

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE
PRACTICE DIRECTIONS
AMENDMENT NO. 3 OF 2018

It is hereby notified for general information that, with effect from 1 October 2018, the State Courts Practice Directions will be amended as follows:

- (a) the existing Practice Direction 35 (*Overview of Alternative Dispute Resolution (ADR) for civil cases*) will be deleted and replaced by the following practice direction:

[*New Practice Direction 35*](#)

- (b) the existing Practice Direction 36 (*Mode of referral to ADR and consideration of ADR options: Case Management Conference, Pre-Trial Conference and Summons for Directions*) will be deleted and replaced by the following practice direction:

[*New Practice Direction 36*](#)

- (c) the existing Practice Direction 39 (*Medical Negligence Claims*) will be deleted and replaced by the following practice direction:

[*New Practice Direction 39*](#)

- (d) the following practice direction will be inserted immediately after the existing Practice Direction 41:

[*New Practice Direction 41A*](#)

- (e) the existing Form 7 in Appendix A (*Alternative Dispute Resolution (ADR) Form*) will be deleted and replaced by the following form:

[*New Form 7 in Appendix A*](#)

- (f) the following form will be inserted in Appendix A immediately after the existing Form 9J:

[*New Form 9J\(A\) in Appendix A*](#)

- (g) the existing Appendix D (*Pre-Action Protocol for Medical Negligence Claims*) will be deleted and replaced by the following appendix:

[*New Appendix D*](#)

2. The amendments to Practice Direction 35 and Form 7 in Appendix A, and the incorporation of the new Practice Direction 41A and the new Form 9J(A) in Appendix A serve to introduce conciliation as an additional Court Dispute Resolution (CDR) modality that the parties to a civil claim which has been filed in the Magistrate's Court or the District Court may opt for to facilitate the resolution of the dispute without proceeding for trial.
3. The amendments to Practice Direction 36 encourage parties to consider the use of Court Dispute Resolution (CDR) and other forms of Alternative Dispute Resolution (ADR), and provide for the mode of referral to CDR and other ADR processes at case management conferences for cases subject to the simplified process under Order 108 of the Rules of Court and at pre-trial conferences for cases not subject to the simplified process.
4. The amendments to Practice Direction 39 and Appendix D extend pre-writ discovery obligations to include medical records maintained by the healthcare provider, and provide for post-writ case management of medical negligence claims, including the use of Court Dispute Resolution (CDR) processes.

Dated this 14th day of September 2018.



JENNIFER MARIE
REGISTAR
STATE COURTS

PART VI: COURT DISPUTE RESOLUTION

35. Overview of Court Dispute Resolution (CDR) for civil cases

- (1) This Part of the Practice Directions focuses on CDR for civil disputes only.
- (2) Alternative Dispute Resolution (ADR) should be considered at the earliest possible stage. Court-driven ADR services give the parties the opportunity to resolve their disputes faster and more economically compared to determination at trial. These services are collectively termed “Court Dispute Resolution” (CDR) and, subject to the exception stated in paragraph (7), are provided by the Court for free. CDR sessions are convened under Order 34A of the Rules of Court (Cap. 322 R 5), which empowers the Court to convene pre-trial conferences for the purpose of the “just, expeditious and economical disposal of the cause or matter”.
- (3) In addition to CDR sessions provided by the Courts, the Courts also encourage parties to consider using other ADR procedures, including the following:
 - (a) Mediation at the Singapore Mediation Centre or Singapore International Mediation Centre;
 - (b) Mediation under the Law Society Mediation Scheme and/or Arbitration under the Law Society Arbitration Scheme; and
 - (c) Mediation and/or Arbitration by private service providers.

Processes used for Court Dispute Resolution sessions

- (4) CDR is provided by the State Courts Centre for Dispute Resolution. There are 3 processes used —
 - (a) Mediation;
 - (b) Conciliation; and
 - (c) Neutral Evaluation.

(Solicitors may refer to the State Courts’ website at <http://www.statecourts.gov.sg> for more information on these processes.)

- (5) Pursuant to Order 34A Rule 7 of the Rules of Court, no communication made in the course of a CDR session shall be disclosed to the Court conducting the trial of the action or proceedings if such communication has been stated by any of the parties to be confidential or without prejudice, or has been marked by the Judge at the CDR session as being confidential or without prejudice.
- (6) If the parties are unable to resolve their dispute at the CDR session, the Judge will give the necessary directions for the action to proceed to trial. The action will be tried by another Judge other than the Judge conducting the CDR session.
- (7) CDR sessions are provided by the State Courts Centre for Dispute Resolution without any fee, with the following exception set out in Order 90A Rule 5A of the Rules of Court (Cap. 322 R 5):
- “(1) *Subject to this Rule, a fee of \$250 is payable by each party in a case in a District Court (regardless of whether the case is commenced before, on or after 1 May 2015) for all Court ADR services that are provided in the case.*
- (2) *The Court ADR fee is payable when the first Court ADR service to be provided in the case, pursuant to either of the following, is fixed:*
- (a) *a request made on or after 1 May 2015 for the Court ADR service by any party in the case;*
- (b) *a referral on or after 1 May 2015 by the Court or the Registrar.*
- (3) *No Court ADR fee is payable in any of the following actions:*
- (a) *any non-injury motor accident action (as defined in Order 59 Appendix 2 Part V);*
- (b) *any action for damages for death or personal injuries;*
- (c) *any action under the Protection from Harassment Act 2014 (Act 17 of 2014).*
- (4) *The Registrar may, in any case, waive or defer the payment of the whole or any part of the Court ADR fee on such terms and conditions as the Registrar deems fit.”*
- (8) Each party who has requested for CDR or has been referred for CDR pursuant to Order 90A Rule 5A shall pay the fee of \$250 before proceeding for the scheduled CDR session. Details concerning the payment of these fees are provided in the relevant correspondence by the State Courts to the parties.

