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Not Everyone is Litigious

by Lynne Peterson

Insurance companies like to point to medical malpractice lawyers and litigious patients as one reason healthcare costs are so high. However, in my experience, some patients with a very good case against a doctor or a hospital refuse even to talk to a lawyer about it. "Mistakes happen" is their attitude.

Are these patients the minority? I'm not so sure. We hear a lot about patients who run to a lawyer whenever there is a bad result, but patients who don't "lawyer up" usually don't talk about it.

For example, a good friend of mine died recently. He was just 64 years old and seemingly in very good overall health. He got a cold, and it turned into pneumonia. After a five-day stay in the hospital and a course of antibiotics, he was released with an antibiotic prescription, which he filled and took. A week later, he developed shortness of breath and went back to the same hospital, where he quickly went into cardiac arrest and died.

The widow declined to request an autopsy, and the entire extended family agreed with that decision. Did the hospital miss something – endocarditis, a pulmonary embolism, something else? Should he have been released from the hospital after pneumonia treatment? To the family none of this mattered; their loved one is dead and investigating potential negligence won't bring him back. For them, the matter is closed.

Several years ago this same friend almost died at another rural hospital in the same state. He had a snowmobile accident and was knocked unconscious. When he revived, he was taken to the hospital, which was pretty busy at the time. In fact, it was so busy that he spent the entire night on a gurney in the hall. In the morning, he was discharged. Within 24 hours, he was back at that same hospital – which had missed three cracked ribs, a concussion, and a collapsed lung. Once he recovered from all of that, my friend wouldn't even consider talking to a lawyer much less suing the hospital.

Over the years, I've known many people with similar stories, and none of them was the least bit interested in suing. In one case, a young woman went into labor, and when she arrived at the hospital, a fetal monitor was attached. Once the baby's heartbeat was checked, the monitor was removed. The baby choked on the umbilical cord and was stillborn. If the monitor had been left on – which was common practice in many hospitals at that time, that tragedy might not have occurred. Not only did the woman refuse to sue, but she went back to the same doctor and the same hospital when she got pregnant again. Fortunately, that pregnancy ended with a healthy baby.

Do I know anyone who has sued because of medical malpractice? Yes, of course. But that case was so egregious that there was little alternative. This woman had a small melanoma on her cheek, and the head of oncology at a major medical center removed it. During the procedure, he saw another suspicious spot, sent a sample off to the pathology department, which did a frozen section and declared that, too, to be melanoma. As a result, the surgeon extensively resected my friend's face and neck, putting in 900 stitches.

The problem was that melanoma is difficult to diagnose from a frozen section. The surgery should have been stopped, a biopsy done and sent to a lab for proper analysis, and then a new surgery scheduled. The proper analysis was done in my friend's case – but only after her face and neck were resected. And the final determination was that the second "melanoma" wasn't melanoma at all.

Because this hospital cut corners, my friend's face was severely disfigured, and she had to undergo numerous reconstructive surgeries. Her face looks fine today, but it was an ordeal. In this case, blame was so clear that the hospital didn't dispute its mistake and wrote her a check.

Yes, I also know people I'd put in the problematic and – whether valid or not – litigious group. A Vietnam vet with very limited vision in both eyes followed the advice of a military ophthalmologist and had a corneal transplant performed at a major eye center. A year later it was time to remove the stitches, but a catastrophic event, a choroidal hemorrhage, occurred when the military doctor started to take them out. By the end of the day, the man had lost all sight in that eye.

Did the man go back to the expert surgeon at the major eye center for a consult? No. Did he seek a consult with another corneal or retinal expert at another major medical center? No. Despite the advice to do that, he chose, instead, to talk with a medical malpractice lawyer. He seems more interested in suing someone than trying to find a way to restore his vision. Maybe it can't be restored, but he doesn't know that for sure yet, and he doesn't really know who made the mistake – the original surgeon a year earlier, or the stitch-remover. I'm not sure he cares as long as someone pays.

My heart goes out to the man who lost his vision, and while he may eventually have grounds for legal action, I believe it is premature at this point. To me, he is the epitome of the stereotypical litigious patient. However, he does not represent the majority of patients I've known with adverse outcomes. He is the one who gets the attention, but please don't forget that there are many patients who don't sue and probably should.

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