

The Good News Zebra



By Kathleen W. Smith, JD

In medicine, as in life, things are sometimes not what they seem. Some patients present with symptoms and complaints that make it challenging for the physician to determine the correct diagnosis and appropriate treatment plan. The well-known medical aphorism instructs physicians that, “when you hear hoofbeats, think horses, not zebras.” We are all familiar with cases where the physician treated a “horse”, but the correct diagnosis was an obscure, incredibly rare “zebra.” However, what happens when the correct diagnosis ended up being the best possible news the patient hoped to receive, but the physician treated a “horse”? This was the situation for the patient in today’s closed claim.

This closed claim concerns a 75-year-old female breast cancer patient, Mrs. Andrews, who was diagnosed with cancer in her right breast 12 years prior. Mrs. Andrews underwent right breast lumpectomy by this general surgeon, Dr. Jones, followed by radiation therapy. At the conclusion of treatment, Mrs. Andrews was determined to be cancer-free; however, she continued to follow up with her oncologist routinely. Mrs. Andrews also underwent serial chest imaging due to a smoking history. It was on one such surveillance PET scan that an increased uptake was seen in a node in her right breast as compared to a prior

PET scan. Her oncologist referred Mrs. Andrews back to Dr. Jones for further evaluation.

At her appointment with Dr. Jones, Mrs. Andrews reported that the reason for her visit was “a new breast mass.” Upon physical examination, Dr. Jones documented a palpable mass in the right breast near the nipple and that the nipple was inverted. Based on the imaging, the patient’s history, and her physical examination, Dr. Jones recommended a total right breast mastectomy. Mrs. Andrews agreed, and the surgery was conducted without complication. Shortly after surgery, Dr. Jones received the surgical pathology report confirming that the breast contained only benign tissue. No cancer was found. This was an unexpected surprise for both Dr. Jones and Mrs. Andrews, who was understandably relieved to learn that her breast cancer had not returned. Her sense of relief was short-lived, however. Mrs. Andrews subsequently filed a lawsuit against Dr. Jones claiming that the mastectomy was unnecessary, and that Dr. Jones should have first confirmed by biopsy that the mass was cancerous before performing surgery.

Dr. Jones was very disappointed by the lawsuit. As she explained at trial, she did what she thought was in Mrs. Andrews’ best interests. Dr. Jones testified that she genuinely believed that Mrs. Andrews’ cancer had recurred. Her belief was based on the PET scan imaging, medical history, and physical findings on examination. Further, it was Dr. Jones’ opinion that the location of the mass made it impossible to perform a core biopsy. Instead, the only option for this mass was an incisional biopsy, which, given the patient’s breast size, was likely to require the removal of so much breast tissue that Mrs. Andrews would not be satisfied with the resulting appearance. It is important to note, however, that Dr. Jones never discussed these details with Mrs. Andrews. Instead, assuming that this was a cancer recurrence, Dr. Jones had a general discussion with Mrs. Andrews about performing the surgery necessary to remove all of the cancer.

The lawsuit was ultimately tried before a jury. Mrs. Andrews presented a sympathetic argument that the mastectomy was an unnecessary surgery that left her permanently physically deformed. Dr. Jones, in contrast, focused on the real-time presentation of this patient. She explained to the jury why she genuinely believed that Mrs. Andrews’ cancer had returned, and further explained why, in her professional opinion, mastectomy was in Mrs. Andrews’ best interests. Dr. Jones was successful in her defense of her medical care, and the jury returned a defense verdict in her favor.

This closed claim presents an example of a jury who was willing to go back in time with the physician and view the facts of the patient’s care contemporaneously with their development, instead of viewing them through the bias of the ultimate outcome. The jury understood that this was a patient who, by all appearances, looked to be experiencing a recurrence of her breast cancer; therefore, mastectomy was a reasonable treatment choice. This jury carefully considered the medical facts prospectively, not retrospectively, which led them to understand why Dr. Jones treated what she believed to be a “horse.”

Additionally, this case highlights the nuances arising when physicians and patients are making decisions about the patient’s medical care. It is always appropriate for a physician to recommend care that the physician believes to be in her patient’s best interest. After all,

that is a doctor's duty. However, the physician must start with the facts of the patient's situation, not simply an assumption or belief. Instead, the physician should present all the information fully and factually to the patient so the patient can make the decision that she determines is in her best interest.

In hindsight, Dr. Jones should not have automatically jumped over the biopsy step. She should have explained to Mrs. Andrews the type of biopsy that would have to be performed and its anticipated physical result. Dr. Jones could have also presented, as an alternative, the option of proceeding directly to mastectomy. This approach would have more completely involved Mrs. Andrews in the decision-making. Had Dr. Jones conducted this discussion with Mrs. Andrews and then documented it thoroughly in her chart, Dr. Jones would have been in a much stronger position when the pathology was returned showing no cancer, i.e. the "good news zebra." If she had done so, Dr. Jones likely could have avoided this lawsuit entirely.

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