Presumption of ADR for all cases

- (9) A “presumption of Alternative Dispute Resolution” applies to all civil cases. For this purpose, the Court —
- (a) encourages parties to consider ADR options as a “first stop”, at the earliest possible stage; and
 - (b) will, as a matter of course, refer appropriate matters to CDR or other forms of ADR.

Presumption of CDR for non-injury motor accident (NIMA) claims, personal injury claims and medical negligence claims

- (10) The following cases will be fixed for CDR:
- (a) all non-injury motor accident (NIMA), personal injury cases and actions arising out of an alleged negligent act or omission in the course of medical or dental treatment (“medical negligence claims”) that are filed in the Magistrate's Court and the District Court; and
 - (b) all motor accident cases (whether or not involving any claim for personal injuries) and actions for personal injuries arising out of an industrial accident that are commenced in the High Court on or after 1st December 2016 and transferred to the District Court (references to NIMA and personal injury cases would hereinafter include these cases).
- (11) The Court will send a notice to the solicitors fixing the date of the first CDR session within 8 weeks of the filing of the memorandum of appearance.
- (12) The procedure and protocols set out in Practice Directions 37 (Non-injury Motor Accident (NIMA) Claims) and 38 (Personal Injury Claims) shall apply, as appropriate, to NIMA and personal injury claims, respectively.
- (13) The procedure and protocols set out in Practice Direction 39 (Medical Negligence Claims) shall apply, as appropriate, to medical negligence claims.

Presumption of ADR for other cases (excluding NIMA, personal injury and medical negligence cases):

A. Cases that are subject to the simplified process under Order 108 of the Rules of Court (Magistrate’s Court cases filed on or after 1st November 2014 and by consent, District Court cases filed on or after 1st November 2014)

- (14) All cases commenced by writ on or after 1st November 2014 in a Magistrate’s Court and any case commenced by writ on or after 1st November 2014 in a District Court (where parties have filed their consent in Form 233 of Appendix A of the Rules of Court for Order 108 to apply) will be subject to the simplified process under Order 108 of the Rules of Court (Cap. 322, R 5).
- (15) The Court will convene a case management conference within 50 days of the filing of the Defence pursuant to Order 108 Rule 3 of the Rules of Court. At the case management conference, the Court may refer cases for CDR or other forms of ADR, where —
- “(a) *the parties consent to the case being referred for resolution by the ADR process;*
or
- (b) *the Court is of the view that doing so would facilitate the resolution of the dispute between the parties.*”
- (16) Practice Direction 20 (Case management conference [CMC]) sets out details of the case management conference.

B. Cases that are not subject to the simplified process

- (17) In all other cases commenced in a Magistrate’s Court before 1st November 2014, and all cases commenced in a District Court on or after 1st April 2014, the Court will fix a Pre-Trial Conference (PTC) within 4 months after the filing of the writ if —
- (a) the Defence has been filed;
- (b) no summons for directions or application for summary judgment, striking out, stay, transfer or consolidation of proceedings has been taken out for the case; and
- (c) no CDR session has been fixed.
- (18) Such cases shall be automatically referred by the Court for CDR or other forms of ADR during the PTC, unless the parties opt out of CDR/ADR.

- (19) The procedure for referral to these CDR/ADR options is set out in Practice Direction 36 (Mode of referral to CDR/ADR etc.).
- (20) Parties are not required to file a Request for CDR in the following cases:
- (a) all NIMA, personal injury and medical negligence claims as the parties are automatically notified by the Court to attend CDR;
 - (b) all cases commenced by writ on or after 1st November 2014 in a Magistrate’s Court which are subject to the simplified process in Order 108 (excluding NIMA, personal injury and medical negligence claims) as the Court will deal with matters concerning CDR/ADR at the case management conference. Further details are set out in Part III of these Practice Directions; and
 - (c) all cases commenced by writ before 1st November 2014 in a Magistrate’s Court, and all cases commenced in a District Court as the Court will refer the appropriate cases for CDR during PTCs or summonses for directions.
- (21) A Request for CDR may be filed via the Electronic Filing Service when the parties wish to attempt CDR at an earlier stage.

Request for Skype Mediation

- (22) Parties can request for mediation to be conducted in the State Courts Centre for Dispute Resolution with one party appearing *via* Skype if the following requirements are satisfied:
- (a) the overseas party satisfies either of the following criteria:
 - (i) the overseas party (not being a corporation) is unable to travel to Singapore on certified medical grounds, or provides other evidence of inability to travel to Singapore for mediation; or
 - (ii) the overseas party is a foreign incorporated company with no local presence and/or representative;
 - (b) the party in Singapore consents to the application for mediation *via* Skype; and
 - (c) the overseas party is represented by solicitors in Singapore.
- (23) A request for Skype mediation must be made by filing a Request for CDR via the Electronic Filing Service, and annexing a Request for Skype Mediation (Form 8 in Appendix A to these Practice Directions) and relevant supporting documents in PDF format via the “paper clip” feature embedded in the Request for CDR.

- (24) Both Part A and Part B of the Request for Skype Mediation have to be completed and endorsed by the relevant parties at the time of filing.
- (25) Skype mediation proceedings or any part thereof shall not be recorded on video, audio or any other form. The attention of parties is also drawn to Order 38A Rule 4 of the Rules of Court.

Request for adjournment of CDR session

- (26) A dedicated time slot is set aside for each CDR session. In order to minimise wastage of time and resources, any request for adjournment of a CDR session shall be made early. A request to adjourn a CDR session —
- (a) for NIMA and personal injury claims shall be made *not less than 2 working days* before the date of the CDR session; and
 - (b) for all other cases shall be made *not less than 7 working days* before the date of the CDR session.
- (27) A request for an adjournment of a CDR session shall be made only by filing a “Request for Refixing/Vacation of Hearing Dates” *via* the Electronic Filing Service. The applicant shall obtain the consent of the other parties to the adjournment, and list the dates that are unsuitable for all parties.

