

TB or not TB, That is the Question

By Reg P. Wydeven
June 9, 2007

In 1944, my Grandpa Wydeven was drafted to serve in World War II. He wasn't permitted to serve after his physical exam revealed he had tuberculosis. TB most often affects the lungs, and therefore, can be spread by coughing, sneezing or just talking. So instead of being quarantined at a county facility, the doctors permitted him to stay for a year at his father's cabin in Waubeno on Trump Lake.

While most cabins in the 1940s were pretty rustic, Great Grandpa's was an exception. He bought the cabin after it was seized by the federal government from the Chicago mob because it was used for making moonshine. It had running water, a furnace, electricity and even a full basement.

After a year my grandpa was cured and he could come home. But because money was tight during that year, my grandma made pancakes almost every day, causing my grandpa to never eat another pancake again.

While my grandpa was considerate by isolating himself to prevent spreading his TB infection, not everyone is quite as thoughtful. Andrew Speaker, who was diagnosed with XDR TB, the most dangerous variety of the disease, still flew internationally knowingly putting hundreds of other passengers at risk. XDR TB is so dangerous because of its resistance to first- and second-line drugs, meaning treatment options are limited for disease, which is then often fatal.

Ironically, Speaker's father-in-law, Robert C. Cooksey, is a microbiologist at the Centers for Disease Control and Prevention in Atlanta and has researched tuberculosis for the National Center for Infectious Diseases.

The CDC alerts Customs and Border Protection authorities whenever they encounter a patient with a highly contagious or dangerous disease, like XDR TB, to avoid infecting others. After his diagnosis, Speaker was put on a no-fly list in the U.S. According to routine practices, the CBP alerted all U.S. ports of entry about Speaker, especially because he was scheduled to fly into Atlanta on June 5.

An attorney, Speaker has traveled extensively during the past several years. How and when Speaker became infected is unknown, but he was aware that he had a drug-resistant form of TB when he flew to Europe for his wedding and honeymoon.

Because of the TB, health officials advised him not to travel even though they had no authority to prevent him from doing so. Speaker intended on traveling anyway and actually asked Fulton County health officials if it would decrease the risk of contamination if he wore a mask.

Instead of flying into a U.S. airport that knew of his no-fly status, Speaker elected to make a return flight from Prague to Montreal, along with 199 other passengers and crew members. He then drove back into the United States through the Champlain, New York, border crossing. According to Homeland Security, Speaker's passport was checked and triggered an alert, but he was still allowed into the country. The CBP agent who processed his entry has since been put on administrative duty.

The CDC has identified and is contacting about 80 passengers on Speaker's two trans-Atlantic flights they feel are most at risk for exposure. Speaker is currently being detained and treated in isolation at Denver's National Jewish Medical and Research Center at an estimated cost of \$250,000 to \$350,000.

At this point it is unlikely that Speaker is facing criminal charges, for while it wasn't advisable for him to travel, it also wasn't illegal. Further, even though he was red-flagged by the border patrol, he was legally allowed to enter the U.S.

As for civil liability, at this point, none of Speaker's fellow passengers have contracted TB, therefore, no one has yet been "damaged." If someone does get sick, it's a sure bet a lawsuit will follow.

Somewhere, I'm sure my grandpa is hoping the hospital serves him nothing but pancakes.

This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2007 McCarty Law LLP. All rights reserved.