



REPUBLIC OF SINGAPORE

GOVERNMENT GAZETTE

BILLS SUPPLEMENT

Published by Authority

NO. 33]

THURSDAY, SEPTEMBER 3

[2020

First published in the *Government Gazette*, Electronic Edition, on 3 September 2020 at 5 pm.

Notification No. B 33 — The Civil Law (Amendment) Bill is published for general information. It was introduced in Parliament on 3 September 2020.

Civil Law (Amendment) Bill

Bill No. 33/2020.

Read the first time on 3 September 2020.

A BILL

i n t i t u l e d

An Act to amend the Civil Law Act (Chapter 43 of the 1999 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Civil Law (Amendment) Act 2020 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

New section 37

2. The Civil Law Act is amended by inserting, immediately after section 36, the following section:

“Standard of care for medical advice

37.—(1) A healthcare professional meets the standard of care in relation to the provision of medical advice to a patient if —

(a) subject to subsection (2), the manner in which the healthcare professional acts in the matter (at the time the medical advice is provided) is accepted by a respectable body of medical opinion (called in this section the peer professional opinion) as reasonable professional practice in the circumstances; and

(b) the peer professional opinion is logical.

(2) In order for the peer professional opinion mentioned in subsection (1) to be relied on for the purposes of that subsection, the peer professional opinion must —

(a) require the healthcare professional to have given (or caused to be given) to the patient —

(i) information that a person in the same circumstances as the patient (which circumstances the healthcare professional knows or ought reasonably to know) would reasonably require to make an informed decision about whether to undergo a treatment or follow a medical advice; and

(ii) information that the healthcare professional knows or ought reasonably to know (in accordance with subsection (3)) is material to the patient for the purpose of making an

informed decision about whether to undergo the treatment or follow the medical advice; and

Explanation. — Sub-paragraph (ii) refers to information which a person in the same circumstances as the patient would not reasonably require to make an informed decision (about whether to undergo a treatment or follow a medical advice), but which is important to the patient, for the patient's own reason (including an idiosyncratic reason), for the purpose of making an informed decision.

- (b) support the non-provision of any information mentioned in paragraph (a)(i) or (ii) to the patient only where there is reasonable justification for that.

Illustrations

(a) *A* (a doctor) decides to perform an emergency life-saving surgery on *B* (a patient), who is unconscious, to create a temporary airway for *B*. Without this surgery, *B* will not be able to breathe and will die. At the material time, there is no person present with legal capacity to make medical decisions on behalf of *B*, and insufficient time to locate or appoint such a person. *A* has reasonable justification for not providing information about the surgery to *B*, or any person with legal capacity to make medical decisions on behalf of *B*, before performing the surgery.

(b) *B* (a patient) seeks treatment for breast cancer from *A* (a doctor) and informs *A* that *B* would like to proceed with a lumpectomy. *B* also informs that *B* had earlier consulted 2 other breast cancer specialists who had advised *B* of the other treatment options (including their benefits and risks) available to *B*, and expressly tells *A* that *B* does not want to be given this information again. *A* is satisfied that *B* appreciates the seriousness of *B*'s decision to waive *B*'s right to hear such information. *A* has reasonable justification for not providing such information to *B*.

(c) *A* (a doctor) is of the view that it is in the best interests of *B* (a patient) to undergo a procedure and that informing *B* about the risks of the procedure would dissuade *B* from undergoing it. This, by itself, does not give *A* reasonable justification for not informing *B* about the risks.

- (3) In subsection (2)(a)(ii), an assessment as to whether any information is material to the patient for the purpose of making an informed decision about whether to undergo a treatment or follow a medical advice must be based on any specific concern

or query the patient has in relation to the treatment or medical advice —

- (a) which the patient expressly communicates to the healthcare professional; or

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Illustration

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B (a patient) asks *A* (*B*'s doctor) about the risks of influenza vaccination. *B* expresses a concern to *A* about side effects of weakness or paralysis after being administered the influenza vaccine (which alludes to the Guillain-Barré syndrome). *B* is not a high-risk patient for developing Guillain-Barré syndrome from influenza vaccination, and doctors would not ordinarily advise a patient in *B*'s circumstances about Guillain-Barré syndrome as it is a very rare side effect of the influenza vaccine. However, since *B* has expressly communicated such a concern to *A*, information on the risks of Guillain-Barré syndrome is material to *B* for the purpose of *B* making an informed decision about whether to receive influenza vaccination.

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- (b) which the patient does not expressly communicate to the healthcare professional but which ought to be apparent to the healthcare professional from the patient's medical records that the healthcare professional has reasonable access to and ought reasonably to review.

Illustration

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Slightly dry skin at the surgery site is a rare but possible consequence of knee replacement surgery. The general medical opinion is that a patient would not reasonably require information about the possibility of dry skin at the surgery site in order to make an informed decision as to whether to undergo knee replacement surgery.

B (a patient) consults *A* (a doctor) on knee replacement surgery. *B* has an unusual concern that *B*'s skin should not become dry, but does not expressly communicate this concern to *A*. A year earlier, *B* had consulted *C* (another doctor working in the same hospital as *A*) on knee replacement surgery but did not proceed with it. *B*'s medical records containing notes of *B*'s consultation with *C* show that *B* had repeatedly asked *C* about dry skin and stated that *B* did not want the skin on *B*'s knee to feel dry after such surgery. Therefore, it ought to be apparent to *A* from such medical records of *B* that information about dry skin being a possible consequence of knee replacement

surgery is material to *B* for the purpose of *B* making an informed decision about whether to undergo the surgery.