Sanctions for failure to make early request for adjournment, lateness or absence

- (28) Where any party is absent without a valid reason for the CDR session, the Court may exercise its powers under Order 34A Rule 6 of the Rules of Court to “*dismiss such action or proceedings or strike out the defence or counterclaim or enter judgment or make such order as it thinks fit*”.
- (29) Where any party is late for the CDR session, this conduct may be taken into account by the Court when making subsequent costs orders pursuant to Order 59 Rule 5(1)(c) of the Rules of Court, which states —

“The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution.”

36. Mode of referral to CDR/ADR and consideration of CDR/ADR options: Case Management Conference, Pre-Trial Conference and Summons for Directions

- (1) This Practice Direction applies to all civil cases except non-injury motor accident (NIMA) claims and personal injury claims.

Case management conference for cases subject to the simplified process in Order 108 of the Rules of Court

- (2) All cases commenced by writ *on or after 1st November 2014 in a Magistrate's Court* and any case commenced by writ on or after 1st November 2014 in a District Court (where parties have filed their consent in Form 233 of Appendix A of the Rules of Court (Cap. 322, R 5) for Order 108 to apply) are subject to the simplified process set out under Order 108 of the Rules of Court (Cap. 322, R 5). The Court will convene a case management conference within 50 days of the filing of the Defence pursuant to Order 108, Rule 3 of the Rules of Court. Practice Direction 20 (Case management conference [CMC]) sets out the procedure for the case management conference.
- (3) At the case management conference, the Court *may refer cases for the most appropriate mode of ADR, where —*
 - (a) *the parties consent to the case being referred for resolution by the ADR process; or*
 - (b) *where the Court is of the view that doing so would facilitate the resolution of the dispute between the parties.*
- (4) To facilitate the Court's decision concerning CDR/ADR options, *all the parties and their solicitors must read and complete the CDR/ADR Form (Form 7 in Appendix A to these Practice Directions) prior to the case management conference.* The CDR/ADR Form must be filed through the Electronic Filing Service not less than 7 working days before the Case Management Conference under the document name "CDR/ADR Form". No court fees will be charged for the filing of the CDR/ADR Form.

Pre-trial conference and summons for directions for cases not subject to the simplified process

- (5) Paragraphs (6) to (12) below do not apply to non-injury motor accident, personal injury and medical negligence claims. They apply to all cases, not subject to the simplified process in Order 108, that are

- (a) commenced before 1st November 2014 in a Magistrate’s Court; or
 - (b) commenced in a District Court on or after 1st April 2014.
- (6) To encourage the use of Court Dispute Resolution (CDR)/Alternative Dispute Resolution (ADR) at an early stage, the Court will convene a Pre-Trial Conference (PTC) *within 4 months after the writ is filed* for every case where —
- (a) the Defence has been filed;
 - (b) no Summons for Directions (SFD) or application for summary judgment, striking out, stay, transfer or consolidation of proceedings has been taken out for the case; and
 - (c) no CDR session has been fixed,
- except that the parties will not be asked to attend a PTC in the event that they have earlier filed an SFD application.
- (7) Parties may file an SFD application prior to the PTC and file a request to vacate the PTC. Practice Direction 26 (Summonses for Directions) applies accordingly.
- (8) The solicitors for all the parties shall be present at the PTC. The parties need not attend the PTC.
- (9) The Judge hearing the PTC will give the necessary directions to facilitate the management of the case. The Judge may also recommend the appropriate mode of CDR/ADR. To facilitate a considered decision on the CDR/ADR options, *the parties and their solicitors must read and complete the CDR/ADR Form (Form 7 in Appendix A to these Practice Directions) prior to the PTC*. A party who is not represented shall also complete the relevant sections of the CDR/ADR Form.
- (10) The parties must file the CDR/ADR Form through the Electronic Filing Service not less than 7 working days before the PTC under the document name “CDR/ADR Form”. No court fees will be charged for the filing of the CDR/ADR Form.
- (11) All cases shall be *automatically referred by the Court for the most appropriate mode of CDR/ADR during the PTC unless any or all of the parties opt out of CDR/ADR*. Any party who wishes to opt out should indicate his/her decision in the CDR/ADR Form.
- (12) Where the Judge is of the view that CDR/ADR is suitable, and the party/parties have opted out of CDR/ADR for reasons deemed to be unsatisfactory, this conduct may be taken into account by the Court when making subsequent costs orders pursuant to Order 59 Rule 5(1)(c) of the Rules of Court, which states:

“The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution.”

39. Medical Negligence Claims

(1) Compliance with Protocol for Medical Negligence Claims

- (a) Parties in medical negligence claims must comply with the terms of the Protocol for Medical Negligence Claims at Appendix D of these Practice Directions (“the protocol”) both in substance and spirit. A breach by one party will not exempt the other parties in the claim from following the protocol so far as they are able.
- (b) In exercising its discretion as to costs, the Court will consider compliance with the protocol. If non-compliance with the protocol has led to unnecessary costs, the Court may make the following orders:
 - (i) an order disallowing a defaulting party his costs, or some part of his costs, even if he succeeds;
 - (ii) an order that the defaulting party pay the other party or parties their costs of the proceedings, or part of those costs; and
 - (iii) an order that the defaulting party pay those costs on an indemnity basis.
- (c) The Court will consider compliance with the protocol in exercising its discretion when deciding the amount of interest payable and may make the following orders:
 - (i) an order awarding a successful party who has complied with the protocol interest from an earlier period; and
 - (ii) an order depriving a successful party who has not complied with the protocol interest in respect of such period as may be specified.

(2) Case management

The Court will send a notice to solicitors fixing the date of the first Court Dispute Resolution (CDR) session within 2 weeks after the memorandum of appearance is filed in a medical negligence claim, to facilitate discussion and resolution of the claim.

41A. Conciliation

Opening statements

- (1) Each party must submit to the State Courts Centre for Dispute Resolution, and serve on all other parties, a written opening statement *not less than 2 working days before the date of the first conciliation session*. The opening statement shall be submitted in hard copy and not filed via the Electronic Filing Service.
- (2) The opening statement shall be in the format prescribed in Form 9J (A) in Appendix A to these Practice Directions. A soft copy of this Form may be downloaded at <http://www.statecourts.gov.sg>.
- (3) The opening statement shall be concise and not exceed 10 pages. It shall contain the suggested solution(s) of the dispute by the party submitting the opening statement.

