

**Miscellaneous Application No. 1699 of 2019 in Writ Petition (Civil) No. 215 of 2005**

**Comparative Chart of the Existing Guidelines of the Supreme Court of India in *Common Cause v Union of India* (2018) 5 SCC 1 and Suggested Modifications developed jointly by the Applicant, the Indian society of Critical Care Medicine and the Respondent, the Union of India**

<b>Reference</b>	<b>Existing Guidelines</b>	<b>Suggested Modifications</b>
<b>Para 198.3.1</b>	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.	The document should be signed by the executor in the presence of two attesting witnesses, preferably independent, <b>and attested before a notary or Gazetted Officer.</b>
<b>Para 198.3.2</b>	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 <b>notary</b> 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.
<b>Para 198.3.3</b>	The JMFC shall preserve one copy of the document in his office, in addition to keeping it in digital format.	Deleted.
<b>Para 198.3.4</b>	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.
<b>Para 198.3.5</b>	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.	<b>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.</b>

<b>Para 198.3.6</b>	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 their digital health records, if any. 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.
<b>Para 198.3.7</b>	The JMFC shall cause to hand over copy of the Advance Directive to the family physician, if any.	Deleted.
<b>Para 198.4.1</b>	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.	In the event the executor becomes terminally ill <b>or is in the end stage of a chronic illness</b> and is undergoing prolonged medical treatment with no hope of recovery and cure of the ailment, <b>and does not have decision-making capacity</b> , the treating physician, when made aware about the Advance Directive, shall ascertain the genuineness and authenticity thereof <b>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.</b> <del>from the jurisdictional JMFC before acting upon the same.</del>
<b>Para 198.4.2</b>	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.	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 <b>or is in the end stage of a chronic illness</b> 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.
<b>Para 198.4.3</b>	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	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 <del>executor</del> <b>the person or persons named in the Advance Directive</b> , as the case may be, about the

	<p>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.</p>	<p>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.</p>
<p><b>Para 198.4.4</b></p>	<p>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.</p>	<p>The <del>physician/hospital</del> where the executor has been admitted for medical treatment shall then constitute a <b>Primary Hospital Medical Board</b> consisting of the treating <b>physician and at least two subject experts of at least five years' experience</b>, who, in turn, shall visit the patient in the presence of his guardian/close relative and form an opinion <b>within twenty-four hours of the case being referred to it</b> whether to certify or not to certify carrying out the instructions of withdrawal or refusal of further medical treatment. <b>The Primary Board may take up to a maximum of forty-eight hours to form its opinion if subject experts are not available.</b> This decision shall be regarded as a preliminary opinion. <del>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 year</del></p>
<p><b>Para 198.4.5</b></p>	<p>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</p>	<p>In the event the <b>Primary Hospital Medical Board</b> certifies that the instructions contained in the Advance Directive ought to be carried out, the <del>physician/hospital</del> shall <del>forthwith inform the jurisdictional Collector about the proposal.</del> <b>The jurisdictional Collector shall then immediately constitute a Secondary Medical</b></p>

	<p>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.</p>	<p>Board comprising <b>one registered medical practitioner from a permanent panel of registered medical practitioners empaneled by the Chief Medical Officer of the district (the Chief Medical Officer may also designate registered medical practitioners empaneled under section 3(6) of the Transplantation of Human Organs and Tissues Act, 1994, for this purpose) and at least two subject experts of at least five years' experience.</b> They shall <del>jointly</del> visit the hospital where the patient is admitted and if they concur with the initial decision of the <b>Primary</b> Medical Board of the hospital, they may endorse the certificate to carry out the instructions given in the Advance Directive. <b>The Secondary Medical Board shall provide its opinion within twenty-four hours of the case being referred to it. This time may be extended to a maximum of forty-eight hours if the requisite medical practitioners are not available.</b></p>
<p><b>Para 198.4.6</b></p>	<p>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.</p>	<p><del>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</del> <b>The</b> consent of the <b>person or persons</b> 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.</p>
<p><b>Para 198.4.7</b></p>	<p>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</p>	<p>The <b>hospital where the patient is admitted</b>, shall convey the decision of the <b>Primary and Secondary Medical Boards and the consent of the person or persons named in the Advance Directive</b></p>

