

When the Most Important Step is to Stop



By Kathleen W. Smith, JD

I have a confession: I prefer a life of green lights. Yellow lights pop up as a challenge to avoid, but I am infuriated by the red lights that dare to stop me. Should that red light's schedule take priority over mine? I have things to do, places to go, people to see. I am efficient. I am organized. I am Getting It Done. (I suspect I am not alone in this posture.)

Ordering my days under the "green lights" of forward progress is not bad *per se*. I am efficient in my work because I seek to be a good steward of the resources I have been given. I am organized when I unpack a challenging situation into information easier for others to understand. The tasks I want to get done are often those performed in service to others. While staying on the Go, Go, Go is not inherently bad, it is certainly not without risk. Moving too fast can cause me to miss something important. Sometimes, the most

important thing is found only in the pause. This was the situation for the physician in today's closed claim. Like me, this physician demonstrated a green light, full-steam-ahead approach to performing his patient's surgery and the result was an undesired sterilization followed by a lawsuit and a settlement.

On April 20, 2022, 31-year-old female patient Ms. Alison presented for an appointment with ob-gyn Dr. Baker. Ms. Alison reported several gynecological complaints to Dr. Baker, who recommended laparoscopic surgery. During the appointment, Ms. Alison also advised Dr. Baker that she did not want to have another child, and she inquired about surgical sterilization. Dr. Baker discussed the possibility of performing a bilateral tubal ligation during the planned laparoscopic surgery. Ms. Alison consented to the sterilization and filled out the necessary consent forms.

Ms. Alison's Medicaid insurance plan mandated a 30-day waiting period for surgical sterilization. The surgery was accordingly planned for the following month. The day after the appointment, Dr. Baker's nurse called Ms. Alison to finalize the scheduling of the surgery. During that phone call, Ms. Alison informed the nurse that she had changed her mind about the sterilization, but she wanted to go ahead with the rest of the surgery. After the call, the nurse emailed Dr. Baker with Ms. Alison's update regarding the sterilization. Dr. Baker responded to the nurse's email, confirmed that he understood that Ms. Alison had changed her mind, and instructed the nurse to go ahead and schedule surgery for the other procedures. Ms. Alison returned to the clinic the following day and signed new consent forms for the surgery. The new forms omitted any reference to bilateral tubal ligation. Surgery was scheduled for May 31, 2022, and Dr. Baker's office submitted paperwork to the hospital for the surgery. The paperwork was based on the new consent forms and did not include bilateral tubal ligation in the list of procedures to be performed. The hospital prepared for the surgery by generating its own paperwork that also did not contain any reference to bilateral tubal ligation.

The day of surgery arrived. Dr. Baker met with Ms. Alison in the hospital before the surgery. He conducted his customary pre-operative discussion, verified that Ms. Alison wanted to go forward with the surgery that they discussed at last month's office visit, and reviewed the risks of the procedure. Ms. Alison confirmed that she understood and wanted to proceed with the surgery. Months later, Dr. Baker and Ms. Alison recalled different versions of this conversation. Dr. Baker remembered asking Ms. Alison specifically whether she still wanted to go forward with "bilateral tubal ligation," using those specific words. Ms. Alison, however, remembered only that Dr. Baker discussed the surgery generally by asking whether she wanted to go forward with "what they discussed" at the appointment, and denied that Dr. Baker said specifically "bilateral tubal ligation."

The surgery ensued. At the appropriate time, the OR nurse called for the "time out" and read the list of planned procedures from the hospital paperwork. Since bilateral tubal ligation was not included in the surgery paperwork, the OR nurse did not mention it. In response, Dr. Baker spoke up and added "and bilateral tubal ligation." Not surprisingly, a discussion followed amongst the OR staff. Dr. Baker maintained that Ms. Alison intended

for the sterilization to occur, had previously signed the sterilization consent form at his office, and confirmed with him that morning that she wanted bilateral tubal ligation. In the end, Dr. Baker proceeded with all facets of the planned surgery, including sterilization.

Ms. Alison's surgery was otherwise uneventful, and she was discharged home. She returned to see Dr. Baker in follow-up on June 14, 2022. During that appointment, she learned that the May 31st surgery included bilateral tubal ligation. Ms. Alison was shocked. She told Dr. Baker that she had changed her mind the day after their appointment and had returned to the office and filled out a new consent form. Shortly thereafter, Ms. Alison filed a lawsuit against Dr. Baker alleging wrongful sterilization. After some time, the parties participated in a mediation and reached a settlement.

Dr. Baker failed to appreciate multiple opportunities to stop, step back, and re-evaluate the situation. Had he done so, Dr. Baker would have recalled that Ms. Alison had changed her mind about proceeding with bilateral tubal ligation.

1. The first missed opportunity to pause was in preparation for the surgery. It was more than one month since Dr. Baker interacted with Ms. Alison. At the time of the surgery, Dr. Baker remembered only half of the pertinent information. Although he remembered the events of the office visit, Dr. Baker did not recall the email correspondence discussing the patient's subsequent change of mind. Reviewing the patient's chart in preparation for the surgery would have refreshed Dr. Baker's recollection of the correct surgical plan.
2. Another missed opportunity to pause was when Dr. Baker decided to proceed with the surgery after receiving the email from his nurse. Instead, this was the time to bring Ms. Alison back to the office to review the situation face-to-face and discuss concerns and the reason for her abrupt change of mind. (In fact, Dr. Baker instituted this change in his office process for those future patients who change their mind about surgery after leaving. Sometimes, a clinic does not recognize a vulnerability in an office process until an adverse patient event exposes a weakness in the process. This is another opportunity to pause. After an unexpected patient event, take the time to pause as a staff to discuss the event, any office process involved, and investigate opportunities to avoid similar outcomes in future cases.)
3. The final missed opportunity to pause was during the "time out." This preoperative procedure is, by definition, a time for the operative team to stop, pause, and review the surgery that they are about to perform. This issue was identified during the "time out." Baker remembered his office appointment with Ms. Alison but not the subsequent email correspondence. He ignored what was listed on the surgery paperwork and pressed ahead with what he believed was correct. Instead, Dr. Baker could have stopped, questioned the discrepancy between his recollection and what was listed on the paperwork, and investigated this further before beginning the surgery. A call to his office nurse would have quickly solved the mystery by reminding Dr. Baker of the patient's change of mind.

Medicine is usually a high stake, time sensitive endeavor. The recommendation to stop may seem counterintuitive to a physician's desire to provide effective and expeditious patient care. However, pausing at the appropriate time helps physicians deliver accurate care, and providing accurate care the first time is always the most efficient and effective option. For physicians, the key is allowing yourself to stop what you are doing, pause to step back and evaluate the situation, and recognize those questions that need to be answered first before resuming the care.

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