THE HIGH COURT OF ORISSA : CUTTACK

No.XI-03/2023/13630 / Dated 30-08-2024

From;

Asanta Kumar Das,
Registrar General

To,

The District & Sessions Judge,..... (All)

Sub: **Forwarding of the order dated 24th January, 2023 passed in M.A. No.1699 of 2019 arising out of W.P. (Civil) No.215 of 2005 (Common Cause-A Regd. Society Vrs. Union of India) by Hon'ble Supreme Court of India**

Sir/Madam,

I am directed to forward herewith a copy of the Order dated 24th January, 2023 passed in M.A. No.1699 of 2019 arising out of W.P. (Civil) No.215 of 2005 (Common Cause-A Regd. Society Vrs. Union of India) by the Hon'ble Supreme Court of India for favour of your kind information and circulation of the same amongst all the Judicial Officers working under your administrative control for their information and strict adherence.

Yours faithfully,

30.08.2024

REGISTRAR GENERAL

Encl.: As above.

'REPORTABLE'

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

MISCELLANEOUS APPLICATION NO. 1699 OF 2019
IN
WRIT PETITION (CIVIL) NO. 215 OF 2005

COMMON CAUSE (A REGD. SOCIETY) Petitioner(s)

VERSUS

UNION OF INDIA Respondent(s)

INDIAN SOCIETY OF
CRITICAL CARE MEDICINE Applicant

O R D E R

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

Signature Not Verified
Digitally signed by Nidhi Ahuja
Date: 2022.02.02 17:19:33 IST
Reason:

(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condition with no hope of recovery and is continued on life support system/medicines, life support system should be withdrawn.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. 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 and comprehend the purpose and 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 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.

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 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.

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.

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.

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.

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.

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 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 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 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.

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, 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 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.

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 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 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."

(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.

There are other aspects which have been highlighted in the application.

(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.

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*(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.
Para 198.3.1	The document should be signed	The document should be

	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, *and attested before a notary or Gazetted Officer*.
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 *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.
Para 198.3.3	The JMFC shall preserve one copy	Deleted.

	of the document in his office, in addition to keeping it in digital format.	
Para 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.	**Deleted.**
Para 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.	***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.***
Para 198.3.6	A copy shall be handed over to the competent officer of the local Government or the Municipal Corporation or	**A copy shall be handed over to the competent officer of the local Government or the**

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

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

	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.
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

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

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.

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.

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 *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.*

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

	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.	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.
Para 198.4.7	The Chairman of the Medical Board	The *hospital where the*

	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.	*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.
Para 198.4.8	It will be open to the executor to revoke the document at any stage before it is acted upon and implemented.	No change.
Para 198.5.1	If permission to withdraw medical treatment is refused by the Medical Board, it would be open to the executor of	If permission to withdraw medical treatment is refused by the *Secondary* Medical Board, it would

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 or persons named in the Advance Directive* 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

	years.	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.
Para 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.	No change.
Para 198.5.3	Needless to say that the High Court shall render its decision at	No change.

	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".	
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.**
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.**

	time of the Advance Directive and which would have affected his decision had he anticipated them.	
Para 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.	No change.
Para 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	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.
Para 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:	No change.

Cases where there is No Advance Directive

Para 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	**In cases where the patient is terminally ill and undergoing prolonged treatment in respect of ailment which is**

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.	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.
Para 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	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*

	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.	*hereinbefore.* The *Secondary* Medical Board shall visit the hospital for physical examination of the patient and, after studying the medical papers, may concur with the opinion of the *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.
Para 199.3	The JMFC shall visit the patient at the earliest and verify the	**Deleted**

	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.	
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	**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**

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	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

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

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.

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

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.

The miscellaneous application will stand

disposed of as above.

No orders as to costs.

......, J.
[K.M. JOSEPH]

......, J.
[AJAY RASTOGI]

......, J.
[ANIRUDDHA BOSE]

......, J.
[HRISHIKESH ROY]

......, J.
[C.T. RAVIKUMAR]

New Delhi;
January 24, 2023.