

When “Country Tough” Isn’t Tough Enough



By Judy King Reneau, JD, BSN

When Dr. Fabian Starr^[1] arrived for work that day in summer 2014, he was asked to examine Mr. Chet Stetson, a 58-year-old male who presented to the office to discuss liposuction. Dr. Starr, a plastic surgeon, worked at Fabulous New You, a free-standing office that advertises esthetic treatments and cosmetic surgical procedures that can be done under local anesthesia. Mr. Stetson, a widower who had recently remarried, explained to Dr. Starr that he had always been overweight and in high school had weighed as much as 320 lbs. He still “loved to eat” but had recently lost a significant amount of weight. Despite the weight loss, he was still unhappy with the way he looked, especially his big belly and “love handles.” He had heard the catchy advertisements by Fabulous New You and was interested in a particular liposuction procedure that promised to give him a thinner, more youthful shape. Dr. Starr examined Mr. Stetson and determined that the problem was not excess abdominal fat, but rather loose skin left behind after his weight loss. Dr. Starr counseled *against* having the liposuction procedure, but instead recommended a different surgery that would remove the loose skin around his middle.

This other procedure, though more invasive, would provide the thinner silhouette Mr. Stetson was seeking.

Dr. Starr remembers discussing the details of the more invasive procedure with Mr. Stetson, including the necessity of arranging for a driver to take him home afterwards. Mr. Stetson signed a form which indicated that if he took sedatives, he absolutely must have a driver. Dr. Starr recalls that Mr. Stetson assured him that he was “country tough” and would not need sedatives, and therefore, he could drive himself home. The visit ended with the understanding that Dr. Starr would use only local anesthetics, and Mr. Stetson would not be sedated in any way. Based on this understanding, Dr. Starr decided to move forward with the surgery. Later, with the benefit of hindsight, Dr. Starr realized that he should not have agreed to perform the procedure with the expectation that only local anesthetics would be used. It was against his medical judgment and an assurance he should not have made.

On the morning of the scheduled procedure, Mr. Stetson arrived without a driver. He confirmed to the staff that he intended to decline any sedative-like medication during the surgery. In fact, he refused the pre-operative Valium that was offered to him. The surgery went forward starting at 9:15 a.m. utilizing tumescent solution containing Lidocaine and Epinephrine.

Approximately an hour into the surgery, Mr. Stetson experienced some pain and anxiety. In response to this, Dr. Starr ordered that a dose of Versed syrup be given. It is alleged that a second dose of Versed syrup may have been given during the surgery but was not charted. When the surgery was over around noon, the patient was moved to the holding area to recover. The staff arranged to have lunch delivered, and he ate his lunch without incident. During this time, it was noted that Mr. Stetson emphasized to the staff that he needed to leave the office right away to beat the traffic he would encounter on the way to his home in a rural part of the state 90 miles away.

Dr. Starr looked in on Mr. Stetson a couple times while he was eating his lunch. He advised him that he should not drive so soon after surgery. The doctor offered to call him a cab, have a staff person drive him home, or make other arrangements to see that he got safely home. Mr. Stetson declined all these offers, commenting that he was “tough enough” to drive. The staff noted a short time later that Mr. Stetson had left the facility when no one was watching. No discharge order was written, and no AMA (Against Medical Advice) form was completed. It would have been helpful if Mr. Stetson had been asked to sign an AMA form, acknowledging his failure to follow medical advice and the risks of such behavior, at the point when he declined the offers for assistance in getting home safely.

During his drive back home, shortly after 3:00 p.m., Mr. Stetson recalled that he suffered a sharp pain in his abdomen, causing him to black out. His vehicle rolled over and wrecked, causing multiple orthopedic and spine injuries. His injuries included multiple acute bilateral rib fractures, acute dehiscence incision, comminuted acute C2 fracture, acute right shoulder dislocation with anterior glenoid fracture, acute C1 ring fracture, acute right-sided

pneumothorax, right vertebral artery dissection, and transverse process fractures of L2 and L5. He was transported by Life Flight to Benevolent Hospital and admitted into the intensive care unit. After approximately one week of treatment, Mr. Stetson was discharged to a rehabilitation hospital where he received therapy for approximately two weeks. He was then discharged in the care of his wife.

Mr. Stetson sought representation from a well-known plaintiff's attorney. Suit was filed demanding a large amount of compensatory and punitive damages (for alleged grossly negligent and reckless medical care). Dr. Starr, in kind, was represented by experienced defense counsel. After three and a half years the case went to trial, and the jury found in Mr. Stetson's favor. A large compensatory damage award was handed down, and the jury determined that punitive damages were warranted with the amount to be determined at a separate hearing. However, before the punitive damages phase of the trial, a confidential settlement was reached that resolved the case.

It is well known that it is foolhardy to drive yourself home after surgery. This is true even if the patient sees himself as "country tough." In this scenario, the practice would have been wise to cancel the procedure when they realized that the patient did not bring someone to drive him home. The surgery should have been rescheduled for a time when he could arrange for a driver to be with him. While they could not control the fact that the patient left without their knowledge, they could control whether the procedure went forward at all that day.

[1] Names have been changed.

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