Attendance at conciliation

- (4) All parties shall attend the conciliation in person.
- (5) The solicitor who has primary conduct over the case shall be present throughout the conciliation.
- (6) In the case of corporations and other entities, the representative who has the authority to settle shall attend the conciliation. In the event that only a board or body has authority to settle on behalf of the entity, the entity shall send the person who is the most knowledgeable about the case and who is able to recommend a settlement to the representative's board or body.
- (7) Conciliation will be conducted by a Judge in the State Courts Centre for Dispute Resolution.

Procedure at Conciliation

- (8) Information on the conciliation process is set out at the State Courts' website at <http://www.statecourts.gov.sg>. Unlike a trial, the primary aim of conciliation is not to determine who is at fault in the dispute. The role of the judge during conciliation is to assist the parties in negotiating and agreeing on a possible settlement to their dispute, with the judge playing an active role in suggesting optimal solution for the parties. Parties who are legally represented will attend the conciliation with their solicitors, and have the opportunity to communicate with each other as well as the judge.

- (9) The procedure for conciliation is more informal than a trial. The judge will exercise his/her discretion in structuring the conciliation, with a view to guiding the parties in arriving at a joint solution.

Form 7

COURT DISPUTE RESOLUTION (CDR)/ALTERNATIVE DISPUTE RESOLUTION (ADR) FORM

*The State Courts regard Court Dispute Resolution (CDR) and Alternative Dispute Resolution (ADR) as the **first stop of a court process**. CDR/ADR is crucial in the cost-effective and amicable resolution of disputes. Early identification of cases is essential to help the parties save costs and improve settlement prospects. To assist in this regard, this Form should be completed by you and your client before the following hearings:*

- (a) *Case Management Conference, for MC writs filed on or after 1st November 2014 and by consent, DC writs (pursuant to Order 108 of the Rules of Court and Practice Direction 20);*
- (b) *Pre-Trial Conference called pursuant to Practice Direction 36 (which PTC will be called in respect of MC writs filed before 1st November 2014 and all DC writs filed on or after 1st April 2014); or*
- (c) *any Summons for Directions that is filed (pursuant to Practice Direction 26).*

Information concerning CDR/ADR is provided on the second page of this Form.

This section is to be completed by solicitors

Case details	MC/DC* _____ / _____(year)		SUM _____ / _____ (year)	
Number of witnesses	Plaintiff		Defendant	
Nature of claim	Tort	Defamation / Medical Negligence*		
	Contract	Construction / Renovation / Supply of Goods & Services*		
	Others (Specify)			

Signature of solicitor

Name of solicitor for Plaintiff/Defendant*:

Law Firm:

Date:

**delete where inapplicable*

This section is to be read by your client

What are my CDR and ADR options?

The State Courts Centre for Dispute Resolution provides CDR services such as **mediation**, **conciliation** and **neutral evaluation**. Mediation services are also provided by the Singapore Mediation Centre (<http://www.mediation.com.sg>) and the Singapore International Mediation Centre (<http://www.simc.com.sg>). The Law Society of Singapore also provides **arbitration** and **mediation** as an ADR service.

Mediation is a process in which a mediator (i.e. a neutral third party) helps you and the other party negotiate for a settlement of your dispute. The mediator does not focus on who is at fault for the dispute. Instead, the mediator will help you and the other side discuss and reach a solution that will meet the concerns of both parties. Apart from mediation in the State Courts Centre for Dispute Resolution, the Law Society also provides mediation services under the Law Society Mediation Scheme (LSMS) as a quick, cost-effective and user-friendly way to resolve civil disputes without having to commence or continue with litigation or arbitration. More details of this scheme may be found at <http://www.lawsociety.org.sg/For-Public/Dispute-Resolution-Schemes/Mediation-Scheme>.

Conciliation is a process in which a conciliator (i.e. a neutral third party) possessing expertise in the subject matter assists you and the other party to negotiate for a settlement of the dispute. A judge at the State Courts Centre for Dispute Resolution will play a more direct role in the resolution of the dispute and assist parties arrive at an optimal solution by developing and suggesting proposals for the settlement. Ultimately, the decision whether or not to accept the settlement proposal still remains with the parties.

Neutral Evaluation (NE) involves an early assessment of the merits of the case by a judge in the State Courts Centre for Dispute Resolution. Parties' lawyers will present the case to the judge, who will review the evidence and provide an evaluation based on the merits of the case. The evaluation can be binding or non-binding, depending on what the parties choose.

More information on mediation, conciliation and neutral evaluation may be found at <http://www.statecourts.gov.sg> under "Interested in Mediation/Conciliation/CDR".

In **arbitration**, there will be a determination of who is at fault. However, the decision is made by a private individual, the arbitrator, instead of a judge. The Law Society Arbitration Scheme (LSAS) is provided by the Law Society of Singapore for parties to resolve their dispute through arbitration in a speedy and cost-effective way. More information concerning fees and details of the scheme can be found at <http://www.lawsociety.org.sg/For-Public/Dispute-Resolution-Schemes/Arbitration-Scheme>.

Which CDR or ADR option should I choose?

You should choose the CDR or ADR option that best addresses your needs. Most litigants are concerned about issues such as legal costs, the duration of the litigation process, confidentiality and whether they have control over the outcome of the case. Some other concerns may include the desire to preserve the relationship with the other party, discomfort over the formal proceedings and a need to be vindicated. Generally, mediation is an option that addresses most of these concerns.

However, you may consider other CDR/ADR options if you have unique considerations. To help you decide the best option for you, we have provided a diagram on page (iii) highlighting the

features of each option. Your solicitor will also be able to advise you on the pros and cons of each CDR/ADR option.

Which option should I use to resolve my dispute?