	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.	to the jurisdictional JMFC before giving effect to the decision to withdraw the medical treatment administered to the executor. <del>The JMFC shall visit the patient at the earliest and, after examining all aspects, authorise the implementation of the decision of the Board.</del>
<b>Para 198.4.8</b>	It will be open to the executor to revoke the document at any stage before it is acted upon and implemented.	No change.
<b>Para 198.5.1</b>	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.	If permission to withdraw medical treatment is refused by the <b>Secondary</b> Medical Board, it would be open to <del>the executor of the Advance Directive</del> or <b>the person or persons named in the Advance Directive</b> 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.
<b>Para 198.5.2</b>	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	No change.

	feasibility of acting upon the instructions contained in the Advance Directive.	
<b>Para 198.5.3</b>	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”.	No change.
<b>Paras 198.6.1</b>	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.
<b>Para 198.6.2</b>	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.	No change.
<b>Para 198.6.3</b>	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.
<b>Para 198.6.4</b>	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	Where the <b>Primary Medical Board</b> takes a decision not to follow an Advance Directive while treating a person, <del>then it shall make an application to the Medical Board constituted by the Collector</del>

	Medical Board constituted by the Collector for consideration and appropriate direction on the Advance Directive	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.
<b>Para 199</b>	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.
<b>Para 199.1</b>	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.	In cases where the patient is terminally ill or in the end stage of a chronic illness 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 Hospital Medical Board treating team shall discuss with the family physician, if any, and the patient's next of kin/next friend/guardian family members and record the minutes of the discussion in writing. During the discussion, the patient's next of kin/next friend/guardian 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 Primary Medical Board may certify the course of action to be taken within twenty-four hours of the case being referred to it. This time may be extended to a maximum of forty-eight hours if the subject experts are not available. Their decision will be regarded as a preliminary opinion.
<b>Para 199.2</b>	In the event the Hospital Medical Board certifies the option of withdrawal or refusal of further medical	In the event the Primary Medical Board certifies the option of withdrawal or refusal of further medical treatment, the hospital

	<p>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.</p>	<p>shall <del>immediately inform the jurisdictional Collector.</del> then constitute a <b>Secondary</b> Medical Board comprising <b>one registered medical practitioner from a permanent panel of registered medical practitioners empaneled by the Chief Medical Officer of the district (the Chief Medical Officer may also designate registered medical practitioners empaneled under section 3(6) of the Transplantation of Human Organs and Tissues Act, 1994, for this purpose) and at least two subject experts of at least five years' experience.</b> <del>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.</del> The <b>Secondary</b> Medical Board <del>constituted by the Collector</del> shall visit the hospital for physical examination of the patient and, after studying the medical papers, may concur with the opinion of the <b>Primary</b> Medical Board. In that event, intimation shall be given by the <b>hospital Chairman of the Collector</b> <del>nominated by the Medical Board</del> to the JMFC and the <b>family members</b> next of kin/next friend/guardian of the patient. <b>The Secondary Medical Board shall provide its opinion within twenty-four hours of the case being referred to it, subject to a maximum of forty-eight hours if the requisite medical practitioners are not available.</b></p>
<p><b>Para 199.3</b></p>	<p>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.</p>	<p>Deleted</p>

<p><b>Para 199.4</b></p>	<p>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”.</p>	<p>There may be cases where the <b>Primary Medical</b> Board may not take a decision to the effect of withdrawing medical treatment of the patient. <b>In such cases, the patient’s next of kin/next friend/guardian may request the hospital to refer the case to the Secondary Medical Board for its opinion. In cases where the Primary Medical Board is of the opinion that life-sustaining treatment should be withheld or withdrawn, but the Secondary Medical Board does</b> not concur with the opinion of the <b>Primary Medical Board</b>. <del>In such a situation, the nominee of the patient or the family member</del> <b>next of kin/next friend/guardian</b> of the patient 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”.</p>
<p><b>Para 200</b></p>	<p>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</p>	<p>No change.</p>

	hard copy which shall be destroyed after the expiry of three years from the death of the patient.	
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