
to the executor to	nominated by the executor	
the extent of and		
consistent with	in the Advance Directive	
the clear		
instructions given	should be obtained	E
in the Advance		
Directive.	regarding refusal or	
	withdrawal of medical	
	treatment to the executor	F
	to the extent of and	
	consistent with the clear	
	instructions given in the	G
	Advance Directive.	

Para	The Chairman of	The <u>hospital where the</u>	
198.4.7	the Medical Board		H

A nominated by the patient is admitted,
 Collector, that
 is, the Chief **shall convey the decision**
 District Medical
 Officer, shall **of the Primary and**
 convey the
 B decision of the **Secondary Medical Boards**
 Board to the
 jurisdictional **and the consent of the**
 JMFC before giving
 effect to the **person or persons named**
 C decision to
 withdraw the **in the Advance Directive**
 medical treatment
 administered to **to the jurisdictional**
 the executor. The **JMFC before giving effect**
 JMFC shall visit
 D the patient at the
 earliest and, **to the decision to**
 after examining
 all aspects, **withdraw the medical**
 authorise the
 implementation of **treatment administered to**
 the decision of
 E the Board. **the executor.**

Para It will be open to **No change.**
198.4.8 the executor to
 F revoke the
 document at any
 stage before it is
 acted upon and
 implemented.

G **Para** If permission to **If permission to withdraw**
198.5.1 withdraw medical **medical treatment is**
 treatment is
 refused by the **refused by the Secondary**
 Medical Board, it
 would be open to **Medical Board, it would**
 H the executor of

the Advance Directive or his family members or even the treating doctor or the hospital staff to approach the High Court by way of writ petition under Article 226 of the Constitution. If such application is filed before the High Court, the Chief Justice of the said High Court shall constitute a Division Bench to decide upon grant of approval or to refuse the same. The High Court will be free to constitute an independent committee consisting of three doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty

be open to the person A
or persons named in the
Advance Directive or even
the treating doctor or B
the hospital staff to
approach the High Court
by way of writ petition C
under Article 226 of the
Constitution. If such
application is filed D
before the High Court,
the Chief Justice of the
said High Court shall E
constitute a Division
Bench to decide upon
grant of approval or to F
refuse the same. The High
Court will be free to
constitute an independent G
committee consisting of
three doctors from the
fields of general H

the earliest as
such matters
cannot brook any
delay and it shall
ascribe reasons
specifically
keeping in mind
the principles of
"best interests of
the patient".

A

B

Paras
198.6.1

An individual may
withdraw or alter
the Advance
Directive at any
time when he/she
has the capacity
to do so and by
following the same
procedure as
provided for
recording of
Advance Directive.
Withdrawal or
revocation of an
Advance Directive
must be in
writing.

No change.

C

D

E

Para
198.6.2

An Advance
Directive shall
not be applicable
to the treatment
in question if
there are
reasonable grounds
for believing that
circumstances
exist which the
person making the
directive did not
anticipate at the

No change.

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A time of the
Advance Directive
and which would
have affected his
decision had he
anticipated them.

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Para If the Advance **No change.**
198.6.3 Directive is not
clear and

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ambiguous, the
Medical Boards
concerned shall
not give effect to
the same and, in
that event, the
guidelines meant

D

for patients
without Advance
Directive shall be
made applicable.

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Para Where the Hospital **Where the Primary Medical**
198.6.4 Medical Board **Board takes a decision**

takes a decision
not to follow an
Advance Directive
while treating a
person, then it

F

shall make an
application to the
Medical Board
constituted by the
Collector for

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consideration and **Advance Directive may**
appropriate
direction on the **request the hospital to**
Advance Directive **refer the case to the**

H

Secondary Medical Board

for consideration and A
appropriate direction on
the Advance Directive.

Para 199 It is necessary to No change. B
make it clear that
there will be
cases where there
is no Advance
Directive. The
said class of
persons cannot be
alienated. In C
cases where there
is no Advance
Directive, the
procedure and
safeguards are to D
be same as applied
to cases where
Advance Directives
are in existence
and in addition
there to, the E
following
procedure shall be
followed:

Cases where there is No Advance Directive F

Para 199.1 In cases where the In cases where the
patient is patient is terminally ill G
terminally ill and
undergoing and undergoing prolonged
prolonged in
treatment in respect of
respect of ailment treatment in respect of
which is incurable ailment which is
or where there is
no hope of being H

A cured, the incurable or where there
physician may
inform the is no hope of being
hospital which, in
turn, shall cured, the physician may
constitute a
B Hospital Medical inform the hospital,
Board in the
manner indicated which, in turn, shall
earlier. The
Hospital Medical constitute a Primary
Board shall
C discuss with the Medical Board in the
family physician manner indicated earlier.
and the family
members and record The Primary Medical Board
the minutes of the
discussion in
D writing. During shall discuss with the
the discussion,
the family members family physician, if any,
shall be apprised and the patient's next of
of the pros and
cons of withdrawal kin/next friend/guardian
E or refusal of
further medical and record the minutes of
treatment to the
patient and if
they give consent the discussion in
in writing, then
F the Hospital writing. During the
Medical Board may discussion, the patient's
certify the course
of action to be
taken. Their next of kin/next
decision will be
G regarded as a friend/guardian shall be
preliminary
opinion. apprised of the pros and

cons of withdrawal or

H refusal of further

medical treatment to the A
patient and if they give
consent in writing, then
the Primary Medical Board B
may certify the course of
action to be taken
preferably within 48 C
hours of the case being
referred to it.

