

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Breast Cancer: Primary Care Nurse Held To Same Standard Of Care As Physician.

A patient had to undergo a mastectomy and six months of chemotherapy, but she did survive.

She had gone to a county health clinic for a checkup and was seen by a nurse midwife. The nurse midwife wrote a chart note about fibrocystic disease and, according to the patient, said there was nothing to worry about.

Six months later, at the same clinic, a physician diagnosed breast cancer. The physician later testified, based on what he found, that a palpable cancerous lump was present six months earlier and should have been found and followed up upon.

The jury awarded a verdict to the patient, but also ruled the nurse midwife was only 51% at fault and the patient herself was 49% at fault for not reporting a lump to the nurse midwife.

The Supreme Court of Appeals of West Virginia said it was wrong to blame the patient in whole or in part.

The court pointed to the chart. The nurse midwife noted her assessment of fibrocystic disease. That meant the nurse midwife must have examined the patient. It did not matter what the patient told her. Even if the patient did not report a lump, the lump was there and the nurse midwife should have found it, the court believed.



***The courts hold a nurse with advanced standing working in primary care to the same standard of care as a physician performing the same tasks.***

***An advanced practitioner doing women's health exams must be able to differentiate fibrocystic disease from a cancerous lump and can be sued after the fact if the patient actually had cancer.***

SUPREME COURT OF APPEALS  
OF WEST VIRGINIA, 2001.

### **Failure to Diagnose Cancer**

Failure to diagnose cancer and treat it at an early stage is a common scenario in medical malpractice litigation. Delayed detection can complicate treatment, take away some percentage chance of survival or cause a patient's death. It often leads to a lawsuit.

In these cases the courts routinely accept expert medical testimony regressing the progression of a tumor to the size and consistency it would have had when the faulty examination took place, as was done in this case.

### **Advanced Practice In Primary Care**

In civil malpractice lawsuits the courts apply the same standards to nurses and physicians for the same tasks in primary care, regardless of the differences in education, certification and licensure that separate nurse midwives and various advanced nurse practitioners from one another and the differences that separate advanced-practice nurses from physicians.

For tasks traditionally associated with the practice of medicine, judges and juries treat nurses the same as physicians. There is only one legal standard of care for primary care providers. **Judy v. Grant County Health Department, 557 S.E. 2d 340 (W. Va., 2001).**

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