I want to control how the dispute should be resolved

I want someone else to decide on the outcome of the dispute

Mediation

Low cost

Fast

Confidential and without prejudice

Can achieve win-win solutions

Preserves relationships

But ...

User-friendly

No guaranteed outcome

Conciliation

Low cost

Fast

Confidential and without prejudice

Can achieve win-win solutions

Preserves relationships

Judge possesses expert knowledge on the subject matter, proposes solutions and guides proceedings

But ...

No guaranteed outcome

Neutral Evaluation

Low cost (but may involve more costs compared to mediation)

Fast (but may involve more time compared to mediation)

Confidential

Benefit of an opinion by a Judge on your likely chances of success

But ...

No guaranteed outcome

Arbitration

Allows for privacy and confidentiality

A binding decision by an arbitrator

Simplified procedure

But ...

More expensive than mediation
(Arbitration can be suitable for tenancy / construction disputes but not economical for complicated matters involving modest claims)

More time consuming than mediation

Limited avenues of appeal

Trial

Public vindication

Adjudication of the case by a Judge

Avenues of appeal

But ...

Costly

Time-consuming

Win-lose outcomes

Likely destructive impact on relationships

Highly stressful

Settled?

Yes

No

Proceed for trial / arbitration

Dispute resolved

This section is to be completed by your client

FOR MAGISTRATE’S COURT CASES ONLY

1. This is to certify that my solicitor has explained to me the available Court Dispute Resolution (CDR) and Alternative Dispute Resolution (ADR) services, and I am aware of the benefits of settling my case by CDR/ADR.
2. I have been advised and understand that the Judge may take the view that CDR/ADR is suitable for my case, and that any unreasonable refusal on my part to resolve this matter via mediation or other means of CDR/ADR may then expose me to adverse costs orders pursuant to Order 59 Rule 5(1) (c) of the Rules of Court as set out below:

Order 59 Rule 5(1) (c)

“The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution.”

3. For a case commenced by writ on or after 1st November 2014 before a Magistrate’s Court:
I have been advised and understand that my case may be referred for CDR/ADR under Order 108 Rule 3(3) of the Rules of Court as set out below:

Order 108 Rule 3(3)

“The Court may make an order directing that a case be referred for resolution by an ADR process if
—
(a) the parties consent to the case being referred for resolution by the ADR process; or
(b) the Court is of the view that doing so would facilitate the resolution of the dispute between the parties.”

4. My decision concerning CDR/ADR is as follows:-

(Tick the relevant boxes)

I wish to opt out from CDR/ADR for the following reasons:-

- I have already attempted CDR/ADR i.e. _____
- The dispute involves a question of law / To establish legal precedence.
- Other good reasons i.e. _____

(Note: Your view that the other party has a weak case is not considered a good reason)

I would like to be referred for the following CDR/ADR service(s)-

(Note: you may tick more than one type of CDR/ADR service.)

- Mediation at State Courts Centre for Dispute Resolution (SCCDDR)
- Conciliation at State Courts Centre for Dispute Resolution (SCCDDR)
- Neutral Evaluation at State Courts Centre for Dispute Resolution (SCCDDR)
- Mediation at Singapore Mediation Centre (SMC) / Singapore International Mediation Centre (SIMC)
- Mediation under Law Society Mediation Scheme (LSMS)
- Arbitration under Law Society Arbitration Scheme (LSAS)
- Others: (Please specify) _____

Signature of Plaintiff/Defendant*

Name:

Date:

**Delete where inapplicable*

This section is to be completed by your client

FOR DISTRICT COURT CASES ONLY

1. This is to certify that my solicitor has explained to me the available Court Dispute Resolution (CDR) and Alternative Dispute Resolution (ADR) services, and I am aware of the benefits of settling my case by CDR/ADR.
2. I have been advised and understand that my case will be referred for CDR/ADR unless any of the parties opt out of CDR/ADR.
3. I have been advised and understand that the Judge may take the view that CDR/ADR is suitable for my case, and that any unreasonable refusal on my part to resolve this matter via mediation or other means of CDR/ADR may then expose me to adverse costs orders pursuant to Order 59 Rule 5(1) (c) of the Rules of Court as set out below:

Order 59 Rule 5(1) (c)

“The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution.”

4. My decision concerning CDR/ADR is as follows: *(Tick the relevant boxes)*

- I wish to opt out from CDR/ADR.

Reason(s): _____

- I would like to be referred for the following CDR/ADR service(s):

(Note: You may tick more than one type of CDR/ADR service)

- Mediation at State Courts Centre for Dispute Resolution (SCCDR)

I am aware that each party in this case is required to pay Court ADR fees of \$250 in accordance with Order 90A rule 5A of the Rules of Court (except for non-injury motor accident actions, any action for damages for death or personal injury and any action under the Protection from Harassment Act 2014).

- Conciliation at State Courts Centre for Dispute Resolution (SCCDR)

I am aware that each party in this case is required to pay Court ADR fees of \$250 in accordance with Order 90A rule 5A of the Rules of Court (except for non-injury motor accident actions, any action for damages for death or personal injury and any action under the Protection from Harassment Act 2014).

- Neutral Evaluation at State Courts Centre for Dispute Resolution (SCCDR)

I am aware that each party in this case is required to pay Court ADR fees of \$250 in accordance with Order 90A rule 5A of the Rules of Court (except for non-injury motor accident actions, any action for damages for death or personal injury and any action under the Protection from Harassment Act 2014).

- Mediation at Singapore Mediation Centre (SMC) / Singapore International Mediation Centre (SIMC)

- Mediation under Law Society Mediation Scheme (LSMS)

- Arbitration under Law Society Arbitration Scheme (LSAS)

Others: (Please specify) _____

Signature of Plaintiff / Defendant*

Name:

Date:

**Delete where inapplicable.*

Form 9J (A)*

Confidential and Without Prejudice

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[CASE NUMBER]

OPENING STATEMENT FOR PLAINTIFF/DEFENDANT (CONCILIATION)

1. Parties attending the conciliation session

- (a) Plaintiff/Defendant/other party to suit
- (b) [Name of any other party attending; reason for attending]
- (c)

Where party is a corporate entity,

- (a) [Name and position of authorised representative of Plaintiff/Defendant]

2. Brief summary of facts

[Summarise your version of facts that gave rise to your claim/defence.]

