



FACTSHEET: SUMMONS

What is a summons?

A summons is a court issued document which starts the litigation process. The summons states the names of the complainant, known as the plaintiff, and the defendant(s) against whom the case is made. The summons also includes the name of the court from which the summons is served and the case number.

A summons is usually a combination of two documents. The first is the summons itself, summoning the defendant/s to defend themselves against a claim and the second is the particulars of claim. It is only from the particulars that one can see the basis of the action as well as the relief sought. The particulars of claim, then, sets out the facts that give rise to the claim as well as what the plaintiff wants the court to decide.

This is referred to as a combined summons but there are other kinds of summonses such as a simple summons and a provisional sentence summons. The most common of these is a combined summons and this is the kind of summons used for medical malpractice claims.

The summons is served upon a defendant by the sheriff of the court. When a summons is served on the defendant, it must either be served personally, or on a person who is older than 16 at the premises where the defendant is employed or resides. There are exceptions to this rule but for the purposes of a medical malpractice claim, this rule applies.

The summons will explain that the defendant must indicate within a specified time period whether he/she will defend the case, usually 10 business days from when the summons was served. If the defendant does not enter an appearance to defend within the specified number of days, the plaintiff can apply for default judgement. Although it might be tempting to ignore a summons and complaint, ignoring a lawsuit does not make it go away. And it could result in the court awarding a money judgment against you by default.

This means that the relief sought by the plaintiff may be granted without any defence by the defendant. It is, therefore, very important to instruct an attorney to formally notify the court within these 10 days that the matter will be defended on your behalf. You should familiarize yourself and all your staff who may receive a summons on your behalf with this note.

What to do first?

1. Check that the document states that it is a summons and not a subpoena or any other legal document
2. Take note of and record the date the summons was served, and on whom
3. Take note of the name of the court on the top of the page

4. Confirm that the description of the defendant describes you correctly. If the summons doesn't describe you or your address correctly or the summons isn't correctly served, you should refuse the summons and inform the sheriff that the defendant described in the summons is not you or the address of service is not yours.
5. If the sheriff insists on leaving a copy, then immediately contact your professional indemnity insurer.

What is the next step?

Your professional indemnity provider will appoint attorneys on your behalf to defend you and they will serve a document known as a notice of intention to defend the proceedings. The notice to defend is served on the plaintiff's attorney, and then to the court.

On receipt of your summons, you should secure the patient's records as well as any other information and documentation relevant to the cause of action. You must also identify and record the details of any witnesses who may assist your defence.

The defendant will then have to provide a plea within 20 days. The plea is your defence and response to the plaintiff's claims as set out in the particulars of claim. Your attorneys will contact you to set up a meeting to discuss the legal process as well as the claims made against you. Your attorneys will need to be provided with all the patient's records and a report from you prior to this meeting.

Your professional indemnity insurer and your legal team will manage the legal process and will assist you in preparing your defence. Expert witnesses may need to be identified and consulted and an advocate will be briefed to appear on your behalf and present your case at court, should the matter not settle or be withdrawn.