In a turnabout, a malpractice lawyer in Boston finds that he is a victim

Michael Mone, leading medical malpractice lawyer in Boston, said he has incurable cancer because it was misdiagnosed in 2009.

By Jonathan Saltzman

For decades, Michael E. Mone has been a go-to lawyer in Boston for patients who believe their medical care was botched.
In 1980, he won a landmark state court ruling that allows people to sue physicians for malpractice even when medical errors don’t come to light until long after treatment has ended. Fifteen years later, he negotiated a settlement for the husband of Betsy Lehman, a Boston Globe health columnist who died in 1994 after receiving a massive overdose of a cancer drug at Dana-Farber Cancer Institute. The fatal error helped spur a national patient safety movement.

Now Mone, 75, says that despite everything he knows about what can go wrong in a hospital, he himself has become a victim of medical malpractice. Mone has inoperable kidney cancer that has spread to his spine and shoulder.

“I’m dying,” he says, without a hint of self-pity, sharing his story publicly for the first time.

It dates to 2009, when he had an MRI scan at a Boston teaching hospital. It was a precautionary test — Mone had a long history of kidney stones. The scan found nothing ominous, according to the written radiology report that he shared with the Globe.

But the report was wrong, Mone says — a malignant tumor in his left kidney was misidentified as a benign cyst. By the time the cancer was found in 2015, it had metastasized, according to two New York doctors Mone later consulted. During those six years in stealth mode, one of them wrote, the disease became “incurable and probably terminal.”

Mone credits two Massachusetts physicians — both former clients — with helping him to get the right diagnosis and pinpoint the mistake that will likely cost him his life. In a twist that brings the story full circle, one of those doctors hadn’t been told of a malignant tumor spotted on his own chest in a 1974 X-ray. It was that lapse that led to the pivotal 1980 court ruling. After surviving the cancer, the client had gone on to become a radiologist.

Fourteen months ago, after mediation, Mone received what he called a “substantial” settlement from the insurance company representing the teaching hospital and the two radiologists who misread his MRI. He didn’t have to file a lawsuit. Mone can’t identify the hospital or radiologists because of a confidentiality agreement, but he said it wasn’t Massachusetts General Hospital, where he is now being treated.
By going public, Mone says, he hopes to spotlight the hidden risk of negligent care, even for those, like him, savvy about medicine and malpractice.

“No matter how sophisticated you are, you don’t know that there’s an X-ray lurking in your records someplace that can blow your life up in a moment,” he said on a recent afternoon in his Back Bay apartment.

More than two years of drug and radiation treatments have left him unable to take on cases, but Mone still has a thick mane of gray hair, and he remains a sharp-witted raconteur whose eyes light up when he tells a joke.

Still, the ravages of his ordeal are obvious. He’s lost about 50 pounds, and at times his voice sounds ragged. During an interview with a reporter, his left arm was in a sling because of a tumor causing shoulder pain. His son, Michael E. Mone Jr. — a partner in their law firm, Esdaile, Barrett, Jacobs & Mone — sat nearby.

Mone’s friends say his predicament is both heartbreaking and shocking.

“Mike knows as much medicine as a lot of doctors do,” said Joan Lukey, a prominent trial lawyer at Choate Hall & Stewart LLP in Boston and a former president of the American College of Trial Lawyers (as is Mone). “I was truly surprised that this could happen to him, of all people.”

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Margaret H. Marshall, a former chief justice of the state Supreme Judicial Court, said any missed diagnosis is alarming, but she is especially sad about Mone’s plight. She noted that he had distinguished himself in another area of the law besides medical malpractice: defending judges and lawyers accused of professional misconduct.

“He’s got deeply held beliefs in a well-functioning democratic system,” Marshall said.

A growing body of research confirms the deadly toll of medical errors nationwide. After heart disease and cancer, such mistakes are the third-leading cause of death in the US, claiming
over 251,000 lives every year, according to a study published in 2016 in the journal BMJ.

