

# UNDERSTANDING SECTION 37'S IMPACT ON THE DUTY TO ADVISE:

## Need to Strengthen the Doctor-Patient Relationship

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Two years after Section 37 of the Civil Law Act (CLA) took effect to statutorily legislate the standard of care for the duty to advise, significant uncertainties persist regarding its implications for the liabilities of healthcare professionals. These unresolved questions formed the core theme of this year's Annual National Medico-Legal Seminar, titled "Confidence in Consent: Equipping Doctors to Navigate the Changing Terrain of the Duty to Advise". Co-organised by the Medico-Legal Society of Singapore and the SMA Centre for Medical Ethics and Professionalism, the event attracted nearly 400 healthcare and legal professionals to come together to share best practices and strategies for meeting legal obligations in clinical practice.

### Legal context of the duty to inform

The event was graced by Justice Judith Prakash, Senior Judge of the Supreme Court of Singapore, who astutely shared a historical overview of the duty to inform, ultimately culminating in the enactment of Section 37 of the CLA.

Justice Prakash traced the evolution of informed consent standards, discussing landmark cases like Bolam (1956) and Bolitho (1998). In Bolam, the court held that doctors were not liable if they acted in accordance with a practice accepted at the time as proper by a responsible body of medical opinion, thereby prioritising

professional standards. Bolitho added that peer opinion must be internally consistent and logical, requiring experts to weigh risks and benefits appropriately. Despite Bolam's long-standing influence, Justice Prakash noted the shift towards patient-centred standards for medical advice in Singapore's Hii Chii Kok decision where the Court recognised patient autonomy as essential to providing informed consent for medical therapy. Importantly, the Court found that doctors have to disclose information that would be relevant and material to a reasonable patient in that particular patient's position, and information that the doctor knows is important to that particular patient in question.

Although Section 37 of the CLA followed a Ministry of Health (MOH) workgroup's recommendations in light of the healthcare professions' dissatisfaction with the uncertainty regarding duty to advise, Justice Prakash highlighted that it remains to be seen how it will be interpreted since the new provision has yet to come before the Courts. Importantly, Section 37 of the CLA contains elements of peer professional opinion (in section 37(1)) subject to elements of patient autonomy (in section 37(2)).

Ultimately, Justice Prakash emphasised that these changes had to be understood amid the evolving doctor-patient relationship, with patients having greater

access to medical information and the concomitant emphasis on patient autonomy. She suggested that while Section 37 of the CLA does not fully restore the Bolam-Bolitho test, it perhaps introduces a hybrid situation. However, the final landing of the interpretation of the legislation depends on the Court.

### Impact of Section 37

In the afternoon, attendees got to take a deep dive into the practical impact of Section 37. First, Prof A Kumaralingam shared his view during a talk titled "Retrial of Montgomery: How might the Courts interpret Section 37?". This was followed by an engaging panel consisting of Justice Prakash, Prof Ong Biauwei Chi, Prof A Kumaralingam and Adj Prof Chin Jing Jih, moderated by Mr Edmund Kronenburg. The panel discussion was labelled "Back to Bolam: Will patients lose out, and doctors ever feel reassured? What role does the Court play in striking the balance between patient autonomy and the complexities of medical practice?".

The discussion shed light on how Section 37 can balance professional standards with patient autonomy, a shift that could significantly influence the obligations of healthcare providers. The following key insights emerged from the panellists' discussion regarding the potential legal impact of Section 37 of the CLA.

First, with the increasing complexity of the patient-doctor relationship, it was universally acknowledged that the hybrid standard imposed by Section 37 would naturally increase complexity in balancing professional opinion with individual patient needs.

Second, the panellists discussed the increased emphasis on documentation and historical records. Medical professionals must ensure that all material information, particularly details relevant to the patient's specific circumstances, are communicated appropriately. The panellists also spoke to the current limitations of the electronic medical records and further complexities introduced by the increasing role of team-based practice with allied health professionals and nurses.

Third, the panellists discussed their concerns that meeting the standards of the hybrid approach of Section 37 poses practical challenges in high-volume healthcare settings. Importantly, the practical constraints to consent-taking must be considered, such as limited consultation times and whether that is enough to foster trust and reduce misunderstandings. It was agreed that training to identify patient-specific red flags early and to balance empathy with efficiency was recommended to address these challenges.

### Best practices to move forward

Prof Ong Biau Chi shared her insights as a practitioner in her talk "Consent Taking and Section 37", walking the audience through the evolution of consent-taking in hospital practice. Dr Ng Chee Kwan, President of the SMA, followed with findings from the "SMA Survey on Informed Consent", using empirical analysis to shed light on perceptions of current consent-taking practices on the ground. In his talk titled "The Well-Informed Patient", Dr Rob Hendry also addressed challenges of cyberchondria, where patients increasingly come in with information from online sources, often impacting trust and creating misconceptions that doctors must address sensitively. Lastly, to round off the topic of best practices, attendees were invited to join the open forum discussing "Consent in real life –

How do practising doctors balance time and resources with adequate counselling and documentation of consent?". Dr Charmain Heah led discussions by a panel consisting of Dr Ng Chee Kwan, Prof Glenn Tan, Dr Rob Hendry and Dr Wong Tien Hua.

The panel discussion illuminated the practical challenges and opportunities posed by Section 37, underscoring its potential to reshape informed consent practices by balancing high patient volumes with the need for individualised, empathetic communication. Some key insights that were raised by the speakers are as follows.

First, all the practitioners agreed on the importance of fostering trust and addressing patient concerns proactively. Where feasible, doctors were encouraged to take time to listen, detect red flags and offer reassurance by involving family members or colleagues when appropriate. Additionally, rather than relying solely on structured consent forms, doctors should engage in discussions that clarify risks relevant to the patient's unique circumstances. While it is acknowledged that doctors face significant time constraints, they should adopt situational awareness to help patients make informed decisions.

Second, the rise of self-researched, "highly aware" patients was acknowledged to present unique challenges. These patients frequently come to consultations with online-sourced information that can be inaccurate or incomplete. Acknowledging patient perspectives while providing respectful, evidence-based corrections is critical in maintaining trust and facilitating effective communication.

Third, consistent documentation and consent discussions featured as critical for legal risk management and communication with fellow professionals. Best practices include documenting key discussion points, using consent templates, and storing signed consent forms in patient records. These practices support clear communication and protect both patient rights and physician responsibilities.

### Conclusion

In conclusion, day 1 of the seminar highlighted the evolving landscape of informed consent under Section 37, emphasising the need for a balanced approach that respects both patient autonomy and professional standards. With the rise of well-informed patients, it is crucial for doctors to prioritise clear communication, empathetic engagement and thorough documentation. These practices not only fulfil legal obligations but also foster trust, ensuring that informed consent remains a meaningful and collaborative process between doctors and patients. ♦

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