

# Guide to Advance Medical Directive (Living Will)

Presentation by **Anil Chawla Law Associates LLP**

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## A. What is AMD?

- AMD or Advance Medical Directive is often called a Living Will.
- Prepared when one is in good health.
- One (**Executor**) specifies what medical treatment one wants or does not want, if terminally ill, unconscious, or unable to express consent.
- Allows one to state one's preference for medical treatment, especially end-of-life care, if one becomes incapable of communicating.
- Making or preparing AMD is known as execution of AMD.

## A. What is AMD? (Contd.)

- Permissions that one grants or refuses to grant with regards to one's body when one is moving towards death.
- Operates only during one's life; has no relevance after death.
- India does not have legislation for AMD.
- Hon. Sup. Court laid down guidelines for AMD (Common Cause v. Union of India, 9 March 2018 and 24 Jan 2023; MANU/SC/0232/2018 & MANU/SC/0089/2023).

## A. What is AMD? (Contd.)

- AMD permits passive euthanasia (withholding of medical treatment to cause natural death).
- AMD does not permit active euthanasia (administering a lethal substance to cause death).
- Active euthanasia (which is often sought to help patients in extreme pain) is not legally permitted in India.

## B. Need for AMD

- Modern medicine can often only prolong the ordeal of pain and vegetative existence. One may choose a painless and quick death over medically supported expensive life support systems.
- Person going through the ordeal is not in a position to take the decision or convey the decision.
- Prevents unwanted aggressive interventions like ventilators or resuscitation when they only prolong suffering.

## B. Need for AMD (Contd.)

- Allows one to decide in advance how one wants to be treated if one loses the ability to communicate (e.g., coma, advanced dementia).

### For Family Members

- Removes burden of making painful / difficult decisions during crisis.
- Prevents conflicts about continuing or withdrawing treatment.
- Saves family from financial overload.



## B. Need for AMD (Contd.)

### For Medical Professionals

- Provides legal and ethical clarity, reducing fear of litigation.

### For Executor

- End-of-Life with Dignity.
- Quick transition with minimum pain to the world beyond life.

## C. Contents of AMD

- Clear & unambiguous statement of wishes in specific terms.

Example - No ventilator support if terminally ill.

- Clearly indicate when withholding or withdrawal of medical treatment to be done.

Example – No Ventilator support or chemotherapy in case of End-stage cancer.

## C. Contents of AMD (Contd.)

- Executor to have right to revoke / modify AMD.

Example – The Executor will have the right to revoke or modify the AMD at any time as long as he / she is in a sound and healthy state of mind.

- A statement that Executor has understood the consequences of executing AMD.

Example – I fully understand the contents of this AMD and I have understood the consequences of executing it.

## C. Contents of AMD (Contd.)

- Name of guardian(s) / close relative(s) authorized to take decision as per AMD when executor becomes incapable of taking decision.

Example – My son named ..... having Aadhar ..... will act as my guardian as and when I become incapable of taking decisions. He will act as per this AMD and all decisions taken by him will be binding on all concerned.

- In the event of more than one valid AMD, the most recently signed AMD will be considered.

## D. Who can make AMD?

- Only adult (above eighteen years of age) can make.
- Sound and healthy state of mind - In a position to communicate, relate and comprehend the purpose of AMD.
- Understand the purpose of AMD is withdrawal / refusal of medical treatment - only to spare one from agony of pain, anguish, suffering and state of indignity during the process of moving towards death which seems certain and imminent.

## E. Necessary conditions to make AMD

- Must be voluntarily executed – no coercion or inducement or compulsion.
- Must be made after having full knowledge and information.
- Informed consent without undue influence or constraint.
- Must be in writing stating when medical treatment may be withdrawn or specific medical treatment shall not be given.

