

NURSE PRACTITIONER MISDIAGNOSES CANCEROUS BREAST LUMP AS A BENIGN FIBROCYSTIC LUMP

written by Nancy Brent | July 12, 2023

Avoiding Liability Bulletin - July 2023

The 2022 Pennsylvania case, *Downes v. Eileen Carpenter, CRNP et al*, received national attention due, in part, to the jury verdict in favor of the plaintiff, Kerri Downes, for \$18,000,000.

Specifics of the Case as Reported by [Verdict Search](#)

Kerri Downes, 23 years of age and an RN, sought care at a women's health center after she thought she felt a right breast lump while showering. She saw Eileen Carpenter, CRNP, who did a comprehensive breast exam and discovered "fibrocystic changes." She instructed Ms. Downes to return to the center in two weeks for a follow-up breast exam which would be at another phase in her menstrual cycle.

The NP saw Ms. Downes again at the follow-up appointment and did another breast examination, and determined that Ms. Downes had "fibrocystic changes bilaterally", and that Ms. Downes was to follow-up with her care as needed.

Approximately 8 months later, Downes returned to the center and saw an OB/GYN physician. She told the physician she felt "intermittent burning" in her right breast, that her right breast was "visibly larger" than her left breast, that she had occasional itching and burning of the skin over her right breast, and there was an indentation in her skin of the right breast. She described the location of the lump as "in the six o'clock area."

The physician noted that the mass in her right breast had grown from "1 grape to 2-3 grapes" in size. A breast ultrasound was ordered and an appointment with a breast surgeon was necessary.

Shortly after this visit, her ultrasound showed a "3.8-centimeter ill-defined hypoechoic area consistent with the palpable lump" and approximately a month later, a biopsy showed invasive breast cancer, with a diagnosis of "Stage IIB" breast cancer in the right breast. The primary tumor was four centimeters in size.

A bilateral mastectomy with "axillary lymph node dissection and reconstruction" was performed. Ms. Downes then underwent egg harvesting prior to eight rounds of chemotherapy and 28 radiation treatments.

Ms. Downes filed a lawsuit against the NP, her employer and two of its “related entities”, and the OB/GYN physician (who was later dismissed from the suit.) Her allegations were that the NP and her employer violated their standard of care when treating her, resulting in emotional distress and potentially shortening her life.

Trial Court Proceedings

During the 10-day trial, the attorneys and experts from both Ms. Downes and Ms. Carpenter, and testimony from both Ms. Downes and Ms. Carpenter, raised their respective arguments in support of their positions concerning the NP’s failure to uphold her standard of care.

Ms. Downes’ attorneys and experts raised the following (not all-inclusive):

- No specific documentation of the NP’s findings during the initial visit was present, including a breast diagram, pain scale, or breast discharge
- The failure of the NP to order breast imaging in either of the two initial visits resulted in the spread of the cancer to the lymph nodes
- Failure to order either a diagnostic mammogram and/or a “targeted ultrasound” was a “costly” deviation from the standard of care
- The NP failed to provide proper follow-up care instructions and patient education to Ms. Downes, including additional breast changes
- The failure of the NP to meet the standard of care resulted in a loss of “decades of life”, caused significant pain and suffering, and prolonged treatment

Ms. Carpenter’s attorneys and experts raised the following (not all-inclusive):

- Ms. Carpenter met the standard of care because her testimony indicated she did not document a mass in the right breast because she did not feel one, only normal fibrocystic tissue
- Ms. Carpenter, therefore, conducted a thorough examination
- Ms. Carpenter’s testimony indicated she did provide follow-up instructions to Ms. Downes
- Ms. Carpenter followed guidelines provided by The American College of Gynecologists and Obstetricians which “does not mandate or recommend imaging in a woman under age 30”
- Based on the “oncotype” or genetic assay of Downes’ own biology in determining the aggressiveness of the tumor and the likelihood of recurrence, Ms. Downes would have needed the same chemotherapy and radiation treatment when she was first seen by Ms. Carpenter and some form of surgery would have been required
- No increase of the risk of harm to Ms. Downes occurred by not doing breast imaging when she was first seen by Ms. Carpenter

The jury deliberated for 2 hours and returned a verdict in favor of Ms. Downes, finding that Ms. Carpenter and her employer were professionally negligent and awarding Ms. Downes \$ 18,000.000.

