I knew she was trouble

Pressured to settle a malpractice case, this doctor is still outraged by the legal system that allowed it to happen.

By Mark Lopatin, MD
RHEUMATOLOGIST/WILLOW GROVE, PA

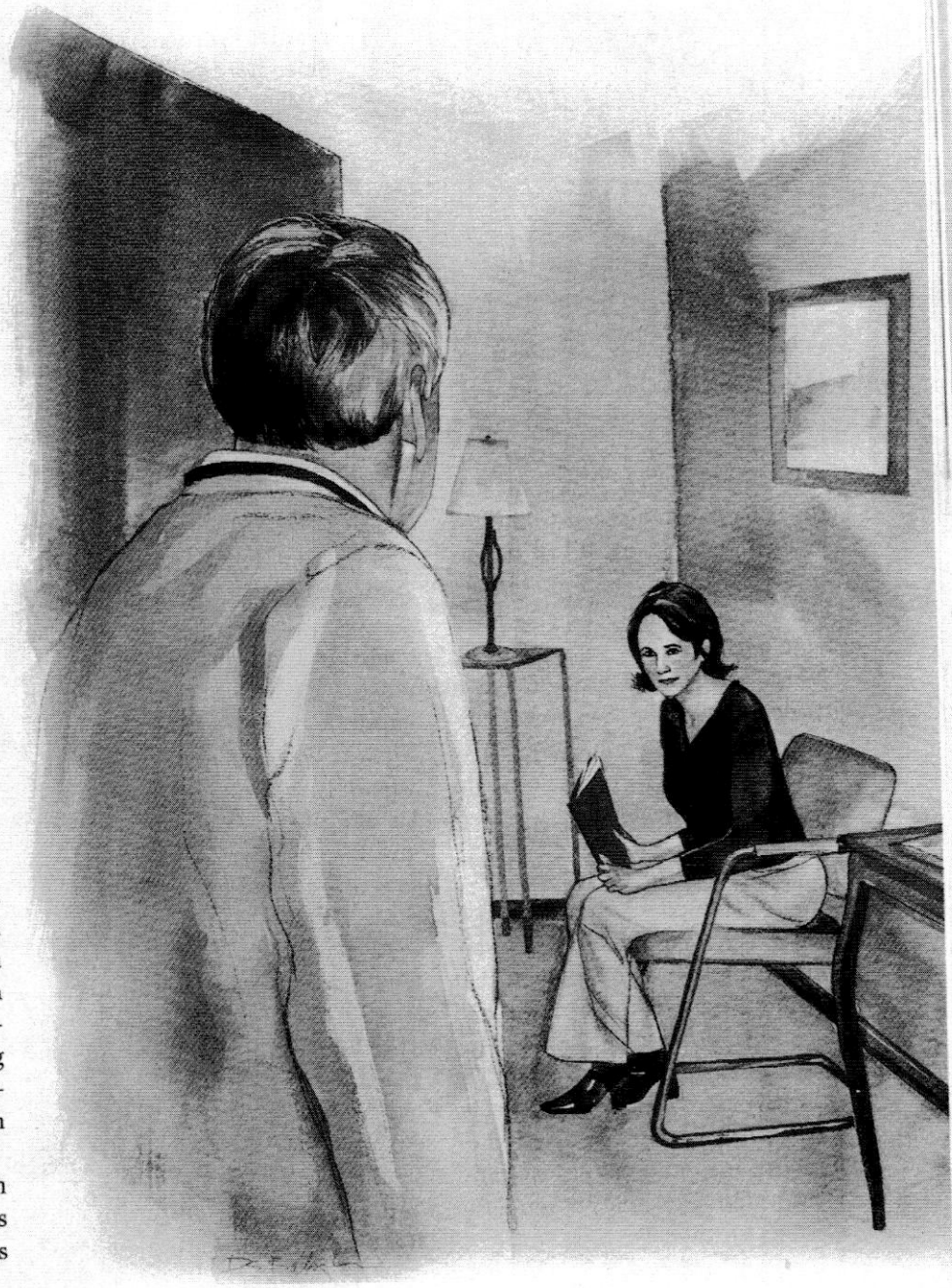

Illustration by Dennis Balogh

I knew Helen Warren was trouble the first time I met her in January 1997. She was a 35-year-old nurse with a notebook full of records and a sullen demeanor. She'd been referred to me for pain in her hands, wrists, ankles, and feet, which had been present for about 10 years, but had worsened over the past several months. Her case was complicated by symptoms of fibromyalgia, plus a positive review of symptoms and a positive ANA. She was a rheumatologist's nightmare: a demanding Type A patient with multiple chronic complaints, and just enough medical knowledge to be difficult.

I diagnosed Mrs. Warren with fibromyalgia, and prescribed various medications to deal with it. Things

went reasonably well for the next year, and we established what I considered a semblance of rapport. I spent a lot of time at each visit answering her many questions, and I began to feel that she trusted me.

In March 1998, however, Mrs. Warren sent me a letter stating that she'd been diagnosed with autoimmune sensorineural hearing loss (AISNHL) by Dr. R, an ENT. After starting her on prednisone, 60 mg, he had referred her to another rheumatologist, Dr. H. A week later Dr. H had switched her to methylprednisolone, 56 mg. When she discovered that Dr. H wouldn't accept her insurance, however, she decided to return to me.

I suspected there would be a suit, but I figured I was safe.

Mrs. Warren called me on April 13, desperate to be seen immediately. I saw her on an emergency basis that day, and once again she became my patient.

Agreeing to taper steroids rapidly

Mrs. Warren complained of severe joint pains that day, although that was nothing new for her. She had been on steroids for only three weeks by then, but she was worried that they were causing side effects. I was also concerned about her hearing loss and dizziness, and what would happen if I lowered the steroids too quickly.

Nonetheless, Mrs. Warren felt strongly that the steroids were hurting her, so I began to taper them, despite the fact that her hearing had improved somewhat since she'd started them. By May 30, I had cut her dosage to 20 mg. On June 2, she showed up for another emergency visit, complaining of severe knee pain, so I ordered an MRI of her knee.

