



DR. WITHERSPOON
CHIEF OF STAFF

by J. M. MacDavid M.D.

Miraculous Mistake

Hot dog! The two lawyers couldn't believe their ears.

It seems a gentleman underwent a biopsy of his prostate gland. The pathologist concluded it was cancerous, so the surgeons removed it.

But the prostate they took out was normal.

The mistake was in the lab. In a classic foul up, a technician had accidentally switched the biopsy samples with those of another patient.

Now, to the lawyers, it was a great case. An entirely unnecessary prostatectomy! And the patient was in their office wanting to sue.

They quickly went to work. They sued for 3, no, 4 million dollars. They sued the hospital. They sued the pathologist. The man was in agony. He was suffering from unbearable emotional distress. He couldn't work, he couldn't sleep, he couldn't have sex. He was miserable, his life ruined. The hospital offered to settle out of court for nearly half a million dollars. They laughed at that.

Then things got interesting. The microscope slides from the prostate that was mistakenly removed had a few spots on them the pathologist was unsure of. He sent the slides to a major cancer research center for review. Amazingly, a leading authority on prostate cancer concluded those small areas were malignant.

There was cancer in his prostate after all.

The pathologist wanted to tell the patient, but his lawyers advised him to wait. He followed their advice but wrote a letter to his lawyers stating he believed the patient should be told.

It was fortunate for him he did so. After a six-month delay, the patient and his lawyers were informed the prostate really was cancerous. The patient was furious about not being told earlier.

If the patient was upset, his lawyers must have been downright depressed, for this changed everything. The opposition could now say it was the patient's good fortune the slides were switched.

Had the mistake not occurred, his cancerous prostate would not have been removed. Perhaps by the Hand of God was he given the gift of life. To sue would seem ungrateful. How would the patient's lawyers respond to the notion that removing his prostate might have been a lifesaving mistake?

Let's sue 'em for *fraud* they said.

They claimed that concealing the information for six months was a fraudulent act.

To make matters worse, the pathologist was informed by his malpractice insurance company that, whereas, he was insured for malpractice, he was not, unfortunately, insured for fraud. Therefore, that was his problem, not theirs.

Now, it seemed, the doctor was in even deeper trouble. He had been in the habit of lamenting his woes in the off hours to a friend who happened to be a lawyer. His friend suggested he hire him. He did.

His friend performed a simple maneuver that was most effective. He wrote the doctor's malpractice insurance company a letter stating that, if any charges of fraud were filed, he would see to it the insurance company's lawyers were included as defendants because the doctor did not tell the patient about his cancer because his lawyers advised him not to do so.

And he had that in writing.

In a case that had taken months on end for decisions to be made, within a week of sending the letter, the doctor was informed by his insurance company he would be covered for fraud as well as malpractice.

Months went by. Nobody cared any more that the slides had been switched. The only issue now was the delay in notifying the patient of his cancer. What if he needed treatment? How could they be so callous as to deny him that information?

If convicted of fraud, the doctor might sue his lawyers for legal malpractice. The insurance company could end up in court defending its lawyers against the doctor they had insured.

For the insurance company, the case was a nightmare. The details would come out in the trial and the newspapers would gleefully print all of it. For these reasons and more, the doctor's malpractice insurance company desperately wished to avoid a trial.

And the opposition knew it. A trial date was finally set and, as the date loomed closer, negotiations between the lawyers reached a fever pitch. It was literally after sundown the evening before the day the trial was scheduled to begin when they struck a deal.

The hospital agreed to settle for an undisclosed amount. The pathologist was dropped from the suit, which eliminated the threat of legal malpractice against his attorneys. The two lawyers got their share and the patient, whose cancerous prostate was mistakenly, though fortunately, removed, received a tidy sum as well.

The laboratory technician who broke protocol, mislabeled the slides, and was, for all practical purposes, the only responsible party, was fired.



Dr. Witherspoon Says:

Nothing I can add to this one, folks. The story tells all.