



# I Am Being Sued for a Medical Debt—What Should I Do?

## I HAVE RECEIVED A SUMMONS AND COMPLAINT ABOUT A MEDICAL DEBT—WHAT DO I DO?

If you are served with a Summons and Complaint, you must file an “Answer.” An Answer is a response by the defendant (the person being sued) to the claims made by the plaintiff (the medical provider or company who filed the lawsuit) that includes defenses. Defenses are reasons why the plaintiff should not win. To file an Answer, you should go to the clerk’s office in the courthouse where the case was filed and fill out an answer form.

## WHAT SHOULD I PUT IN MY ANSWER?

Following are some defenses that may be raised in your Answer to a medical debt lawsuit:

**General Denial:** Don’t assume that the information in the Complaint is correct. You have the right to generally deny the allegations in the Complaint when you are not certain that all the information is true.

**Improper Service:** If you never received a copy of the summons and complaint, you can assert this defense. Even if you have received the summons and complaint, you may not have received it according to the procedures required by the law. Generally, there are three correct ways to be served: (a) in person, where the process server gave you the summons and complaint directly, (b) by “substituted service,” where the process server gave the summons and complaint to another adult at your residence or place of business and mailed you a copy, or (c) by “nail-and-mail,” where the process server attached a copy of the summons and complaint to the door of your residence and mailed you a copy. If you received the summons and complaint by any other method, or only received the summons and complaint in the mail, you should indicate that service was not correct.

**Suing for the Wrong Amount:** You have the right to challenge the amount claimed unless you are absolutely certain that the plaintiff properly calculated it, down to the penny, including all interest, collection costs and attorney’s fees.

**Illegal Acceleration Clause:** The medical provider cannot charge you the full amount of the service because you missed an installment payment. This is called acceleration and it is illegal for medical debts, even if you agreed to it.

**Insurance:**

- If you have insurance that covers the service, the medical provider must charge the insurance company first.
- If you had Medicaid at the time of the service:
  - a Medicaid provider cannot sue you.
  - a non-Medicaid provider cannot sue you unless it gave prior notice in writing that it does not accept Medicaid and that you would have to pay out-of-pocket.
- If you did not have Medicaid but were eligible, a hospital has a duty to help you file an application and inform you if the application was denied.
- If you did not have insurance that fully covered the service, a hospital is required to notify you about, and provide financial assistance.

**Statute of Limitations:** The plaintiff must file the lawsuit within 6 years from the date of the default. The date of the default is the date that your first missed payment was due. This 6-year clock will start to run again if you make any future payments, so be very careful when trying to settle or pay off a defaulted debt. If the statute of limitations has run out, you can get a case dismissed.

**Bankruptcy:** If you received a discharge of debts in bankruptcy after you incurred the debt, you do not owe the money.

**Duress:** This defense applies if you were pressured into agreeing to payment terms when you were so sick or in so much pain that you had no free will.

**Unconscionability:** Use this defense when the agreement was shockingly unfair and very one-sided in favor of the medical provider.

**Law of Necessaries:** Were you sued for someone else's medical debt? You may only be responsible if all of the following is true:

- The other person is your spouse or child;
- The services provided were necessary for the other person's health or survival;
- The medical provider would only provide the service on the condition that you would be financially responsible;
- The other person is financially unable to pay the debt out of his or her own resources; AND
- You are able to pay the debt out of your own resources.

**Debt buyers:** If another company bought your debt from the medical provider and has sued you, you may have additional defenses:

- **Standing:** The debt buyer plaintiff must prove that it owns your debt and, therefore, is allowed to sue you (or has "standing" to sue you). Put the plaintiff to its proof and demand to see the contract of sale (or "assignment").
- **Licensing:** All debt buyers must be licensed by the NYC Department of Consumer Affairs. To find out, call 311 or check <https://a858-elpaca.nyc.gov/CitizenAccess/>. If the plaintiff is not licensed, the court can dismiss the case. If the plaintiff is licensed, it must list its license number on the complaint.

**Exempt Income:** Although not a defense, you may want to inform the plaintiff and the court of your source of income if it is exempt from collection. The following sources of income cannot be taken to pay a judgment:

1. Supplemental Security Income, (SSI)
2. Social Security
3. Public Assistance (welfare)
4. Spousal Support, maintenance (alimony) or child support;
5. Unemployment benefits
6. Disability benefits
7. Workers Compensation benefits
8. Public or private pensions
9. Veterans benefits
10. 90 percent of your salary or wages earned in the last 60 days
11. Railroad retirement
12. Black lung benefits

#### **CAN I GET ANY ADDITIONAL ASSISTANCE?**

One place where you can get free legal advice is the Civil Legal Advice and Resource Office (CLARO). The CLARO program is staffed by volunteer attorneys and law students who give brief advice to self-represented defendants in these cases. Their times and locations vary by borough, and you can visit [www.claronyc.org](http://www.claronyc.org) to learn more, or you can ask the court clerk when the CLARO program in your borough meets. You can also visit [www.lawhelpny.org/consumer](http://www.lawhelpny.org/consumer) for additional resources.

#### **WHO CAN I CONTACT IF I HAVE QUESTIONS?**

You may call MFY Legal Services, Inc.'s Consumer Rights Project on Thursdays from 10:00 a.m. to 2:00 p.m. at 212-417-3881.

**DISCLAIMER: This fact sheet gives general information for NYC residents; it is NOT legal advice.**