I saw Mrs. Warren the following week, while the MRI results were still pending. Since her hearing was stable, I felt it was safe to continue tapering her steroids fairly rapidly. I decreased her dosage to 16 mg, with instructions to cut it to 12 in two weeks.

On June 16, I received a call from Mrs. Warren's internist informing me that her MRI showed avascular necrosis. (Although I'd ordered the MRI, the results went to him because that was the policy of her managed care plan.) Two days later I learned that she was seeing an orthopedic surgeon, complaining of multiple joint pain. He ordered MRIs that revealed widespread avascular necrosis involving both knees, both shoulders, both ankles, and both hips. She then began to question whether her ENT's original diagnosis of AISNHL had been accurate, and whether she should have been started on steroids in the first place.

At this point, I suspected there would be a lawsuit, but I figured I was safe. After all, I was the one Mrs. Warren had called when she was in trouble. I was the one who had brought her in on two separate emergency visits on the same day she had called. I was the one who had rapidly tapered her off the steroids. I was the one who had ordered the MRI that led to the correct diagnosis.

My charting was excellent

Mrs. Warren was down to 2 mg by July, and I actually had to increase her dosage for a short time because of adrenal insufficiency. By August, she was off steroids completely, only five months after having started them for an autoimmune condition that threatened her hearing. (By comparison, most patients with temporal arteritis—which also threatens a sense organ—are usually tapered off steroids over 18 to 24 months.)

Over the next year, Mrs. Warren saw several orthopedic surgeons and ENTs, and had several joint surgeries. Her new internist was managing her narcotics (after her old one discharged her from his practice). Since her fibromyalgia had become a secondary issue, my role in her care diminished, although I still saw her on a regular basis.

In March 1999, Mrs. Warren asked for her records. When I asked why, she informed me that she was suing the ENT who'd made the original diagnosis of AISNHL, and that her lawyer wanted to learn more about her fibromyalgia. She said nothing about suing me.

