

Closed Claim Review: Opie and the Bully



By John T. Ryman, JD

“I don’t want him to be the kind of boy lookin’ for fights, but I don’t want him to run from one when he’s in the right” – Sheriff Andy Taylor, The Andy Griffith Show, Opie and the Bully (1961)

Once upon a time in the fictional hamlet of Mayberry, young Opie Taylor had a problem. A local bully was confronting Opie on his journey to school each morning and demanding that he relinquish his milk money, or he would “get it”. After some time, considerable anguish, and wise counsel from his father, Sheriff Taylor, Opie grew weary of this harassment and made a stand. It was a difficult, mentally and physically painful episode that earned Opie a black eye. He also retained his milk money and his honor. The bully was no longer a threat to him. If you grew up watching The Andy Griffith Show, you saw multiple incidents of our friends in Mayberry having to confront bullies. Sheriff Andy Taylor and his deputy, Barney Fife, had to confront and overcome challenges by bullies. Here in

the real-world life is not always idyllic and many of us have had to deal with bullies at times.

In this article, I am deliberately brief on the medical facts of the case. The conceptual lessons deserve the emphasis. The lessons are not unique to the facts of this case. The lawsuit originated as the result of a very common surgery. There were complications, which were promptly addressed and within the range of known complications for the procedure. A poor outcome does not equate to negligence, and there was none in this case. Unfortunately, the patient had some permanent injury. Our doctor was an excellent and well-respected surgeon. She deeply regretted that the patient had a poor outcome but recognized that it was not a consequence of any negligence on her part. She had done her best.

At mediation, which was ordered by the Court, the doctor declined the invitation to settle the case. This was of course unacceptable to the plaintiff and his attorney. The patient's attorney aggressively explained in detail how he would publicize any negative jury verdict if the doctor insisted on going to trial and lost. The doctor was shown examples of the full-page ads that would be run in the local paper to sensationalize the plaintiff's verdict. This was a small town, rather like Mayberry. Everyone would know. The doctor, recognizing that she had done nothing wrong continued in her refusal to settle the case. We, of course honored and fully supported the doctor's decision. However, the patient's attorney was intent on getting a settlement or making the doctor very uncomfortable.

In litigation, most attorneys are professional and zealously represent their clients within the bounds of civilized and ethical behavior. Some are more zealous than others. In the Preamble to the Tennessee Rules of Professional Conduct we find the following guidance for lawyers. "These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system." "As a negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others." "A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others." The rules are similar in most states.

The American Psychological Association defines [bullying](#) as "a form of aggressive behavior in which someone intentionally and repeatedly causes another person injury or discomfort. Bullying can take the form of physical contact, words, or more subtle actions." While the plaintiff's attorney in this case did not make a threat of physical injury, it was a threat to injure the doctor's reputation and practice. Injury to professional reputation is often a fear that doctors have in litigation. So, was this bullying? Was the action intended to advance an argument based on the facts and law or to intimidate the doctor into settlement? It was a threat intended to use the doctor's fear of public humiliation and possible damage to profession to encourage a settlement. One person's zealous advocacy is another's bullying. While we may disagree on whether this tactic amounted to bullying, the doctor certainly thought that it was.

If bullying tactics are used in your case, recognize them for what they are. Bullies use fear

and shame to try to control our actions. The plaintiff wants you to give up, to surrender and settle. Sometimes settlement is the wise and appropriate choice but be aware of why you decide to settle. Your defense attorney and claims attorney at SVMIC can help you evaluate that decision.

The doctor could have avoided much of the pain and uncertainty of litigation by insisting that we settle. It would have been easy for our doctor to back down and ask that we settle the case. However, this courageous doctor refused. The doctor was convinced that her care for the patient was appropriate and wanted to defend her care. “We can have courage or we can have comfort, but we cannot have both” – Brene Brown

What happened?

After a week-long trial the jury returned a verdict in favor of the doctor. The jurors unanimously agreed that she had complied with the standard of care, and therefore had no liability for the injury to the patient. This doctor probably felt the same fear and anxiety that Opie felt every morning on his walk to school, knowing he would have to face the local bully, and the possibility that he would “get it”. When the dust settled, it had been an unpleasant week in the arena, but she prevailed.

If you encounter bullying tactics in a lawsuit you might consider Opie Taylor and how he rose to the challenge and defeated the bully in his life. And remember we have your back.

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