3. Claim/Defence/Counterclaim/Defence to Counterclaim

[Summarise your legal claim or Defence.]

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4. Evidence supporting claim

A. Essential documents

The following *essential* documents are currently being relied on to support our claim/defence (without prejudice to modification after discovery):

- (a) [Provide very brief details on how each document supports your case. Append a copy of the essential documents to your opening statement.]
- (b) ...

B. Essential witnesses

We currently intend to rely on the following *essential* witnesses if the case goes to court (without prejudice to modification after extracting order of court containing court's directions for exchange of affidavits of evidence-in-chief):

- (a) [Provide a very brief outline of what you believe each essential witness will say.]
- (b) ...

5. Suggested Possible Solution/s at Resolving Dispute

The Plaintiff/Defendant suggests the following to resolve the dispute:

- (a) [Provide details on the suggested solution/s and reason/s why the party thinks it is viable and effective. If the suggested solution is premised on statute or legal precedents, set out the statutory provision(s) or points of law briefly.]

6. Other relevant information for settlement

[Provide any other information that may be beneficial in reaching a settlement.]

Dated this [-] day of [-] 20__

SOLICITORS FOR THE [PLAINTIFF/DEFENDANT]

APPENDIX D

PROTOCOL FOR MEDICAL NEGLIGENCE CLAIMS

PART ONE: PRE-ACTION SPECIFIC DISCOVERY OF DOCUMENTS

1. Application

- 1.1 The aim of Part One of the Protocol for Medical Negligence Claims (“the protocol”) is to prescribe a framework for pre-writ exchange of documents, information and communication with a view to resolve medical negligence disputes arising out of a negligent act or omission in the course of medical or dental treatment without protracted litigation and to maintain/restore the patient/healthcare provider relationship.
- 1.2 Part One of the protocol will apply from the time a potential claimant contemplates filing a medical negligence claim in Court. Prior to such time, either party is at liberty to communicate, correspond or negotiate with the opposing party in any manner they see fit.
- 1.3 This protocol does not affect any privilege that may apply to communication between parties undertaken in compliance with it (including medical reports and medical records furnished to the claimant’s solicitor by the doctor and/or the hospital (“health care provider”) pursuant to this protocol).
- 1.4 For avoidance of doubt, this protocol equally applies to actions arising from dental treatments.

2. Letter of request for medical report and other related medical records

- 2.1 Generally, to enable the claimant to consider whether he has a viable cause of action against the health care provider for medical negligence, a medical report and medical records of the patient from the health care provider are essential. The application for the medical report and medical records that may be necessary for the claimant and/or his solicitor to ascertain if there is a cause of action should be made by letter (see Form 1 below) setting out briefly the basis of the claim and the nature of the information sought in the medical report, including:
 - (a) symptoms presented by the claimant or the deceased (where the patient has passed away and the claimant is the deceased’s next-of-kin or executor or administrator of his estate) prior to treatment;

- (b) clinical findings;
- (c) diagnosis;
- (d) treatment prescribed, whether there are risks in such treatment and if so, when and how such risks were communicated to the claimant or the deceased and/or his next-of-kin;
- (e) whether alternatives to the prescribed treatment were disclosed to the claimant or the deceased and/or his next-of-kin and if so, why the prescribed treatment was preferred over these alternatives;
- (f) assessment of the claimant's or the deceased's condition at the last consultation and the cause of such condition or the cause of the deceased's death;
- (g) prognosis and recommended future treatment, if available.

2.2 The above guidelines on the contents of the medical report are meant to ensure that the report is as comprehensive as possible. Depending on the facts and nature of the medical management in each case, the contents of the medical report may be suitably modified. The application for the medical report may be dispensed with where the harm caused to the patient is *res ipsa loquitur*.

2.3 If the claimant and/or his solicitor wish to obtain copies of medical records from the health care provider, this should also be made clear in the letter. The various types of medical records that the claimant and/or his solicitor may seek from the health care provider are set out in Form 1. The medical records listed in Form 1 are not exhaustive, but act as guides. The claimant and/or his solicitor may request any other medical records that are relevant and necessary for the claim, which can depend on the nature and focus of the complaint, the type of medical treatment rendered and advice sought as well as whether the health care provider is a doctor or hospital.

2.4 The application for the medical report and medical records should be accompanied by the claimant's letter (see Form 1A below) authorising the health care provider to release the medical report and medical reports to the claimant's solicitor.

2.5 Within 7 days of receipt of the application, the health care provider shall inform the claimant what the requisite charges are for the medical report and medical records.

- 2.6 The medical report and medical records should be provided to the claimant within 6 weeks upon payment of the requisite charges. The claimant may where necessary, seek further information or clarification from the health care provider on any aspect of the report, in which case, the health care provider should respond within 4 weeks from receipt of the further request.
- 2.7 If the health care provider has difficulty complying with the timeline prescribed above, the problem and reason for the difficulty must be explained to the claimant in writing and the necessary extension of time sought.
- 2.8 If the health care provider fails to provide the requisite medical report, medical records and/or clarification within the timeline prescribed above or agreed extension period, the claimant may proceed to apply to the Court for an order for pre-action discovery under Order 24 Rule 6 of the Rules of Court (Cap. 322, R 5), without further notice to the health care provider. The Court will take into account any unreasonable delay in providing the medical report, medical records and/or clarification when considering the issue of costs.

