



## The Supreme Court's new protocol on medical negligence cases

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1. The Supreme Court has recently introduced a new protocol for medical negligence case in the High Court, which took effect from 1 July 2017 ("the Supreme Court's Protocol").

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## The State Courts' 2007 pre-action protocol for medical negligence cases

2. Before we elaborate on the Supreme Court's Protocol, we wish to highlight the State Courts pre-action protocol for medical negligence cases which took effect more than 10 years ago on 1 January 2007 ("the State Courts' Protocol").
3. The difference between the cases heard in the Supreme Court and the State Courts lies in the total value of the claim being heard. Cases in which the total claim amount is less than \$250,000 are heard in the District Court or the Magistrate's Court (which are part of the State Courts), while cases in which the total claim amount is \$250,000 or more are heard in the High Court (which is part of the Supreme Court). It is however possible for cases to be transferred from the State Courts to the Supreme Court before they are decided, and vice versa, if certain conditions are satisfied.
4. The aim of the State Courts' Protocol is to prescribe a framework for pre-action exchange of information and communication with a view to resolving medical negligence disputes.
5. The State Courts' Protocol provides that before legal action is commenced:-
  - a. a claimant can obtain a medical report and medical records from a hospital so that he can consider whether he has a viable claim against the hospital and/or doctors; and
  - b. the claimant must then have a without prejudice discussion with the hospital and doctors so that the doctors will have an opportunity to explain the medical procedures to the claimant and the claimant can clarify with the doctors any doubts that he may have, paving the way to a possible amicable resolution of the claim.
6. Failing to comply with the State Courts' Protocol could lead to a stay of the legal action and/or adverse costs orders.
7. In our view, the State Courts' Protocol has worked well over the years in that it has led to the amicable resolution of claims before legal action is commenced or to some claimants not commencing legal action, thereby saving all parties concerned the time and costs of a legal action.

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8. Some claimants who eventually commenced legal action in the High Court also invoked and followed the State Courts' Protocol before they commenced legal action.

## **The Supreme Court's Protocol has 3 parts**

9. The Supreme Court's Protocol has 3 parts: pre-action discovery, commencement of legal action and pre-trial proceedings, and medical assessors.

### **Part One: Pre-action discovery**

10. Part One of the Supreme Court's Protocol is similar to the State Courts' Protocol in that it provides that the claimant can obtain a medical report and medical records before legal action is commenced. However, unlike the State Courts' Protocol, the Supreme Court's Protocol does not provide for a without prejudice discussion before legal action is commenced.

### **Part Two: Commencement of legal action and pre-trial proceedings**

11. Part Two of the Supreme Court's Protocol introduces procedures in relation to the commencement of the legal action up to the trial, including the earlier involvement of Judges in Pre-Trial Conferences.
12. One of the most important aspects of this Part is that the claimant has to file and serve the main documents in support of his claim, including expert report(s), together with the Statement of Claim.
13. Previously, the claimant only had to file his expert report(s) at a much later stage of a legal action, namely, at the exchange of Affidavits of Evidence-in-Chief. Some claimants may not even have had expert reports prepared when they commenced legal action.
14. Now, a claimant will generally have to obtain expert reports before he commences legal action as his Statement of Claim has to be filed shortly after legal action is commenced. This could possibly result in a decline in the number of legal actions that are commenced.

### **Part Three: Medical assessors**

15. Part Three of the Supreme Court's Protocol sets out the framework for the appointment and scope of a medical assessor. A medical assessor is a qualified medical professional whose role is to assist the Judge on specialised and technical aspects of the case so that the Judge may reach a properly informed decision. The Judge is still the sole arbiter of the dispute. The role of the medical assessor does not extend to rendering an opinion to the Judge.
16. The medical assessor will be as far as possible appointed from a standing panel of medical assessors who are appointed on the panel by the Singapore Medical Council, with the assistance of the Academy of Medicine and the College of Family Physicians.
17. The Rules of Court already provide for the appointment of Court experts. There have been medical negligence cases in the past whereby a Court expert was appointed. Although their roles are not exactly the same, it can be argued that medical assessors and Court experts both perform a similar function.

# LEGISLATION UPDATE



## Non-compliance

18. Non-compliance with the Supreme Court's Protocol can result in adverse costs orders or adverse interest orders.

## Conclusion

19. In conclusion, the State Courts' Protocol, which was introduced in 2007, and which applies to cases in the District Court and the Magistrate's Court (claims less than \$250,000), only provides for a medical report and for medical records to be given, and for a without prejudice discussion to be held, before legal action is commenced.
20. The new Supreme Court's Protocol, which took effect from 1 July 2017, and which applies to cases in the High Court (claims for \$250,000 or more), introduces more procedures. Its main features include medical reports and medical records being given before legal action is commenced, earlier Judge Pre-Trial Conferences, claimants' expert reports being exhibited to Statements of Claim, and medical assessors being appointed to assist Judges. This should streamline litigation for medical negligence cases, as well as encourage parties to try and resolve their disputes amicably at an earlier stage of a claim.

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