Take Aways from this Case for Your NP Practice

Although each jury decision in a lawsuit is different because it involves specific facts, specific testimony, and specific expert witness testimony, some guidelines can be gleaned from this case.

An initial issue to keep in mind in any specialty of NP practice is that you cannot always absolutely rely on applicable recommendations for your practice. Here, Ms. Carpenter relied on standards established by the American College of Gynecologists and Obstetricians for breast imaging for women under 30.

Regardless of the existence of such standards, they cannot take the place of your clinical judgment and critical thinking concerning an aspect of patient assessment and treatment.

If Ms. Carpenter had ordered the breast imaging in either of the two appointments in which she saw Ms. Downes, at the very least she would have established a base line upon which further developments in Ms. Downes condition could be based.

Additionally, it is important to consider the “right” standard or recommendation when making a clinical decision.

For example, the [American Cancer Society's](#) position on early detection for breast cancer should also be based on a patient's family history and other high-risk factors.

Another factor illustrated in this case is the importance of accurate and complete documentation of any assessment, care, patient teaching, and follow-up for patients that you see. Failure to document raises the old adage: “If it wasn't documented, it wasn't done.”

The case also highlights that any professional negligence case is a “battle of the experts”. There were many expert witnesses in the case, and each one's objective was to educate the jury as to the standard of care. It is then up to the jury to determine which opinion or opinions supported their decision.

Credibility is also an issue in any lawsuit. Here, the jury had to determine which expert witnesses were the [more credible](#). It also had to determine the respective [credibility](#) of Ms. Downes and Ms. Carpenter.

The OB/GYN physician who was initially included in the lawsuit as a named defendant was later dismissed from the lawsuit, apparently because she had no role in the failures of the NP's treatment of Ms. Downes.

The dismissal illustrates the standard practice of naming whomever *may* have been involved in the care of a patient that resulted in injury or injuries that patient. Until a case proceeds into further phases—such as the discovery of facts surrounding the case—can actual defendants become clear.

As a result, a named defendant that had no part in the patient injury would be dismissed from a suit. Similarly, others may be added as a named defendant when it is discovered that another health care provider breached his or her standard of care.

This practice illustrates another caveat: if you are named in a lawsuit, or think you may be named, you need to notify your professional liability insurance carrier as soon as possible. The assigned attorney can then begin to work on your case and determine how best to represent you.

Until you are notified that an attorney has been assigned your case, it is important that you not speak with anyone concerning the case, including the attorney for the plaintiff (injured patient), your employer's attorney, or the injured patient and his or her family.

According to Verdict Search, Ms. Carpenter filed a motion post-trial for a new trial or for remittitur (request that a court reduce the monetary award in a jury verdict). Although my research did not reveal if that motion was granted, it speaks to the fact that a jury decision may not be the end of a lawsuit. In addition to a motion for these two options, another is to appeal the decision to an appellate court.

Although it is not known if Ms. Carpenter had her own professional liability policy, if she did, some of the monetary award would be paid based on the insurance policy's obligation in its Limits of Liability provision.

It is important to keep in mind as well that when an insurer pays an amount to a plaintiff as a result of a judge or jury award, that payment is reported to the [National Practitioner Data Bank \(NPDB\)](#).

As an NP, you are not required by the law to be perfect. Nor was Ms. Carpenter required to be perfect. You are required, however, to practice in accordance with applicable, established standards of practice. In addition, you are required to utilize critical thinking and clinical judgment in how to care for the patients you treat.

This information is for educational purposes only and is not to be taken as specific legal or other advice. If legal or other advice is needed, the reader is encouraged to seek such advice from a nurse attorney, attorney, or other professional.