'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

<u> 0 R D E R</u>

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.
- (2) A Constitution Bench came to be constituted on the basis of a Reference made to it by a Bench of

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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condition with no hope of recovery and is continued on life support system/medicines, life support system should be withdrawn.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 Thereafter, this Court has proceeded to dignity. lay down the directives as follows:

our considered opinion, Advance "198. In 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 they will be in a position to doctors as 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 safequards. 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

- executor becoming incapable of taking relevant time, decision the will at authorised to consent to refuse give or medical withdraw 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.

physician/hospital where 198.4.4. The been admitted medical executor has for treatment shall then constitute a Medical Board of the Head of the consisting treating department and at least three experts from the 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 patient in the presence of quardian/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 physician/hospital shall forthwith out, the 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 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

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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 capable of understanding withdrawal consequences of of medical treatment. In the event the executor incapable of taking decision or develops impaired decision-making capacity, then consent of the quardian nominated bv executor in the Advance Directive should be obtained regarding refusal or withdrawal 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 undergoing prolonged treatment 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 discussion, the family members shall apprised of the pros and cons of withdrawal or refusal of further medical treatment to the

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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 the hospital for physical visit 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 independent committee to depute three doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care 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

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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, filed a counter affidavit. We find from contents of the counter affidavit that the stand of India the Union of was that it opposed the application.
- (5) As we have noticed, this is an application seeking clarification. Ordinarily, be it an

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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, notice that there has been subsequent we a 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

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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

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

It should specify the name of a quardian(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 with the consistent Advance Directive.

Para The document The document should be
198.3.1 should be signed

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by the executor in the presence of attesting two witnesses, preferably independent, and countersigned bν the jurisdictional Judicial Magistrate of First Class (JMFC) designated the District Judge concerned.

The witnesses and

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of

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the presence of two attesting witnesses, preferably independent, and attested before a notary or Gazetted Officer.

the jurisdictional 198.3.2 JMFC shall record their satisfaction that the document has been executed voluntarily and without any coercion or inducement or compulsion and

understanding

information

consequences.

all the relevant

with

Para

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

Para The JMFC shall De
198.3.3 preserve one copy

Deleted.

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of the document in his office, in addition to keeping it in digital format.

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

Deleted.

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

A copy shall be handed

Para
A copy shall be
198.3.6 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

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Municipality or Panchayat, as the case may be. The aforesaid authorities shall nominate 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 shall the who be 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.

Deleted.

Para The JMFC shall 198.3.7 cause to hand over copy of the Advance Directive to the family physician, if any.

Para In the event the 198.4.1 executor becomes terminally ill and is undergoing

In the event the executor becomes terminally ill

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prolonged medical treatment with no hope of recovery of and cure the ailment, the treating physician, when made aware about the Advance shall Directive, ascertain the genuineness and authenticity thereof from jurisdictional JMFC before acting upon the same.

undergoing and is prolonged medical treatment with no hope of recovery and cure of the ailment, and does not <u>have</u> <u>decision-making</u> *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, <u>if any or from the</u> custodian of the document referred to in Paragraph 198.3.6 of this <u>judgement.</u> No change.

Para The instructions
198.4.2 in the document
 must be given due
 weight by the

the

and

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

physician If the Para 198.4.3 treating patient (executor of the document) is

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alternative forms

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consequences

remaining

treatment

If the physician treating the patient (executor of document) the 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 beliefs he 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 and care consequences of alternative forms of treatment and the consequences of remaining untreated. He must also ensure that he believes on reasonable grounds that the in person question understands information provided, has cogitated the over options and has come to a firm view that the option of withdrawal or refusal medical treatment is of the best choice.

Para The
198.4.4 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

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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 the in medical profession of at least twenty vears who, shall visit turn, the patient in the presence of his quardian/close relative and form an opinion whether to certify or not to certify out the carrying instructions of withdrawal or refusal of further medical treatment. This decision shall be regarded preliminary a opinion.

constitute **Primary** a Medical Board consisting of the treating *physician* and at least two subject <u>experts</u> of the concerned specialty with at least five years' experience, who, in turn, shall visit patient the the in of his presence quardian/close relative form opinion and an preferably within 48 hours of the case being <u>referred to it</u> whether to certify or not to certify carrying out the instructions of withdrawal or refusal of further medical treatment. This decision shall regarded be

preliminary opinion.

Para In the event the 198.4.5 Hospital Medical certifies Board that the instructions contained in the Directive Advance ought to be carried out, the physician/hospital shall forthwith inform the jurisdictional Collector about 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 the in

In the event the *Primary* Medical Board certifies the instructions that contained in the Advance Directive ought to be carried out, the hospital shall then immediately constitute a <u>Secondary</u> **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.

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medical profession of at least twenty (who were vears not members of the Medical previous Board of the hospital). Thev shall jointly visit the hospital where the patient is admitted and if they concur with the initial decision οf the Medical Board of the hospital, they endorse the may certificate to carry out the instructions given Advance in the Directive.

