I'm taking CHARGE
TAKING BACK WHAT CANCER TOOK FROM ME

November 3, 2016

New Orleans Woman of the Year, Kim Sport: Powerful Breast Reconstruction Laws Emerge in Louisiana, Part 1

By Guest Author
In Guest Posts

Kim Sport is a nuclear medicine technologist turned lawyer, and former Executive Counsel to the Chief Justice of the Louisiana Supreme Court. She's also a three-time cancer survivor and the founder of Breastoration, which educates, assists and advocates for women facing mastectomies as a result of breast cancer. This is the first of her two-part series for ITC on breast reconstruction laws. Part 2 is here. Sport's full bio follows this article.

PART 1: DUTY TO INFORM

My second breast cancer diagnosis in December of 2008 led to my decision to undergo a bilateral mastectomy with immediate reconstruction in my hometown of New Orleans at the Center for Restorative Breast Surgery. Following my series of surgeries, I learned about the "Alderman Study" which concluded that 7 of 10 of my fellow cancer survivors were living lives vastly different from mine – senselessly disfigured following their mastectomies, not by their own choosing, but rather because of a dereliction of duty on behalf of physicians to inform their patients that breast reconstruction was an insured option for them:

Many women are not informed about breast reconstruction at the time of their cancer diagnosis; and minorities are particularly at risk. African-Americans and Latinas, especially Spanish-speaking Latinas, have lower rates of breast reconstruction than whites but are less likely to see a plastic surgeon prior to mastectomy and express a significant desire to learn more about their reconstructive options.
-The Alderman Study

Incredibly, nearly half of the surgeons in the Alderman study felt patients were concerned about the cost of reconstruction, despite a 1998 federal law that mandated insurance coverage of breast reconstruction. This lack of information was especially egregious in Louisiana which has the highest mastectomy rate in the nation at 51% following a diagnosis of breast cancer and a minority population rate of 41%. I was appalled and decided to do something about it. No woman should ever suffer unnecessarily delayed and more complicated breast reconstruction surgeries or lifelong disfigurement following a mastectomy simply because of a lack of information.

Sport speaking at the Plastic Surgery Foundation, on behalf of women with breast cancer.

With two other breast cancer survivors, I formed an organization called "Breastoration" to educate, financially assist and advocate on behalf of women facing mastectomies. Since 2011, Breastoration has educated thousands of women and has provided financial assistance for over 100 breast reconstruction surgeries in southeast Louisiana. Despite these successes, what sets Breastoration apart from other breast cancer organizations is Breastoration's public policy efforts in Louisiana. This blog will discuss Louisiana's strong "duty to inform" breast cancer patients of all of their options before any treatment can begin.

The issue of cost provides no plausible explanation for a physician's failure to inform. The federal "Women's Health and Cancer Rights Act of 1998" (WHCRA) provides that health issuers which offer medical and surgical benefits with respect to a mastectomy shall provide coverage for reconstruction and written notice of the availability of such coverage shall be delivered by the insurer to the participant upon enrollment and annually thereafter.

Louisiana was one of the first states to adopt this federal act and took it a step further with the passage of the 1999 "Oral and Written Summary of Breast Cancer Treatment Alternatives Law" which required physicians in Louisiana to inform breast cancer patients orally and in writing of all of their treatment options, including breast reconstruction, at the time of diagnosis. The law further required the development of a specific brochure of breast cancer treatment options to be reviewed every three years by the Louisiana Department of Health and Hospitals (DHH) and distributed by the Louisiana State Board of Medical Examiners (LSBME) to all physicians as a component of license renewal. Finally, the law required that physicians provide patients with a copy of the brochure and document the date and time when this was done in the patient's medical record. Failure to comply would subject physicians to sanctions by the LSBME for unprofessional conduct.

Tragically, provisions of this law were fulfilled only once in the year 2000 and remained dormant for over 10 years before Breastoration "discovered" it in 2011. In cooperation with all of the statutory governmental entities, Breastoration redesigned and re-wrote what is now the 2014 Breast Cancer Treatment Alternatives brochure which includes a full panel on insurance coverage and breast reconstruction options. Importantly, the brochure is annually distributed to all Louisiana licensed physicians with reference to the law mandating their duty to inform.

Consider that from 2000 to 2012, approximately 36,000 new breast cancers were diagnosed in Louisiana and nearly 8,000 women died from the disease. Of the +/- 28,000 survivors, 14,280 underwent surgical mastectomies and nearly 10,000 were never told by their physician that breast reconstruction was an insured surgical option for them because our well-intentioned Louisiana law was not enforced. Enforcement and oversight of laws designed to inform and protect breast cancer patients is essential in all states. A law without enforcement is just good advice.

