



Ayana Legal

# THE BUZZ

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## Ulysses Clauses

Just as Odysseus instructs his crew to not heed his requests to untie him while attempting to listen to the songs of the Sirens, 'Ulysses clauses' can be understood as an additional instruction provided in advance medical directives

For example, if at the time of executing the living will, the executor feels that they are likely to refuse medication or treatments when they are incapacitated, they can specify and authorise their agent or medical professional to provide the treatment even if they object at the time of their incapacity.

The concept of Ulysses clauses was first recognised by the state of Virginia.

## LIVING WILLS

Does being alive and human entail the right to choose how and when one wishes to greet death? Along such lines was the question posed before the Supreme Court of India in *Common Cause (A Registered Society) v. Union of India and Another* which led to the Apex Court recognising advanced medical directives a.k.a. living wills.

### WHAT IS A LIVING WILL?

A living will is a document prescribing a person's wishes regarding the medical treatment the person would want if they become unable to communicate the same to their health care provider. Though both terms 'advance medical directive' and 'living will' are used interchangeably; living wills are, in certain contexts, limited to only terminal illnesses. Advance directives include different types such as:

-DNR order - 'Do Not Resuscitate' order which is an order that a person has decided not to have cardiopulmonary resuscitation attempted in the event their heart or breathing stops.

- Medical Power of Attorney which is a document which allows an individual that is the principal to appoint a trusted person as an agent to take health care decisions when the principal is not able to take such decisions.

## Further Guidelines

The guidelines by the Apex Court further specify that the hospital where the executor has been admitted must constitute a Primary Medical Board who shall certify whether the directive is to be carried out or not. In the event that the Primary medical board certifies that the directions ought to be performed a Second Medical Board is to be constituted. If the Second medical Board concurs with the view of the Primary Board then the decision is to be communicated to the Judicial Magistrate First Class before carrying out the directions.

## Thank You

We at Ayana Legal thank you for your continued support and patronage. We look forward to being back with our next edition soon.

## Disclaimer

This newsletter is solely for the purpose of providing information and the content provided is not and should not be construed as legal advice.

## GUIDELINES

Clarifying who can execute advance medical directives and other procedures, the Supreme Court has laid down the following guidelines:

- The Advance Directive can be executed only by an adult who is of sound mind and in a position to communicate, relate and comprehend the purpose and consequences of executing the document. It must be voluntarily executed and without any coercion, inducement or compulsion.
- It must specify as to when medical treatment may be withdrawn or no specific medical treatment shall be given. It should also mention that the executor may revoke the instructions and or authority at any time.
- 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 authorized to give consent to refuse or withdraw medical treatment in a manner consistent with the Advance Directive.
- The document should be signed by the executor in the presence of two attesting witnesses, preferably independent, and attested before a notary or Gazetted Officer.
- A copy of the directive 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 instructions in the document must be given due weight by the doctors. The directive 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 or her being cured.