The "Surgeon's Dread"

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WEST PALM BEACH, Fla. (AP) — It has been called the "surgeon's dread." The most common mistake made in surgery, according to medical journals, is leaving a sponge or instrument inside a patient.

County Judge Nelson Bailey knows precisely what happens when something is left behind.

After abdominal surgery at Good Samaritan Medical Center for diverticulitis, the pain in the judge's belly only got worse. Repeatedly, he says, he returned to his primary doctor and complained. Repeatedly, he was sent for CT scans. And repeatedly, the metal marker on the sponge appearing in the scans was misidentified.

For five months, the surgical sponge festered near Bailey's intestines. The pus- and bile-stained mass measured more than a foot long and a foot wide when finally removed and unwound in March.

"I was expecting something like a kitchen sponge," the longtime judge said. "I was shocked."

The missed sponge was not the only mistake made during his care at Good Samaritan, Bailey said.

After the diverticulitis surgery, an incorrectly dispensed medicine from the hospital's pharmacy one that revved up his heart instead of lowering blood pressure, as Bailey needed nearly gave him a heart attack, he said.

"It was the only time in my life that I knew I was actually dying," said Bailey, 67.

That mistake had no lasting physical effect, he said, so he could make no legal claim for damages.

But the sponge was a different matter.

Bailey has reached a confidential settlement with Good Samaritan that does not allow him or his lawyer, medical malpractice litigator Joe Johnson, to reveal the amount of money he received.

Johnson is not finished. He recently informed two radiologists of Bailey's intent to sue and is preparing the same notice for Bailey's surgeon, Johnson said.

A regional spokeswoman for Good Samaritan's owner, Tenet Healthcare System, wrote in a statement that the hospital is bound by mutual privacy and

confidentiality provisions and could not comment. The 90-year-old institution takes pride in providing safe, quality care to all patients, Shelly Weiss Friedberg wrote.

Bailey said he required, as part of his settlement with the hospital, that he be able to talk publicly of the experience. He did that so people will be held accountable and the hospital will make changes.

He wants to advocate for two changes to help others. All hospitals, he said, should have equipment that will unfailingly spot sponges or equipment left behind. And, he added, caps on the amount of damages a patient can claim in a medical malpractice lawsuit should be lifted.

A lower quality of life His body built a protective barrier around the sponge, trapping the fetid infection from spilling into his belly. But it rotted part of his intestine, which had to be removed, leaving him always needing to be near a bathroom. That has robbed him of one of his dearest joys: horseback trail riding.

When his friend and colleague of 30 years, County Judge Peter Evans, sat at Bailey's bedside after the medication mixup, he said Bailey seemed so unwell he wondered if his friend would survive.

"Sadly they nearly killed him twice," Evans said. "And if he wasn't such an ornery old coot, they may have."

Bailey might prefer the term "Cracker."

As in Florida Cracker, nickname for the state's earliest settlers, the ones cracking whips to drive cows.

The judge is a trove of knowledge and a storyteller of Florida history, including how the nation's first cowboys came from here. He is a fixture at folk festivals and for 18 consecutive years rode horseback in an annual folk trail ride across Florida.

With a long white beard, he looks part Amish farmer, part cattle rancher, with his cowboy boots at times peering out from under his black robe. He is the lone judge presiding in the Belle Glade courthouse and lives with his wife on a small ranch in Loxahatchee Groves.

Bailey was appointed to the bench in 1995 by then-Gov. Lawton Chiles. Since then, Bailey has been a driving force behind a specialized court for drug-addicted defendants and a key advocate in the county's drug abuse prevention efforts.

Pushing for a solution After Good Samaritan doctors finally divined there was a sponge still inside him, they offered to remove it for free, Bailey said. "I said, You are never going to lay a hand on me again.' "

He hightailed it to the Cleveland Clinic in Weston for the sponge removal surgery in March.

It was at the Cleveland Clinic, Bailey said, that he learned of an instrument used at its Ohio hospital. The wand, waved over a patient after surgery, beeps if any surgical sponges tagged with microchips have been left inside.

Bailey said he wants to speak to Good Samaritan's board of directors and advocate that such a device be routinely used during surgeries at their hospital.

The U.S. Food and Drug Administration has approved surgical sponge counting systems, including bar codes and the beeping wand. Last month, an Arkansas-based company making ORLocate — a radio frequency ID system with a radio tag attached to each instrument and sponge — announced it had received FDA approval for use.

There's a need for such systems.

"The inadvertent leaving of sponges inside surgery patients is a rare but embarrassingly persistent error. It happens in at least 3,000 patients a year," Dr. Atul Gawande, a surgeon at Brigham and Women's Hospital and the Dana Farber Cancer Institute, has written.

"Surgical teams have been seeking a solution to this problem for decades."

Gawande has studied the problem and last year authored a best-selling book — The Checklist Manifesto: How to Get Things Right — about the need for precise checklists in surgery, where hundreds of sponges and instruments can be laid out for use. He writes in his book that the tasks of surgeons are so incredibly complicated, mistakes are virtually inevitable.

Surgeons across the country are expected to perform manual sponge counts at least three times before and after surgery. Bailey's Good Samaritan surgical records show that all the sponges and instruments were recorded as accounted for.

Bailey's surgeon, Dr. David Kurtz of West Palm Beach, did not respond to questions, citing his need for a working relationship with the hospital.

Opposed to legal limits Bailey also wants to advocate against the legal limits on damages in medical malpractice claims. There are caps under Florida law on money paid to injured patients, the result of legislators responding to an all-out effort by doctors to curb lawsuits they deem frivolous.

"I don't know what all these caps are. That is not my area of the law," Bailey said. "But what I would like to see is when you have malpractice per se, something this egregious, the damages should be between the parties, a judge and jury without the state legislature dictating limits."

Bailey said he asked months ago for feedback from Good Samaritan officials about what had been done to correct its practices. He had not heard a thing until after The Palm Beach Post called Tenet for comment.

On Friday afternoon, Bailey received a message telling him to expect a call from Good Sam's CEO on Monday.

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