3. **Letter of request for discussion**

- 3.1 Upon receipt of the medical report and/or medical records and before commencement of legal proceedings, the claimant is to write to the health care provider against whom he intends to pursue his claim to arrange for a without prejudice discussion (see Form 2 below). The health care provider must respond within 14 days after receipt of the letter, proposing a date and time for the meeting which should be held within 2 months from the date of the letter of request. This important step opens additional channels of communication between the health care provider and claimant, affording the health care provider an opportunity to explain medical procedures to the claimant and for the claimant to clarify with the health care provider any queries or doubts which he may have. Quite often, legal proceedings are taken because of miscommunication between the health care provider and patient or because the patient interprets a perceived lack of information and empathy as lack of due care and attention on the part of the health care provider. Hence, such discussions may pave the way for an amicable resolution of the claim. To facilitate the discussion, either party may in suitable cases, engage a separate or joint third party medical opinion on the medical management provided.
- 3.2 The letter to the health care provider is to be sent by way of A R Registered mail or by hand (in which case an acknowledgment of receipt should be obtained).
- 3.3 If the health care provider fails to propose a date and time for the meeting within the requisite 14 days or if without reasonable cause, the meeting is not held

within the requisite 2 months, the claimant may commence proceedings without any sanction by the Court.

4. Negotiation

- 4.1 After the initial discussion, the parties are at liberty to correspond or negotiate with each other in any manner they see fit with a view to resolving the matter amicably at the earliest opportunity. Litigation should not be commenced prematurely if there are reasonable prospects for resolution. Where reasonable effort has been made without reasonable prospects of resolution, and after the expiry of 2 months from the date of request for a without prejudice discussion, save where paragraph 3.3 applies, the claimant must give 10 clear days' notice, by letter (see Form 3 below) to the potential defendant of his intention to proceed with a writ. He is also to inform each potential defendant, to the best of his knowledge, the names of all the parties he is contemplating to sue.
- 4.2 Where the claim is affected by limitation and/or the claimant's position needs to be protected by the early commencement of an action, the claimant need only comply with this protocol as far as he is able.

PART TWO: COMMENCEMENT OF SUIT AND PRE-TRIAL PROCEEDINGS

5. Application

- 5.1 Part Two of the protocol relates to the commencement of proceedings for medical negligence and the pre-trial procedures in such cases.

6. Filing of medical reports and lists of documents

- 6.1 A claimant commencing a medical negligence suit in Court is required under Order 18 Rule 12(1A) to file and serve a medical report and a statement of the special damages claimed with the Statement of Claim. The medical report(s) should include expert report(s) that the claimant intends to rely on.
- 6.2 The defendant is also required to file and serve a medical report within 6 weeks after the filing of the memorandum of appearance.
- 6.3 For cases that are subject to the simplified process under Order 108 of the Rules of Court (Magistrate's Court cases filed on or after 1st November 2014 and by consent, District Court cases filed on or after 1st November 2014), each party is required to file and serve a list of documents together with the relevant pleading on the other party within the time limited for the service of such pleading under Order 108 Rule 2(4) of the Rules of Court.

6.4 For cases that are not subject to the simplified process, if there are documents other than the medical report filed with a claimant's pleading and the medical report that will be filed by a defendant under paragraph 6.2 which are:

- (a) documents on which a party relies or will rely; and
- (b) documents which could —
 - (i) adversely affect a party's own case;
 - (ii) adversely affect another party's case; or
 - (iii) support another party's case,

that party is required to file and serve a list of documents on the other party within 6 weeks after the filing of the memorandum of appearance using Form 37 of Appendix A of the Rules of Court.

7. Steps to be taken after close of pleadings

7.1 In order to encourage parties to delineate undisputed facts and issues at an early stage, parties are required to file a list of undisputed facts and issues 2 weeks after the close of pleadings or as directed by the Court.

7.2 Currently, a party may file a notice to admit facts under Order 27 Rule 2 of the Rules of Court only after a matter is set down for trial. For medical negligence cases, such a notice to admit may be served at any time after the close of pleadings.

8. CDR session

8.1 For all medical negligence cases that are filed in Court, the Court will convene the first CDR session under Order 34A of the Rules of Court within 2 weeks after the filing of the memorandum of appearance.

8.2 At the first CDR session, parties will explore the possibility of resolving the case by mediation, neutral evaluation, conciliation or other forms of CDR under the prevailing CDR framework. Solicitors for all parties seeking an indication on liability must submit a duly completed "Liability Indication Form (Medical Negligence Claims)" (see Form 4 below) to the Court at the CDR session. Whether or not an indication on liability is given, the Court may, at its own discretion in appropriate cases or at solicitors' request, provide an indication on quantum. Solicitors requesting for an indication on quantum must obtain each

other's consent before the CDR session, and submit the duly completed Quantum Indication Form (i.e. Form 9B in Appendix A) to the Court.

- 8.3 No directions for general discovery will be given as most discovery of documents would have taken place at the pre-action stage and pleadings stage. However, parties may apply for specific discovery as provided for under the Rules of Court.
- 8.4 The Court may, where appropriate, appoint a medical professional to co-mediate at the CDR session.

9. **Compliance with the protocol**

- 9.1 In the interest of saving time and costs, claimants are expected to use this protocol as a checklist on the required steps to be taken before commencing court proceedings and during pre-trial proceedings. Parties must comply with the terms of the protocol in substance and spirit. A breach by one party will not exempt the other parties in the claim from following the protocol insofar as they are able.
- 9.2 In exercising its discretion and powers, the Court will have regard to compliance with this protocol or lack thereof, including staying an action for the party in default to comply with the protocol, and in determining the amount of costs to be awarded under Order 59 Rule 5 of the Rules of Court.
- 9.3 Where there are good reasons for non-compliance, the Court will not impose sanctions against the party in default.

Form 1
Sample Letter of Request for Medical Report and Medical Records

To: Medical Records Officer
[Name of hospital/medical practice]
[Address]

Dear Sir

[Patient's full name]
[Patient's NRIC or passport number]

We are instructed by the abovenamed patient who received medical treatment [*underwent an operation*] at your hospital [*medical practice*] on [date] [*from [date] to [date]*].

