APPENDIX J

Para. 158(1)

PROTOCOL FOR MEDICAL NEGLIGENCE CASES IN THE GENERAL DIVISION OF THE HIGH COURT

PART ONE: PRE-ACTION SPECIFIC DISCOVERY OF DOCUMENTS

1. AIM OF PROTOCOL ON PRE-ACTION SPECIFIC DISCOVERY

1.1 In order for a claimant to consider whether he has a viable claim or cause of action against his doctor and/or hospital ("health care providers") for medical negligence, a medical report and medical records of the patient from the health care providers are often essential.

1.2 The aim of Part One of the Protocol for Medical Negligence Cases in the General Division of the High Court (the "Protocol") is to establish a protocol on pre-action specific discovery of documents. It is to prescribe a framework for pre-writ exchange of information with a view to resolving medical negligence disputes without protracted litigation. It is hoped that this will help to standardise and streamline the disclosure of medical records to a claimant who is considering pursuing a medical negligence claim. It aims to facilitate the exchange of relevant information and medical records so as to increase the prospect that medical negligence disputes can be resolved quickly.

1.3 Part One of the Protocol will apply from the time a claimant contemplates commencing a medical negligence suit in the General Division of the High Court (the "General Division") against his health care providers.

2. LETTER OF REQUEST FOR MEDICAL REPORT AND OTHER RELATED MEDICAL RECORDS

2.1 The application for the medical report and medical records that may be necessary for the claimant and/or his legal adviser to ascertain if he has a viable cause of action should be made by way of a letter set out in **Form 1** of this Appendix J setting out briefly the basis of the claim and the nature of the information sought in the medical report, including:

(a) the symptoms presented by the claimant or the deceased (in the case where the patient has passed away and the claim is pursued by his next-of-kin) prior to the treatment;

(b) clinical findings;

(c) diagnosis;

(d) treatment prescribed, risks in such treatment (if any) and when and how these risks were communicated to the claimant or the deceased and/or his next-of-kin;

(e) whether alternatives to the prescribed treatment were discussed and disclosed to the claimant or 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 condition at the last consultation and the cause of such condition or the cause of the deceased's death (if applicable);

(g) prognosis and recommended future treatment, if available.

2.2 If the claimant and/or his legal adviser wish to obtain copies of medical records from the health care provider, this should also be made clear in the letter of request. The various type(s) of medical records that the claimant and/or his legal adviser may seek from the health care provider are set out in **Form 1**. However, as the medical records to be sought from the health care provider would 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 medical doctor and/or hospital, the medical records listed in **Form 1** are not exhaustive, but act as a guide. The claimant and/or his legal adviser can request any other medical record(s) that are relevant and necessary for the claim.

2.3 As the above and the sample letter of request are guides only, the contents of the actual letter of request and medical report can be suitably modified depending on the facts and nature of medical management of each case.

2.4 The application for the medical report/medical records should be accompanied by a Consent Form set out in **Form 2** of this Appendix J signed by the claimant authorising the health care provider to release the medical report/medical records to the claimant's legal adviser.

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

2.6 The medical report and medical records should be provided to the claimant within 6 weeks of 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 and the health care provider should respond within 4 weeks from receipt of such 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 timelines prescribed above or agreed extension period, the claimant can proceed to apply to the Court for an order for pre-action discovery under Order 24 Rule 6 of the Rules of Court, without further notice to the health care provider. The Court will take into account any unreasonable delay in providing the said medical records when considering the issue of costs.

PART TWO: COMMENCEMENT OF SUIT AND PRE-TRIAL PROCEEDINGS

3. Part Two of the Protocol relates to the commencement of medical negligence cases in the General Division and the pre-trial procedures undertaken in such cases.

4. FILING OF MEDICAL REPORTS WITH PLEADINGS

4.1 With effect from 1 July 2017, a plaintiff commencing a medical negligence suit in the General Division is required to file and serve the main documents relied on in support of the claim including expert report(s) together with the Statement of Claim.

4.2 The 1st pre-trial conference ("PTC") will be called 1 week after the entry of appearance. Directions will be given by the Court. The defendant is also required to file and serve the Defence with a medical report 6 weeks from the date of the 1st PTC. The usual timeline for filing and service of Reply (if any) will apply.

5. STEPS TO BE TAKEN AFTER CLOSE OF PLEADINGS

5.1 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.

5.2 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.

