



DR. WITHERSPOON CHIEF OF STAFF

by J. M. MacDavid M.D.

Final Notice

A gentleman was given the unfortunate news he had colon cancer. His doctor advised him to undergo surgery to remove it.

The patient wanted to think about it. "It's cancer. It must be removed," the doctor said. They agreed to discuss it further at his next office visit.

But the patient canceled the next visit. Then another. Several calls were made urging him to come in, but the patient always had an excuse.

He complained about the cost of surgery. Then he accused the doctor of thrusting an unnecessary operation on him just to get his business. The doctor pleaded with him to get a second opinion. The patient ignored that, too.

Finally, the doctor sent him a registered letter stating that, since he had ignored repeated advice to undergo a life-saving operation, he, the patient, would be responsible for what the doctor was convinced would be a fatal outcome.

Eventually, the man grew weak and thin. He saw another doctor who diagnosed advanced colon cancer. His prognosis was now dismal, his time very short.

The man sued his first doctor for malpractice. He claimed the doctor failed to advise him of the seriousness of his condition and never told him he needed surgery. In a scurrilous denunciation, his lawyer claimed the man's fatal condition was a result of the doctor's inexcusable negligence.

But the doctor kept a meticulous record of all his dealings with the patient. Every phone call was accompanied by an office note, every letter photocopied. And they had his signature on the little slip accepting the registered letter.

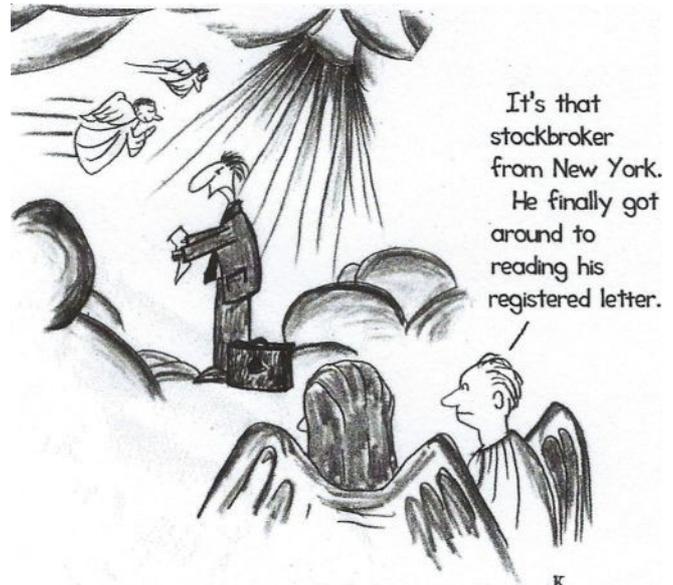
The unfortunate patient did not survive to hear the judge inform the man's widow that the case was dismissed.

Dr. Witherspoon Says:

Why in the world would a man, presumably of sound mind (by that I mean able to manage his affairs, go to work, balance the checkbook, things of this nature) simply walk away from an operation that would save his life?

He was probably in "denial," a coping strategy by which the mind refuses to acknowledge information that it cannot deal with.

To the good doctor, this can be downright baffling. What can he do? You can't drag a patient into the OR and operate on him against his will. You have to be legally incompetent (mentally ill, etc.) or otherwise incapable of informed consent (e.g., intoxicated accident victim) for that to happen. We could order a competency hearing but if he otherwise makes sense and doesn't meet the



criteria, they won't force him into an operation he doesn't want.

We can advise counseling but it's the ol' "lead a horse to water" situation with that. If he doesn't want to go, he won't.

There is some evidence the best approach is confrontation. Get the family to directly and pointedly confront him with the situation. This may break through the denial to realization and acceptance of treatment.

Unfortunately, with the HIPPA restrictions it's become hard to discuss these thorny cases with other people. Calling the wife behind his back could be risky. If angered, the patient could sue. The doctor could be prosecuted for violating the law.

There have been malpractice cases involving doctors clearly documenting their patients' refusal to follow sound medical advice. As the patient flatly ignored the doctor's advice, one would think the patient would be responsible for the bad outcome.

Yet despite that, such cases are frequently decided in favor of the patient. Various arguments have been persuasive to juries, such as:

"He used big words I couldn't understand."

"I couldn't understand what he was saying."

"He never told me that."

On and on. Juries buy it. Everyone sympathizes with the patient who can't understand the doctor who uses big words (will we ever learn?). Plus, in court, it will be the forlorn patient sitting across the from doctor in his jacket in a "he-said-she-said" situation. In that contest, my friend, the good doctor will almost certainly lose, and every lawyer knows it.

We can talk to our patients 'til we're blue in the face, it seems, yet we physicians consistently are held responsible when things go wrong whilst our patients' responsibility for following our instructions such that they might remain in good

health may as well be zero. That's just the way it is.

There does exist, however, one legal thing out there that does level the playing field.

Extremely important here, so listen up!

The recipient of a registered letter is *legally aware of, and responsible for, the information it contains*. That is the sole purpose of a registered letter. Once a person signs for its receipt, according to the courts, that person now legally knows the information it contains. Period. "He never told me," is no longer an option.

It reliably stands up in court to defend the doctor against taking the blame for an unfavorable outcome. It proves the doctor did, indeed give his patient critical advice that would be ignored at the patient's own peril. The patient, believe it or not, will actually take responsibility for his unwise decision.

For our dear patients who may be reading this humble piece, I must emphasize the extraordinary gravity of receiving a registered letter from your doctor. It means he's at his wit's end to get you to listen to him and has sent you this out of sheer desperation.

It also means (and this is *really* important) that he likely has given up on you.

After sending you a registered letter, your doctor will no longer call you about missed appointments, send you notices, or nag you about tending to critical health matters. It is the final notice to you that those efforts will cease. He's done all he can for you and has, quite frankly, given up. After receiving a registered letter from your doctor, you likely will hear from him no more.

From that point on, you are truly alone with your decision.