(4) The fact that there are differing professional opinions held by other respected healthcare professionals does not, by itself, prevent the peer professional opinion mentioned in subsection (1) from being relied on for the purpose of that subsection.

(5) For the purposes of subsection (1)(b), a peer professional opinion is logical where —

(a) the body of healthcare professionals holding the opinion has directed its mind to the comparative risks and benefits relating to the matter; and

(b) the opinion is internally consistent and does not contradict proven extrinsic facts relevant to the matter.

(6) A reference in this section to a patient includes, in the case where the patient is under a legal disability, a reference to a person with the responsibility for making a decision for the patient having regard to medical advice.

(7) In this section, “healthcare professional” means an individual who practises a profession that provides medical advice, and includes —

(a) a medical practitioner registered (or deemed to be registered) under the Medical Registration Act (Cap. 174); and

(b) a dentist registered (or deemed to be registered), and an oral health therapist registered, under the Dental Registration Act (Cap. 76).”.

Saving and transitional provisions

3.—(1) Where a healthcare professional provides, before the date of commencement of section 2, any medical advice to a patient, that section applies to the provision of that medical advice by the healthcare professional if the healthcare professional continues to

provide medical advice, diagnosis or treatment to the patient on the same matter on or after that date.

(2) For a period of 2 years after the date of commencement of section 2, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that section as the Minister may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Civil Law Act (Cap. 43) to set out the legal test in respect of the standard of care for medical advice given by healthcare professionals.

The provisions of the Bill, when enacted as law, will prevail over existing common law on the standard of care for medical advice, to the extent of inconsistency between those provisions and common law. To avoid doubt, the common law in this area will continue to apply where it is not inconsistent with the provisions of the Bill.

The Bill does not deal with, and does not affect existing common law on, the standard of care for medical diagnosis and medical treatment carried out by healthcare professionals.

Clause 1 relates to the short title and commencement.

Clause 2 inserts a new section 37.

The new section sets out the standard of care for medical advice given by healthcare professionals. A healthcare professional is defined by the new section to mean an individual who practises a profession that provides medical advice — this includes a medical practitioner, a dentist and an oral health therapist.

The new section 37(1) states that a healthcare professional meets the standard of care in relation to the provision of medical advice to a patient if the manner in which the healthcare professional acts (at the time the medical advice is provided) is accepted by a respectable body of medical opinion (called the peer professional opinion) as reasonable professional practice in the circumstances, and such peer professional opinion is logical.

The new section 37(2) describes the standard by which the peer professional opinion must assess the information given by a healthcare professional in providing medical advice to a patient.

The new section 37(2)(a)(i) provides that the peer professional opinion must require the healthcare professional to have given or caused to be given to the patient information that a person in the same circumstances as the patient would reasonably require to make an informed decision about whether to undergo a treatment or follow a medical advice. These circumstances are relevant to the extent that they are circumstances which the healthcare professional knows or ought reasonably to know.

The new section 37(2)(a)(ii) provides that the peer professional opinion must also require the healthcare professional to have given or caused to be given information that the healthcare professional knows (or ought reasonably to know) is material to the patient for the purpose of making an informed decision about whether to undergo a treatment or follow a medical advice. The Bill explains that this provision refers to information which a person in the same circumstances as the patient would not reasonably require to make an informed decision about the treatment or medical advice, but which is important to the patient for the patient's personal reasons (which may even be idiosyncratic reasons) for the purpose of making an informed decision.

The new section 37(2)(b) provides that the peer professional opinion must support the non-provision of any information mentioned in the new section 37(2)(a) only where there is reasonable justification for that. The Bill includes non-exhaustive illustrations of the presence or absence of reasonable justification.

The new section 37(3) provides that an assessment in the new section 37(2)(a)(ii) as to whether information is material to the patient (for the patient's personal reasons) for the purpose of making an informed decision about whether to undergo a treatment or follow a medical advice must be based on the patient's specific concerns or queries about the treatment or medical advice (i) which the patient expressly communicates to the healthcare professional; or (ii) which are not expressly communicated by the patient to the healthcare professional but which ought to be apparent to the healthcare professional from the patient's medical records that the healthcare professional has reasonable access to and ought reasonably to review. The Bill includes non-exhaustive illustrations on the operation of subsection (2)(a)(ii) read with subsection (3) of the new section 37.

The new section 37(4) states the legal position on a multiplicity of peer professional opinions in respect of the giving of medical advice by a healthcare professional. The mere fact that there are different professional opinions held by other respected healthcare professionals does not preclude the peer professional opinion from being relied on for the purposes of the new section 37(1).

The new section 37(5) describes the threshold test of logic for the peer professional opinion.

The new section 37(6) provides that the stated legal test for medical advice by a healthcare professional would also apply to medical advice given to a person with the responsibility for making a decision for a legally disabled patient about undergoing a treatment or following a medical advice.

Clause 3 provides for saving and transitional provisions.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