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November 9, 2016

Kim Sport, Part 2: Louisiana's Newest Breast Reconstruction Law

By Guest Author
In Guest Posts, We're Taking Charge Together

Kim Sport is a nuclear medicine technologist turned lawyer, and former Executive Counsel to the Chief Justice of the Louisiana Supreme Court. She's also a three-time cancer survivor and the founder of Breastoration, which educates, assists and advocates for women facing mastectomies as a result of breast cancer. This is the second of her two-part series for ITC on breast reconstruction law. Her full bio follows this article.

In Part 1, I discussed the advocacy work of the non-profit organization, Breastoration, which revived a "duty to inform" law in Louisiana. Breastoration now acts as a watchdog to make sure that physicians are reminded, as part of their license renewal by the Louisiana State Board of Medical Examiners, to inform their breast cancer patients of all of their treatment options, including breast reconstruction surgery, before any treatment can begin. In 2015, Breastoration discovered other Louisiana laws which placed significant insurance coverage impediments in the paths of women seeking breast reconstruction. In cooperation with the United Way of Southeast Louisiana, where I serve as chairman of public policy, and with the expertise of Dr. Alan Stolier, Breastoration set to out create the strongest breast reconstruction insurance coverage bill in the nation.

Sport speaking for the United Way Toqueville Society.

The first problem with the old laws was the "same plan" provisions. These provisions provided insurance coverage by HMO and PPO providers for breast reconstruction only if the mastectomy was literally performed under the same plan. This was contrary to the interpretation of the federal Women's Health and Cancer Rights Act (WHCRA) and, more recently, contrary to the Patient Protection and Affordable Care Act (ACA) which cannot limit or deny benefits for preexisting conditions. Moreover, it was nonsensical, considering that not all women elect to have reconstruction simultaneous with their mastectomies; years may pass before a decision is made to undergo breast reconstruction for personal or medical reasons; patients' employers may change their companies' health insurance providers; and women or their insured partners may change employment or retire. Under the leadership of Louisiana Rep. Helena Moreno, these HMO and PPO laws were eliminated in their entirety, and a new provision was added to the primary health insurance coverage law, which now states:
Any health benefit plan offered by a health insurance issuer shall not ... require that the mastectomy procedures and reconstructive procedures be performed under the same policy or plan.

The second problem with the old laws pertained to the definition of "breast reconstruction." Breastoration's position was that insurance coverage should be provided for all stages of reconstruction, and that procedures which health insurance

companies regularly flagged as "cosmetic" were indeed medically necessary. The most common topics of dispute involved liposuction and tattooing. Those of us who frequent this website know that nipples are sometimes removed during a mastectomy and need to be surgically re-created. These "new" nipples do not have any pigment, so tattooing is necessary to add color to the nipples and help create a three dimensional appearance which looks just like anyone else's nipples. We also know that liposuction is necessary in both implant and flap reconstructive procedures to contour a breast and/or to fill donor sites from where tissue and fat are harvested with blood supplies intact to create a new breast. Louisiana's new law now reads:
Breast reconstruction means all stages of reconstruction ... including but not limited to liposuction performed for transfer to a reconstructed breast or to repair a donor site deformity [and] tattooing the areola of the breast ...

The third problem with the old law was that it contained some wiggle room regarding whether insurance coverage was required following lumpectomies (partial mastectomies), for any surgery performed on the non-diseased breast to achieve symmetry, and for "re-dos." A "re-do" is necessary when unforeseen medical complications arise from the original reconstructive procedures, and also, sadly and frequently, when reconstruction is improperly performed by unqualified surgeons (Note to readers: make sure your surgeon is certified by the American Society of Plastic Surgeons and has experience in the type of surgery which is best for you! More on this below). Louisiana's new law now states:
Any health benefit plan offered by a health insurance issuer that provides medical and surgical benefits with respect to a partial or full mastectomy shall also provide medical and surgical benefits for breast reconstruction. ... Breast reconstruction ... [includes] surgical adjustments of the non-mastectomized breast, [and] unforeseen medical complications which may require additional reconstruction in the future.

The final problem to be addressed in the new law was making sure that women and their health care providers decided which reconstructive procedure was best for the patient and would be covered by health insurance. This was the most important provision in my opinion. An insurance company should not dictate which medically-necessary procedures are best for you. To this end, the following language became Louisiana law:
The purpose of this section is to ... stress that decisions regarding the reconstructive procedures to be performed shall be made solely by the patient in consultation with attending physicians... Any health benefit plan ... shall not reduce or limit coverage benefits to a patient performed pursuant to this section as determined in consultation with the attending physician and patient [or] penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide monetary incentives to an attending provider, to induce such provider to provide care ... inconsistent with this section.

The bottom line is that women fighting for their lives due to breast cancer should not also have to fight with their insurance companies. If you see problems with your own state's laws, contact your local legislator. You will be amazed at how hard they will work to help you. Breastoration owes a great debt of gratitude to the caring men and women who serve in the Louisiana Legislature who unanimously passed these strong laws to benefit women with breast cancer.