[*We are instructed by [name of claimant], the [relationship] of the abovenamed deceased and executor/administrator of his estate. The deceased received medical treatment [underwent an operation] at your hospital [medical practice] on [date] [from [date] to [date]].*

Following the medical treatment [*operation*], our client instructed us that he is [briefly describe the client's present physical and/or mental condition or symptoms] [*the deceased passed away on [date]*]. In the light of our client's present condition [*In view of the death of the deceased*], our client is contemplating a claim for damages against [name of attending doctor(s)] and/or [name of hospital/medical practice].

Please let us have a comprehensive medical report stating:

- (a) symptoms presented by our client [*the deceased*] prior to treatment;
- (b) clinical findings;
- (c) diagnosis;
- (d) treatment prescribed, whether there are risks in such treatment and if so, when and how those risks were communicated to our client [*the deceased and/or his next-of-kin*];
- (e) whether alternatives to the prescribed treatment were disclosed to the claimant [*the deceased and/or his next-of-kin*] and if so, why the prescribed treatment was preferred over these alternatives;
- (f) assessment of our client's [*the deceased's*] condition at the last consultation and the cause of such condition [*the cause of the deceased's death*];
- (g) prognosis and recommended future treatment, if available.

We also request copies of all medical records that are in your hospital's [*medical practice's*] possession, including but not limited to the following:

- (a) admission records;

- (b) medical and clinical notes including letters of our client's [*the deceased's*] referral letters by doctors (from family clinics, polyclinics or other clinics/institutions);
- (c) nursing notes;
- (d) observation charts and documents on the health of our client [*the deceased*] during the treatment or stay in the hospital;
- (e) laboratory test results;
- (f) radiological scans, images and reports;
- (g) consent forms;
- (h) surgical records including anaesthetic records;
- (i) pharmaceutical records, including fluids intake records and outputs;
- (j) histological slides, images and reports;
- (k) blood transfusion records;
- (l) maternity records and cardiotocography (CTG) records (where claims involve matters relating to maternity and paediatric issues);
- (m) physiotherapy and rehabilitative treatment records;
- (n) records of family conferences.

Please let us know within 7 days from the receipt of this letter the requisite charges for the medical reports and/or medical records. Upon receipt of the requisite charges by your hospital [*medical practice*], please let us have the medical report within the next 6 weeks as prescribed under the Protocol for Medical Negligence Claims found in Appendix D of the State Courts Practice Directions. The letter authorising the release of the patient's medical records/medical report to us is enclosed.

Yours faithfully,

Form 1A
Sample Letter of Authorisation

Date:

[Patient's full name]

[Patient's NRIC or passport number]

I, [full name and NRIC or passport number] being the abovenamed patient *[being the [state relationship] of the abovenamed deceased and the executor/administrator of his estate]* hereby consent to and authorise the Medical Records Officer, [name of hospital/medical practice] to furnish my medical report *[the medical report on the abovenamed deceased]* to my solicitors [name of firm] pursuant to their letter of request dated [date].

Signature:

Form 2
Sample Letter of Request for Discussion

To: Head *without prejudice save as to costs*
[Name] Department
[Name of hospital/medical practice]
[Address]

Dear Sir

[Patient's full name]
[Patient's NRIC or passport number]

Thank you for the medical report on the abovenamed written by Dr. [name].

Our client [*together with us as his solicitors*] proposes to meet the doctor(s) involved in his treatment [*the treatment of the abovenamed deceased*] on a **without prejudice** basis so that he may have a better understanding of the management of his [*the deceased's*] illness [*injury/disability*].

Please reply within 14 days of receipt of this letter stating the date, time and venue of the meeting at your hospital [*medical practice*]. The meeting should be held no later than 2 months from the date of this letter.

Please note that unless we hear from you within the requisite 14 days, our client will have no alternative but to commence proceedings against the relevant doctor(s).

All communications arising out of this meeting will be treated in strict confidence and will not be disclosed to the Court in the event that legal proceedings are commenced.

Yours faithfully,

cc. [name of the defendant doctor(s)]

Form 3
Sample Letter by Claimant Before Issue of Writ of Summons

To: Head
[Name] Department
[Name of hospital/medical practice]
[Address]

Dear Sir,

[Patient's full name]
[Patient's NRIC or passport number]

We regret that despite reasonable effort having been made to meet the doctor(s) as proposed in our letter of [date] *[to resolve our client's claim]*, there does not appear to be any reasonable prospects of an amicable resolution.

We hereby give you 10 clear days' notice that our client intends to proceed with the issue of a writ of summons against Dr. [name(s)] and your hospital *[medical practice]* for damages for medical negligence in the treatment of our client *[the abovenamed deceased]*. In this regard, please let us know if you are instructing solicitors to accept service of process on your behalf.

Yours faithfully,

cc. [name of the defendant doctor(s)]

Form 4

**LIABILITY INDICATION FORM
(MEDICAL NEGLIGENCE CLAIMS)**

Instructions: Where liability indication is required, this form is to be completed before the CDR session by all solicitors having conduct of the case.

Case Number: _____

Plaintiff's Counsel/Signature: _____

CDR Date: _____

Defendant's Counsel/Signature: _____

[Other Party's Counsel/Signature]: _____

Alleged negligent act(s) or omission(s) by the Defendant	Details of alleged negligent act(s) or omission(s): _____
	Date(s) of occurrence: _____
	Alleged adverse outcome(s): _____
	Time of discovery of alleged adverse outcome(s): _____

Did the Plaintiff receive other relevant treatment(s) by other healthcare provider(s)?
 Yes

Name(s): _____	Type of treatment(s): _____
	Date(s) of treatment(s): _____

No

Plaintiff's Case	Defendant's/Other Party's Case
<i>What is the alleged breach of duty of care and causal link with the damage suffered?</i>	<i>Which allegation(s) of breach of duty of care and/or causation are denied and which are admitted and why?</i>

List of medical report(s) and other related medical record(s)

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Chronology of events giving rise to the claim

Date	Description	Supporting document(s) (if any)	Comments	Supporting document(s) (if any)