Their decision will be D
regarded as a preliminary
opinion.

Para In the event the In the event the Primary
199.2 Hospital Medical Medical Board certifies
Board certifies
the option of the option of withdrawal
withdrawal or
refusal of further or refusal of further
medical treatment, medical treatment, the
the hospital shall hospital shall then
immediately inform the jurisdictional
the jurisdictional Collector. The
Collector. The jurisdictional
jurisdictional Collector shall
Collector shall constitute a Secondary
then constitute a Medical Board comprising
Medical Board comprising
comprising the in the manner indicated
Chief District
Medical Officer as

E
F
G
H

A the Chairman and hereinbefore. The
 three experts from
 the fields of Secondary Medical Board
 general medicine, shall visit the hospital
 cardiology,
 neurology,
 B nephrology, for physical examination
 psychiatry or
 oncology with of the patient and, after
 experience in
 critical care and studying the medical
 with overall
 C standing in the papers, may concur with
 the medical profession
 of at least twenty the opinion of the
 years. The Medical
 Board constituted Primary Medical Board. In
 by the Collector
 D shall visit the that event, intimation
 hospital for
 physical shall be given by the
 examination of the
 patient and, after hospital to the JMFC and
 studying the
 E medical papers, the next of kin/next
 may concur with friend/guardian of the
 the opinion of the patient preferably within
 Hospital Medical Board. In that
 F event, intimation shall be given by
 the Chairman of 48 hours of the case
 the Collector being referred to it.
 nominated Medical
 Board to the JMFC
 and the family
 G members of the
 patient.

**Para
199.3**

The JMFC shall
 visit the patient
 at the earliest
 and verify the

Deleted

H

medical reports, A
examine the
condition of the
patient, discuss
with the family
members of the
patient and, if B
satisfied in all
respects, may
endorse the
decision of the
Collector
nominated Medical C
Board to withdraw
or refuse further
medical treatment
to the terminally-
ill patient.

Para 199.4 There may be cases where the Board may not take a decision to the effect of withdrawing medical treatment of the patient or the Collector nominated Medical Board may not concur with the opinion of the hospital Medical Board. In such a situation, the nominee of the patient or the family member or the treating doctor or the hospital staff can seek permission from the High D
There may be cases where the Primary Medical Board may not take a decision to the effect of withdrawing medical treatment of the patient or the Secondary Medical Board may not concur with the opinion of the Primary Medical Board. In such a situation, the nominee of the patient or E
F
G
H

A Court to withdraw the family member or the
life support by treating doctor or the
way of writ treating doctor or the
petition under hospital staff can seek
Article 226 of the permission from the High
Constitution in Court to withdraw life
B which case the support by way of writ
Chief Justice of petition under Article
the said High 226 of the Constitution
Court shall in which case the Chief
constitute a Justice of the said High
C Division Bench Court shall constitute a
which shall decide petition under Article
to grant approval 226 of the Constitution
or not. The High in which case the Chief
Court may Justice of the said High
constitute an Court shall constitute a
D independent committee to Division Bench which
depute three shall decide to grant
doctors from the approval or not. The High
fields of general Court may constitute an
medicine, independent committee to
E cardiology, depute three doctors from
neurology, the fields of general
nephrology, medicine, cardiology,
psychiatry or neurology, nephrology,
F oncology with psychiatry or oncology
experience in with experience in
critical care and
G with overall
standing in the
medical profession
of at least twenty
years after
H consulting the
competent medical
practitioners. It
shall also afford
an opportunity to
the State counsel.
The High Court in
such cases shall

render its critical care and with A
decision at the
earliest since overall standing in the
such matters medical profession of at
cannot brook any delay. Needless to
say, the High least twenty years after B
Court shall
ascribe reasons consulting the competent
specifically medical practitioners. It
keeping in mind shall also afford an C
the principle of
"best interests of the patient".
opportunity to the State
counsel. The High Court
in such cases shall D
render its decision at
the earliest since such
matters cannot brook any E
delay. Needless to say,
the High Court shall
ascribe reasons F
specifically keeping in
mind the principle of
"best interests of the G
patient".

Para Having said this, No change.
200 we think it

H

- A appropriate to
 cover a vital
 aspect to the
 effect the life
 support is
 withdrawn, the
B same shall also be
 intimated by the
 Magistrate to the
 High Court. It
 shall be kept in a
 digital format by
C the Registry of
 the High Court
 apart from keeping
 the hard copy
 which shall be
 destroyed after
D the expiry of
 three years from
 the death of the
 patient.

(7) Registry will communicate a copy of this Order to Registrar
Generals of all the High Courts.

- E The Registrar Generals of the High Courts will dispatch a copy of
this Order to the Health Secretaries in the respective States/Union
Territories for onward communication to all the Chief Medical Officers
in the States/Union Territories.

- F The miscellaneous application will stand disposed of as above.
No orders as to costs.

Ankit Gyan
(Assisted by : Mahendra Yadav, LCRA)

Miscellaneous application disposed of.