

From

Director General Health Services, Haryana

To

All the Civil Surgeons of Haryana.

Memo No. 3PM2(Misc.)/2023/2208-2229

Dated: 05.06.2023

Subject: 'Advance Medical Directive' issued by Hon'ble Supreme Court of India in MA No. 1699 of 2019 in Writ Petition (Civil) No. 215 of 2005 regarding 'the right of a person to die with dignity'.

With reference to the subject cited above,

It is informed that Hon'ble Supreme Court of India, in MA No. 1699 of 2019 in Writ Petition (Civil) No. 215 of 2005 titled as Common Cause (A regd. Society) Vs Union of India, has laid down 'Advance Medical Directive' regarding the 'right of a person to die with dignity'; which would serve as a fruitful means for making decision, 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condition with no hope of recovery and is continued on life support system/medicines, life support system may be withdrawn. A copy of the said directive is attached herewith and also published on official website of Health Department, Haryana (haryanahealth.gov.in).

In this regard, it is hereby directed to circulate a copy to all the doctors under your jurisdiction for information and necessary action.

Enclosed: As mentioned above.

[Signature]
5/6/2023

ADGHS

for Director General Health Services, Haryana

Endst. No. 3PM2(Misc.)/2023/2230-34

Dated: 05.06.2023

A copy is forwarded to the following for kind information:

1. Director, Department of Medical Education & Research, Haryana with a request to circulate to Directors of all the medical colleges with directions to further apprise all the doctors.
2. State President, IMA Haryana
3. PS to Additional Chief Secretary to Govt. of Haryana, Health Department in reference to their letter no. 2/53/2023-1HB-III dated 20.04.2023.
4. Supdt., Supreme Court Cell, O/o the Registrar, Punjab & Haryana High Court, Chandigarh in reference to their letter no. 34 dated 01.03.2023.
5. DSEO, IT Cell O/o DGHS with a request to publish the document on website.

[Signature]
5.6.2023

ADGHS

for Director General Health Services, Haryana

“RIGHT OF A PERSON TO DIE WITH DIGNITY”

ADVANCE MEDICAL DIRECTIVE

Issued by Hon’ble Supreme Court of India on 24th January’ 2023

in

Miscellaneous Application No. 1699 of 2019 in Writ Petition (Civil) No. 215 of 2005
Common Cause (A regd. Society) Vs Union of India.

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 questions 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.** Thereafter, this Court has proceeded to lay down the directives as follows:

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:
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, comprehend purpose consequences of executing the document.
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.
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?
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.
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.
198.2.5	It should specify the name of a guardian(s) or close relative(s) 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.
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?
198.3.1	The document should be signed by the executor in the presence of two attesting witnesses, preferably independent, and attested before a notary or gazetted officer.
198.3.2	The witnesses and the notary or gazetted officer 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.
198.3.3	Para deleted.
198.3.4	Para deleted.
198.3.5	The executor shall inform, and hand over a copy of the Advance Directive to the person or persons named in paragraph 198.2.5, as well as to the family physician, if any.
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. The executor may also choose to incorporate their Advance Directive as a part of the digital health records, if any.
198.3.7	Para deleted.

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, and does not have decision making capacity, the treating physician, when made aware about the Advance Directive, shall ascertain the genuineness and authenticity thereof with reference to the existing digital health records of the patient, if any or from the custodian of the document referred to in Paragraph 198.3.6 of this judgement.
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.
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 person or persons named in the Advance Directive, 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 beliefs 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.
198.4.4	The physician/hospital where the executor has been admitted for medical treatment shall then 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, 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.
198.4.5	In the event the Primary Medical Board certifies that the instructions contained in the Advance Directive ought to be carried out, the hospital shall then immediately constitute a Secondary Medical Board comprising 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. They shall 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.
198.4.6	The Secondary Board 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 person or persons 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 hospital where the patient is admitted, shall convey the decision of the Primary and Secondary Medical Boards and the consent of the person or persons named in the Advance Directive to the jurisdictional JMFC before giving effect to the decision to withdraw the medical treatment administered to the executor.
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 Secondary Medical Board, it would be open to the person or persons named in the Advance Directive or even the treating doctor or the hospital staff 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 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.
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"
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.
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.
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.
198.6.4	Where the Primary Medical Board takes a decision not to follow an Advance Directive while treating a person, the person or persons named in the Advance Directive may request the hospital to refer the case to the Secondary Medical Board for consideration and appropriate direction on the Advance Directive.
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:
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 Primary Medical Board in the manner indicated earlier. The Primary Medical Board shall discuss with the family physician, if any, and the patient's next of kin/ next friend/ guardian and record the minutes of the discussion in writing. During the discussion, the patient's next of kin/ next friend/ guardian 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 Primary Medical Board may certify the course of action to be taken preferably within 48 hours of the case being referred to it. Their decision will be regarded as a preliminary opinion.
199.2.	In the event the Primary Medical Board certifies the option of withdrawal or refusal of further medical treatment, the hospital shall then constitute a Secondary Medical Board comprising in the manner indicated hereinafter. The Secondary Medical Board shall visit the hospital for physical examination of the patient and, after studying the medical papers, may concur with Primary Medical Board. In that event, intimation shall be given by the hospital to the JMFC and the next of kin/ next friend/ guardian of the patient preferably within 48 hours of the case being referred to it.

199.3.	Para deleted.
199.4.	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 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 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".
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.
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.