In August, she sent me a nice note thanking me for helping her out with some forms, and for expediting an earlier appointment with an orthopedic surgeon. Surely this wasn't the behavior of someone who was planning to sue me. In fact, she continued to see me until December 1999. She gave no hint of any displeasure with my care, and routinely scheduled follow-up appointments.

Then the roof caved in. Dr. H, the other rheumatologist, called, asking

me why he'd been named in Mrs. Warren's lawsuit, since he'd only seen her once. He informed me that I'd been named also, even though I'd never received a summons. Later I learned that I was being sued for not tapering Mrs. Warren's steroids quickly enough, and for not recognizing her avascular necrosis sooner. I was floored!

I immediately scoured Mrs. Warren's chart, looking for errors I might have made, but I couldn't find any. My attorney reviewed the chart, and told me that my documentation was excellent, that I'd done nothing wrong, and that my case was strong. But he explained that I was now at the mercy of our legal system, and that a jury might not see things that way, particularly given Mrs. Warren's extensive medical problems.

I faced other troubles as well. Because the defendant ENT practiced in Philadelphia, a city notorious for big jury awards, Mrs. Warren's attorney had the case transferred there from our suburban county, where she'd had most of her treatment. Worse, I was the guy with the "deep pockets" in the case: I had twice as much coverage as Dr. R, the ENT; and due to a slip-up, Dr. H, the other rheumatologist, had no insurance at all. So if the award exceeded our combined coverage, I could be held liable for anything above that amount.

Making the choice to settle

My deposition went well, but the trial judge was pushing for a settlement. Just before the scheduled trial, my attorney advised me to settle. The jurors weren't likely to understand the medical issues involved, he explained. Instead, they would probably decide the case on an emotional basis: whether I was more likable than Mrs. Warren, and how sorry they felt for her when they saw her in her wheelchair.

Given the real potential for a big plaintiff's verdict, my attorney argued that the risks of going to trial clearly outweighed the benefits. If I went to trial, I might win. But if I lost, I'd risk a verdict that might exceed my coverage. If I settled the case, however, it would be over. Besides, as my attorney said, whether I settled or not, the sun would continue to rise each day.

After much soul searching, I decided to settle. (Dr. R did, too.) The big question then was how I could live with that decision, knowing I'd not only met the standard of care, but even exceeded it. And how could I look my kids in the eye when I've always told them to fight for what's right?

"It's just business; nothing personal"

My lawyer was right: The sun did continue to rise each day. But I was too outraged to appreciate it; I felt violated. No matter how much venom I spewed about the faults of our malpractice system, the poison stayed within me. Who else would sue me now, I wondered? What if the next patient has an adverse effect from a medication I'd prescribed? What if the patient has an unfortunate outcome despite proper care?

My rage at plaintiffs' lawyers and the legal system went on unabated. Ultimately, I needed counseling to help me get through it. Only now, nearly two years later, am I finally ridding myself of the poison.

So what have I learned from my experience? First of all, I found out that I'm not alone. After the lawsuit, I conducted a survey of more than 1,000 physicians in my area, and found that 70 percent of them had been sued at least once for malpractice. Of those who had settled, nearly 90 percent said they did so despite being convinced they'd done nothing wrong.

I was the guy with the "deep pockets" in the case.

Second, I learned that my lawsuit had nothing to do with me. Or as the lawyers say, "It's just business; it's nothing personal." Still, it hurts. I've come to realize that talking about the experience helps. Discussing it with my colleagues, and hearing their similar stories has been therapeutic.

Looking back, I'm convinced that my decision to settle was strategically sound. But as a result, for the first time in my life, I've become politically active in the fight for malpractice reform. This has also been therapeutic. Although I settled the case, I can still look my children in the eye, knowing that I'm setting a good example by fighting for what I believe is right.

Having endured this case and survived, my innocence is lost. But I refuse to let the experience destroy me. That's my choice, and no lawyer can take it away from me. That's the most important lesson of all. ■