## F. How to execute AMD?

- Prepare AMD in consultation (A legal expert with knowledge of AMD may be consulted).
- Print on plain paper. Stamp paper not required.
- Sign in presence of two independent witnesses and a Public Notary / Gazetted Officer.
- Witnesses and Notary / Officer to record - AMD executed voluntarily, without coercion or inducement or compulsion and with full understanding of all the relevant information and consequences.

## G. Copies of AMD

Executor to inform and hand over a copy of AMD to each of the following:

- i. Every Guardian(s) or close relative(s) named in AMD;
- ii. Family physician, if any;
- iii. Competent officer of the local government or Municipal Corporation or Municipality or Panchayat, as the case may be.

Authorities mentioned in (iii) above shall nominate an official who shall be custodian of the AMD.

Executor may choose to incorporate AMD as a part of digital health records, if any.



## H. AMD – Duties of Doctors

- First ascertain genuineness and authenticity of AMD from custodian / digital health records.
- AMD to be given effect only after being satisfied that the patient is terminally ill and is undergoing prolonged treatment or is surviving on life support and that the illness is incurable or there is no hope of him / her being cured.

## H. AMD – Duties of Doctors (Contd.)

- If the physician is satisfied of need to act upon AMD, he/she shall inform the guardian(s) named in AMD about the following:
  - i. Nature of illness;
  - ii. Availability of medical care;
  - iii. Consequences of alternative forms of treatment; and
  - iv. Consequences of remaining untreated.

Physician to ensure that the person(s) think deeply over the information and options. They should form a firm view that option of withdrawal or refusal of medical treatment is the best choice.

## H. AMD – Duties of Doctors (Contd.)

- Constitution of Primary Medical Board (**PMB**) - The hospital doing treatment shall constitute a PMB consisting of (a) treating Physician (b) at least two subject experts of concerned speciality with at least five years' experience.
- PMB to form opinion preferably within 48 hours of the case being referred to it. This is called Preliminary Opinion.

## H. AMD – Duties of Doctors (Contd.)

- If Preliminary Opinion is for implementation of AMD instructions, the hospital to constitute Secondary Medical Board (**SMB**).
- Constitution of SMB – (a) one registered medical practitioner nominated by the Chief Medical Officer of the District (b) at least two subject experts with at least five years' experience of the concerned specialty, not part of the PMB.
- SMB to provide opinion preferably within 48 hours of the case being referred to it.

## H. AMD – Duties of Doctors (Contd.)

- SMB to ascertain wishes of executor if he / she is in a position to communicate and capable of understanding else consent of guardian(s) nominated by the executor to be obtained.
- Hospital to convey decision of PMB and SMB along with consent of guardian(s) named in AMD to jurisdictional Judicial Magistrate First Class (JMFC) before giving effect to AMD.

# I. Other Legal Provisions

- Refusal by PMB - If PMB decides to not follow AMD, the guardian(s) as per AMD may request the hospital to refer the case to the SMB.
- Refusal by SMB - If SMB refuses to follow AMD, either guardian(s) or treating doctor(s) or hospital staff may file Writ Petition in High Court under Article 226 of the Constitution of India.
- High Court to render decision at the earliest keeping in mind the principles of “best interests of the patient”.

## J. Revocation of AMD

- ❑ Revocation must be in writing.
- ❑ Revocation can be at any time when one has the capacity to make an AMD.
- ❑ Revocation / Modification - Same procedure as provided for execution of AMD.

## K. Inapplicability of AMD

No effect to be given to AMD in case of the following:

- a) AMD is not clear and ambiguous.
- b) Reasonable grounds for believing that circumstances exist which the executor did not anticipate at the time of making the AMD and which would have affected his / her decision had he / she anticipated them.



## L. Procedure when there is no AMD

In case a patient is terminally ill and undergoing prolonged treatment, the physician may inform the hospital, procedure same as with AMD except that:

- a) Minutes of discussions with guardians / family members to be recorded.
- b) In case PMB or SMB does not permit withdrawing of medical treatment, the guardian(s) may approach High Court.

# Always ready to help you:



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