

# Mass. hospitals urged to apologize, settle

For hospitals, avoiding lawsuits may mean learning to say 'I'm sorry'

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**Mary White was told she had cancer and needed surgery and then discovered she did not have cancer. The hospital apologized, told her what went wrong, and offered a financial settlement.**

Mary White was totally unprepared for the call from her gynecologist late one Friday afternoon. A routine polyp removed a week earlier had turned out to be an aggressive uterine cancer. She needed urgent surgery.

Two weeks later, doctors removed her uterus, ovaries, fallopian tubes, cervix, and lymph nodes.

As the 45-year-old White nervously waited at home for test results to see how far the cancer had spread, she wondered whether she would be alive to see her two teenagers, ages 13 and 16, graduate high school.

Then she got another unexpected call.

This time, the gynecologist said White's original pathology report contained a clerical error - White did not have cancer. She never had cancer.

*'I was shaking and crying. I was happy and angry. It was so confusing.'*

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“It was just a crash of emotions,” said White, who recalls repeatedly shouting an expletive after hanging up. “I was shaking and crying. I was happy and angry. It was so confusing.”

Despite being the victim of such an egregious and undeniable error, White decided not to sue Brigham and Women's Hospital, where the error occurred in May 2007, or the doctors involved in her care.

She reached her decision largely because the hospital, caregivers, and their malpractice insurer swiftly apologized, disclosed details about what went awry, implemented improvements in hospital procedures and offered a financial settlement for her pain and suffering so she would not have to resort to a lawsuit.

The Brigham and CRICO, which insures Harvard-affiliated hospitals and doctors, have been early adopters of the “disclosure, apology, and offer” approach, which is the cornerstone of a new initiative to improve the state's cumbersome and costly malpractice system.

A coalition of Massachusetts physician, hospital, and patient groups announced last month that they will use a \$1 million grant to educate the industry about the practice, develop standards for implementing it, and collect data on how the approach works at seven hospitals before pushing for its adoption statewide.

The groups believe that this approach, which grew out of the patient safety movement a decade ago, will cut down on lengthy litigation that drives up health care costs and fuels distrust between caregivers and patients.

The pathologist's "apology was a factor in me not wanting to go after more," White said in a recent interview. "It softens the rage."

Some of White's friends and co-workers advised her to "get enough money to retire on," she said. But she dreaded the "long arduous process" of a malpractice court case, which typically take four years to resolve.

White and the Brigham reached a settlement a year and a half after her surgery. She declined to disclose the amount because she considers it private, and while she can't retire, it's helping pay for her children's college educations and allowed White, a longtime realtor, to return to school for a master's degree in education. Her attorney, Elizabeth Mulvey, called the settlement "very fair" and "well within the range a jury would award."

Another case, at Massachusetts General Hospital, also showed the potential of the early-offer approach. An elderly man died in January 2010 when nurses did not respond to alarms on his cardiac monitor. His family settled for an \$850,000 payment, along with an apology, just 16 months after the patient's death.

"In cases where there is preventable harm, there is no reason they should ever end up in court," said Janet Barnes, executive director of clinical compliance and risk management at the Brigham.

But the approach has challenges.

Malpractice lawyers have to be convinced it will work to the financial benefit of their clients - and themselves - and not just hospitals. Elizabeth Cushing, vice president of claims at CRICO, has met with Boston lawyers to encourage them to approach the insurer about a case before filing suit.

Cushing said CRICO and its hospitals use the disclosure, apology, and early offer approach in about 10 cases a year, where the mistake is inarguable and the health implications for the patient are obvious early on.

But most situations are not as clear-cut as White's. The patient may have experienced a known complication of treatment, so an apology for a mistake is not warranted. Or, a doctor may have failed to diagnose a disease, an oversight only discovered years later. Some of these cases ultimately prove to be malpractice, but it takes time and expert evaluation to come to that determination, Cushing said.

CRICO paid about 90 claims total last year, which averaged \$660,000; most payments are below \$1 million, with the average of these about \$220,000.

It has been especially difficult to persuade doctors to openly acknowledge mistakes after years of being told not to talk about them for fear of stimulating a malpractice action. The Brigham has trained about 50 physicians to counsel caregivers involved in errors, help them cope with the shame they often feel, and prepare them to talk to patients. “Shame and anger need to be acknowledged as part of the healing process, not just accountability and payments,” Cushing said.

The pathologist involved in White’s erroneous cancer diagnosis attended her mediation session to apologize, which Mulvey said is rare. But he declined a Globe request for an interview, and the hospital declined to identify him, indicating that errors are still deeply embarrassing for caregivers.

After the initial call to White about the error, the surgeon phoned later that day to say that everyone up to top hospital administrators felt terrible about the mistake. She referred White to a patient advocate, who met White two weeks later and gave her contact information for a support group, and set up a meeting at the Brigham with White, family members, Cushing, and a hospital administrator from Barnes’s office. Cushing told White that the hospital would compensate her and that she should contact a lawyer. The pathologist wanted to attend, Barnes said, but White wasn’t ready to meet him.

In August, the head of pathology sent her a letter putting the apologies in writing and explaining the error in detail.

The pathologist had given his secretary a handwritten report on White’s biopsied tissue that identified it as adenomyoma submucous, a noncancerous polyp. When she prepared the final report, she typed adenosarcoma submucous, a malignant diagnosis. Cancer diagnoses are usually typed in all capital letters and accompanied by a descriptive paragraph, but not in this case.

Because there were no visual cues, the pathologist signed the report without noticing the discrepancy. The pathology department’s policy is to call the patient’s doctor in the case of a new cancer diagnosis, but the pathologist did not because it was not a cancer case.

“So many people didn’t catch it,” White said, her voice breaking. “It still gets me upset to this day.”

The letter outlined four improvements the hospital had made, including requiring a pathologist to review all cases scheduled for surgery, and buying software that highlights certain words in reports.

Over the next year, Mulvey and Cushing negotiated. CRICO based its offer on what juries and insurers award patients in similar cases, and considered factors such as the weeks White lost from work and the fact that she hadn’t planned to have more children.

In October 2008, about a year and a half after White’s surgery, everyone sat down at Mulvey’s office for mediation. White was ready to meet the pathologist.

He sat across the conference table from her and said he was really sorry. "He was really sincere. It helped me not be angry at him," said White, who said she could have developed an image of him as an arrogant doctor too rushed to read reports. At the same time, she said she "didn't want to feel responsible for making someone feel better for something they did."

She told the pathologist the mistake had turned her life upside down. She was thrust suddenly into menopause, she suffers chronic nerve pain from the removal of one of her lymph nodes, she recoils from medical procedures and is skeptical of doctors. Even though she compliments how the hospital handled the error - her case was settled that day - she said she is not the same person.

"It just zapped a little bit of my spirit," she said.