6. EARLY PRO-ACTIVE JUDGE LED CASE MANAGEMENT

6.1 For all medical negligence cases commenced in the General Division, the 1st PTC before a Judge ("JPTC") will be convened 3 weeks after the close of pleadings.

6.2 At the 1st JPTC, parties will explore the possibility of resolving the case by mediation, neutral evaluation or other forms of Alternative Dispute Resolution ("ADR") under the current ADR framework. Parties will be required to fill up an ADR Offer (Form 28 of Appendix A of these Practice Directions) and Response to ADR Offer (Form 29 of Appendix A of these Practice Directions) for medical negligence cases and it will be a requirement that the relevant medical insurers sign off on these ADR forms in addition to the solicitors and clients.

6.3 At the 1st JPTC, the Court may also discuss with the parties the potential appointment of a medical assessor.

6.4 No directions for general discovery will be given as most discovery of documents would have taken place at the pre-action stage and pleading stage. However, parties may apply for specific discovery as provided for under the Rules of Court.

6.5 The 2nd JPTC will be convened 2 weeks after completion of discovery. At the Judge's discretion, the medical assessor, if any is appointed, may attend the JPTC. The possibility of resolving the matter via ADR will be explored with the Court.

6.6 The final JPTC is to be convened no later than 4 weeks before trial. At the Judge's discretion, the medical assessor may attend the final JPTC.

PART THREE: MEDICAL ASSESSORS

7.1 Part Three of the Protocol sets out the framework for the appointment and scope of involvement of a medical assessor at various stages of medical negligence proceedings.

7.2 A medical assessor is a qualified medical professional whose role is to assist the Judge on specialised and technical aspects of a case so that the Judge may reach a properly informed decision. The Judge is the sole arbiter of the dispute. The role of the medical assessor does not extend to rendering an opinion to the Judge.

8. APPOINTMENT OF MEDICAL ASSESSORS

8.1 The Court may, if it thinks fit on the application of any party, or on its own motion, appoint a medical assessor.

8.2 Parties should be prepared to discuss the possible appointment of a medical assessor at the 1st JPTC. Parties are therefore encouraged to consider the desirability of appointing a medical assessor as early as possible, having regard, in particular, to the complexity and technicality of the medical issues involved and the necessity of a medical assessor for the just disposal of the case. Where a party considers it desirable to appoint a medical assessor even before the 1st JPTC, that party should make an application for such an appointment as soon as possible and inform the Registrar at the earliest PTC of its intention to do so.

8.3 Where a party is of the view that a medical assessor should be appointed, it may apply to the Court by filing and serving on parties a form in **Form 3** of this Appendix J.

8.4 Where the Court decides that a medical assessor should be appointed, the medical assessor will as far as possible be appointed from a standing panel of medical assessors who are appointed to the panel by the Singapore Medical Council, with the assistance of the Academy of Medicine and College of Family Physicians.

9. REMUNERATION OF MEDICAL ASSESSORS

9.1 Where a medical assessor is appointed pursuant to an application of a party, unless the Court otherwise orders, the remuneration to be paid to the medical assessor shall be shared equally by the parties in the first instance. In the ultimate analysis, the Court will decide who shall bear the medical assessor's fees and in what proportions.

10. INVOLVEMENT OF MEDICAL ASSESSORS

10.1 A medical assessor shall take such part in the proceedings as the Court may direct.

10.2 Involvement pre-trial

10.2.1 Prior to the trial, the medical assessor may be asked to assist the Judge or the Registrar at PTCs.

10.2.2. The medical assessor may also be required to preside at a meeting of party-appointed experts. This could be done to help counsel or the experts reach agreement on certain issues or to refine the issues in dispute. Where the medical assessor is required to preside at such a meeting, the meeting will be held with a Registrar in attendance.

10.3 Involvement during trial

10.3.1 The medical assessor is expected to sit with the Judge in open court while expert evidence is being led. The medical assessor's exact involvement during the trial will be discussed and decided at the JPTC, and this will be communicated to the medical assessor prior to the commencement of trial.

10.3.2 The Judge may consult the medical assessor on a range of issues during the trial. This includes asking the medical assessor questions to help with the Judge's understanding of the technical issues, the proper technical inferences to draw from undisputed facts, the shortcomings of an expert's opinion, and the extent of the difference between apparently contradictory conclusions. The medical assessor may also suggest questions for the Judge to pose to the witnesses with a view to testing the opinion of the witnesses. All such communications should take place in open court.

10.3.3 The medical assessor may directly pose questions to the witness if permitted by the Court. However, the medical assessor shall not at any time be subject to cross-examination by the parties.

