

Be prepared, not panicked, when served with a subpoena

On Friday morning, Dr. G receives a subpoena requesting one of her patient's records be available for court the following Monday. This is Dr. G's first subpoena. The timetable is short, and she is uncertain about what to do and whom to ask for advice.

If you experience circumstances similar to Dr. G's, these suggestions can acquaint you with the legal system, its processes, and jargon.

Subpoena or summons? A summons may mean a lawsuit was filed against you. A subpoena means you're called to appear as a witness and/or provide the court with records or information.¹ Inform your personal attorney or your facility's legal team about the subpoena and provide a copy.

Identify the sender. Find out if a judge, attorney, or prosecutor issued the legal notice. Ask the issuer for information such as the case details and type of information expected from you. Confirm that you treated this particular patient or saw him or her in consultation.

Don't ignore it. Subpoenas and summonses are court orders. You can be served twice, and if you disregard these notices you can be held in contempt of court. You could be fined or imprisoned, but judges usually are more interested in having witnesses comply than in inflicting punishment.

If the date, time, or location of the court appearance is not convenient, work with the court to reschedule and obtain these arrangements in writing. If you experience difficulty, contact the judge's clerk directly.

Privacy concerns. Your attorney and the American

Psychiatric Association's legal consultation plan (available at www.psych.org/ecp/membership.cfm) can help you act in accordance with Health Insurance Portability and Accountability Act (HIPAA) regulations and applicable state laws. Your malpractice insurer can also offer guidance.

Request your patient's consent to release your records to the court. If the patient refuses to consent, clearly explain to the court your inability to release confidential records. If your records or testimony are crucial for the case, the judge may still order you to comply.

Some subpoenas have exclusion criteria that exempt psychiatric and/or psychotherapeutic notes. If you believe your records qualify as exempt, you must submit a letter to the court explaining the reasons.

Requirements to comply. A subpoena may require testimony only, records only, or both. If you are required to testify, clarify whether you are to appear at trial, deposition, or both. In court, discuss only facts pertaining to the case, not your opinion.

References

1. Reiley DG, Guldner GT, Leinen AL. "You are commanded to appear." The subpoena and the emergency medicine resident. *Ann Emerg Med* 2003;42(6):843-6.

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