They shall visit the hospital where the patient is admitted if they concur with the initial decision of the **Primary** Medical Board of hospital, they the the certificate endorse carry out the to 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 The Board 198.4.6 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 <u>secondary Board</u> must beforehand ascertain the wishes of the executor if he is in a position to communicate and is

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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 quardian nominated by the executor in the Advance Directive should be obtained regarding refusal withdrawal of or medical treatment to the executor to the extent of and consistent with the clear instructions given the Advance in Directive.

capable of understanding consequences the of withdrawal of medical treatment. In the event the executor is incapable of taking decision develops impaired decision-making capacity, then the consent of the person or persons nominated by the executor in the Advance Directive should be obtained refusal regarding or withdrawal of medical treatment to the executor to the extent of and consistent with the clear instructions given in the Advance Directive.

Para The Chairman of TI
198.4.7 the Medical Board

The <u>hospital where the</u>

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nominated by the Collector, that Chief the 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 jurisdictional to the JMFC before giving effect the decision to to medical withdraw the treatment administered to the executor.

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

No change.

If permission Para to 198.5.1 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 <u>Secondary</u> Medical Board, it would

the Advance Directive or his family members or even the treating doctor or the staff to hospital approach the High Court by way 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 fields the of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall the standing in medical profession of at least twenty

be open to the person or persons named in the Advance Directive or even the treating doctor or staff hospital the 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 **Division** a Bench to decide upon grant of approval or to refuse the same. The High Court will be free to constitute an independent committee consisting three doctors from the fields of general

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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 The High Court
198.5.2 shall hear the

application expeditiously

affording after opportunity to the State counsel. Ιt 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.

its decision at

No change.

No change.

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

Paras 198.6.1

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

Para 198.6.2

An

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

Advance

No change.

No change.

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

Τf the Para Advance 198.6.3 Directive is not clear and ambiguous, the Medical Boards concerned shall not give effect to the same and, event, that the quidelines meant for patients Advance without Directive shall be made applicable.

No change.

Where the Hospital Para 198.6.4 Medical Board takes decision a not to follow 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 <u>Primary Medical</u>

<u>Board</u> takes a decision

not to follow an Advance

Directive while treating

a person, <u>the person or</u>

<u>persons named in the</u>

<u>Advance Directive may</u>

<u>request the hospital to</u>

<u>refer the case to the</u>

<u>Secondary Medical Board</u>

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for consideration and appropriate direction on the Advance Directive.

No change.

Para It is necessary to make it clear that there will be

there will be cases where there Advance is no Directive. 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 addition and in there the to, following procedure shall be followed:

Cases where there is No Advance Directive

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

cured, the physician may inform the hospital which, in turn, shall constitute a Hospital Medical in Board the indicated manner earlier. The Hospital Medical Board shall discuss with the physician family family and the members and record the minutes of the discussion in writing. During discussion, the the family members shall be apprised of the pros cons of withdrawal or refusal further medical treatment to the patient and if they give consent in writing, then Hospital the Medical Board may certify the course of action to taken. Their decision will be regarded as a preliminary opinion.

incurable or where there hope of being is no cured, the physician may inform the hospital, which, in turn, shall constitute **Primary** a 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/quardian 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 withdrawal of cons refusal of further

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

Their decision will be regarded as a preliminary opinion.

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

In the event the *Primary* Board Medical certifies the option of withdrawal refusal of further or medical treatment, hospital shall then constitute a Secondary **Medical Board comprising** in the manner indicated

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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 vears. The Medical Board constituted Collector by the shall visit the hospital for physical examination of the patient and, after studying the medical papers, concur with may the opinion of the Medical Hospital Board. In that intimation event, shall be given by the Chairman of the Collector nominated Medical Board to the JMFC family and the members of the patient.

hereinbefore. The Secondary Medical shall visit the hospital for physical examination of the patient and, after studying the medical papers, may concur the opinion of the Primary Medical Board. In that event, intimation shall be given bv the hospital to the JMFC and the of kin/next next friend/quardian of patient preferably within 48 hours of the case being referred to it.

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

Deleted

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medical reports, examine the condition of the patient, discuss the with family of the members patient and, if all satisfied in respects, may endorse the decision the of Collector nominated Medical Board to withdraw or refuse further medical treatment to the terminallyill 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 the or hospital staff can permission seek from the High

There may be cases where the *Primary Medical* Board may not take a decision the effect to 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 situation, the a nominee of the patient or

to withdraw Court life support by of writ wav 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 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 after years consulting the competent medical practitioners. shall also afford an opportunity to the State counsel. The High Court in cases shall such

the family member or the treating doctor the or hospital staff can seek permission from the High Court to withdraw life support by way of writ under Article petition Constitution 226 of the 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 independent committee depute three doctors from the fields of **general** medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in

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render its decision at the earliest since such matters cannot brook any delay. Needless to sav, the High Court shall reasons ascribe 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 such in shall cases render its decision the earliest since such matters cannot brook any delay. Needless to the High Court shall ascribe reasons specifically keeping in the principle mind of "best interests of the patient".

Para Having said this,
200 we think it

No change.

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appropriate to cover vital a to the aspect effect the life support is withdrawn, the same shall also be intimated the by Magistrate to the High Court. Ιt shall be kept in a digital format by Registry the of High the Court apart from keeping the hard CODV shall which be destroyed after of the expiry 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 of this Order to the dispatch a copy 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

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disposed of as above.

No orders as to costs.

	[K.M. JOSEPH]	J.
	[AJAY RASTOGI]	J.
	[ANIRUDDHA BOSE]	J.
	[HRISHIKESH ROY]	J.
New Delhi; January 24 2023	[C.T. RAVIKUMAR]	J.