10.4 Involvement post-trial

10.4.1 After the conclusion of the trial and before closing submissions are due, the medical assessor may be called to assist the Judge based on the evidence that has emerged.

10.4.2 To ensure transparency and fairness where a Judge obtains assistance from the medical assessor, the following safeguards must be observed:

(a) The range of topics on which assistance might be sought from the medical assessor should be canvased with counsel, at the latest before closing submissions;

(b) Ordinarily, the Judge's questions to the medical assessor should not stray outside the range previously discussed with counsel;

(c) The questions ultimately put by the Judge to the medical assessor (regardless of whether they have strayed beyond the boundaries discussed with counsel) and the answers by the medical assessor should be disclosed to counsel before the Court hands down its judgment;

(d) Counsel should be given the opportunity to make submissions to the Judge as to whether the answers provided by the medical assessor should be accepted. Ordinarily, such submissions should be in writing; but if there is good reason for doing so, the parties may request an oral hearing with reasons why an oral hearing is preferred;

(e) Generally, the interests of proportionality and finality will make it unnecessary to repeat the procedure above in respect of any further or revised questions that the Judge may pose to the medical assessor. Accordingly, unless the Judge in his discretion thinks it appropriate to disclose them to counsel before judgment is delivered, any further or revised answers from the medical assessor will simply be recorded in the judgment, together with the Judge's decision as to whether or not to accept those answers and his reasons for doing so.

FORM 1

SAMPLE LETTER OF REQUEST FOR MEDICAL REPORT AND OTHER RELATED MEDICAL RECORDS

To: Medical Records Officer / Name of Medical Practitioner

[Name of Hospital / Medical Practice]

[Address]

Dear Sir

[Patient's full name/ NRIC Number]

We are instructed by [name of claimant] / [deceased's next-of-kin]. The above-named patient received medical treatment/ operation at your hospital / medical practice on [date] to [date].

2 Following the medical treatment/operation, our client instructed us that he was [briefly describe the patient's present condition or symptoms] / [briefly describe the deceased's symptoms or condition after treatment and date of passing].

3 In light of the above, our client is contemplating a medical negligence suit to claim for damages against [name of attending doctors] and/or [the hospital].

4 Please let us have a comprehensive medical report stating:

(a) the symptoms presented by the claimant or the deceased prior to the treatment;

(b) clinical findings;

(c) diagnosis;

(d) treatment prescribed, risks in such treatment (if any) and when and how these risks were communicated to the claimant or the deceased and/or his next-of-kin;

(e) whether alternatives to the prescribed treatment were discussed and disclosed to the claimant or 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 condition at the last consultation and the cause of such condition or the cause of the deceased's death (if applicable);

(g) prognosis and recommended future treatment, if available.

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

(a) admission records;
(b) medical and clinical notes including letters of the patients' referral letters by doctors (from family clinics, polyclinics or other clinics/institutions);
(c) nursing notes;

(d) observation charts and documents on the health of the claimant or 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.

6 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 payment of the requisite charges by our client, please let us have the said medical report and/or medical records within 6 weeks as prescribed under the Protocol for Medical Negligence Cases in the General Division of the High Court found in Appendix J of the Supreme Court Practice Directions.

7 The consent form authorising the release of the patient's medical records/medical report to us is enclosed.

FORM 2

SAMPLE CONSENT FORM AUTHORISING RELEASE OF MEDICAL REPORT AND OTHER RELATED MEDICAL RECORDS TO SOLICITORS

Date:

[Patient's full name/ NRIC Number]

I, [full name of patient] / [full name of executor and/or administrator of deceased's estate] hereby consent to and authorise the Medical Records Officer, [name of hospital / medical practice], to furnish [my] / [the deceased's] medical report and/or other related medical records to my solicitors [name of law firm] pursuant to their letter of request dated [date].

Signature:

NRIC No.

FORM 3

APPLICATION FOR APPOINTMENT OF ASSESSOR

Case number:	
Date:	
Details of Applicant:	Plaintiff/Defendant/Third Party/Others (please state)

The applicant would like to apply for the appointment of a medical assessor, for the following reasons:

The applicant has/has not* informed the claimant and/or respondent(s) of this application. If the respondent(s) has been so informed, please state if the respondent(s) consents to the application:

*Delete as appropriate

Name of applicant:	

Name of counsel (if applicable):	
Law firm (if applicable):	
Signature of applicant / counsel (if applicable):	