Hospitals have taken steps to try to reduce mistakes. Surgical teams take a timeout before an operation to make sure doctors are performing the right procedure on the right part of the right person. Bar codes on patient wristbands ensure that medications go to the appropriate patient.

But how do you keep a doctor from misdiagnosing a malignant tumor on an X-ray or an MRI? And what happens if a doctor does identify a suspicious lesion, but the patient isn’t informed?

The latter happened to Dr. Peter Franklin in the 1970s. Mone represented him in a case that helped cement the lawyer’s reputation.

Franklin was a 24-year-old UMass Boston student in 1974 when he had a chest X-ray at Mass. General prior to undergoing general anesthesia to have his wisdom teeth removed. Two days later, he was discharged by a resident who wrote in a report that the X-ray had been normal, according to court records.

It wasn’t.

A suspicious mass had been spotted in Franklin’s chest and noted on the radiology report, but no one at the hospital told Franklin.

Four years later, as a second-year student at the Boston University School of Medicine, Franklin went to Mass. General again, this time with flu-like symptoms, court records show. An X-ray revealed a massive tumor filling his chest. The diagnosis: Hodgkin’s disease, a cancer of the lymphatic system.

Franklin, after getting a copy of his earlier X-ray, hired Mone and sued Mass. General as well as the resident who discharged him in 1974. But under state law, plaintiffs in
medical malpractice cases had to file suits within three years of their injury — Franklin was a year too late, and a judge threw out the case.

Mone, who had wanted to challenge the restrictive statute for years, appealed to the Supreme Judicial Court. The rule, he argued, left his client without any remedy because Franklin didn’t even know he had been harmed until after the three-year period had elapsed.

The high court agreed, ruling that plaintiffs had to bring lawsuits three years after they discovered they had been injured. The decision dramatically altered the landscape for medical malpractice cases in Massachusetts.

Neil Sugarman, a veteran personal injury lawyer in Boston and longtime friend of Mone’s who represented him in his recent malpractice claim, said the 1980 decision “was a pivotal moment in malpractice litigation, and its effects are being felt right to the present.”

Indeed, Mone would benefit from it himself more than 30 years later.

In the summer of 2015, he complained of pain in his back and leg while at a law conference in Atlanta, recalled his friend Lukey, who was there. At first, Mone thought he had wrenched his back getting off a motorboat on Mashnee Island in Bourne shortly before the trip to Georgia.

But the pain persisted, so he called Dr. Dennis Burke, an orthopedic surgeon at MGH whom Mone was representing in an unrelated matter. Burke urged Mone to have an MRI at Mass. General. He did. Soon afterward, Burke called Mone with crushing news.

“He said to me, ‘Mike, there’s no easy way for me to tell you this. You have a metastatic tumor in your spine that is causing this pain, and it’s probably from kidney cancer in your left kidney.’”

Mone decided to seek out the results from the 2009 MRI of his kidneys done at the Boston teaching hospital that he won’t name, so the old and new images could be compared. The 2009 report said Mone had three cysts in his kidneys — all “without worrisome features.”

A radiologist at Weill Cornell Medical Center — one of two New York doctors Mone later consulted — examined the original MRI image without having any other information. The
growth in Mone’s left kidney, he wrote, had a “high likelihood of being malignant.”

Mone also shared the MRI with Franklin, who had survived Hodgkin’s to become a prominent Newton radiologist specializing in sports medicine.

Franklin also thought the growth was malignant, according to Mone and Franklin’s widow, Kathleen Franklin. She said her husband’s interest in radiology had been kindled partly by his own medical history. He died later in 2016 at age 66.

At first, Mone said, he resisted filing a claim. He wasn’t in need of money, but more important, he didn’t want to spend whatever time he had left fighting in court.

Ultimately, however, he had his lawyer, Sugarman, contact the hospital and the radiologists who Mone said missed his cancer. It was important for them to know they had made a grave error.

“These guys wouldn’t have even known my name,” Mone said. “They never met me. They never saw me. They looked at an image.”

In the end, he settled the dispute without filing a suit.

“I have no harsh feelings for these doctors,” he said. “Very, very good people sometimes make a mistake.”

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