SEARCY DENNEY SCAROLA BARNHART & SHIPLEY

OF COUNSEL

A report
to clients
and attorneys.

VOLUME 06
NUMBER 3

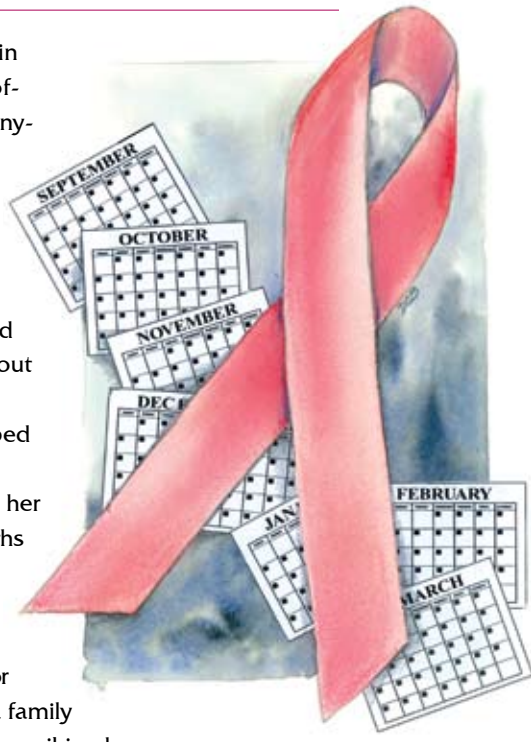
Seven-Month Delay in Diagnosis Results in Loss of Breast

In spite of family history, medical personnel delayed immediate action.

Twenty years ago, Jane Doe and her mother and sisters were heartbroken when Jane's beloved aunt died from metastatic breast cancer at 38 years of age. Since that time, the women in Jane's family have all been vigilant and proactive regarding any breast problems. Thus, when Jane felt a small lump in her right breast during self-examination in September 2000, she called her gynecologist and made an appointment to be seen immediately.

At the appointment, Jane was not examined by a doctor. Instead, she was examined by a poorly trained nurse practitioner who lacked adequate and accurate medical knowledge. During the examination, the nurse practitioner failed to document Jane's family history of breast cancer, but did document a dominant mass in Jane's right breast. She then directed Jane to have a mammogram and ultrasound examination, which Jane completed five days later. The findings of the ultrasound suggested breast cancer, but the radiologist failed to report the findings or inform the patient. Instead, he told Jane that she had a cyst and he recommended that she have another study performed in seven months. Had the radiologist exercised the proper standard of care in light of the examination's findings, he would have recommended an immediate breast biopsy and not a delay of seven months. The biopsy would have resulted in the diagnosis of Jane's breast cancer.

The report sent to the nurse practitioner by the radiologist recommended only clinical follow-up by that office. Incredibly, the report sat in the nurse practitioner's office for a month before anyone bothered to look at it. When the nurse practitioner finally picked up the report, she read only part of it and negligently concluded that the study had ruled out breast cancer. The nurse practitioner then prescribed hormone replacement therapy for Jane and told her to come back in six months for another examination. Numerous studies have shown that when a patient has breast cancer, or has a risk evidenced by a family history of such cancer, prescribing hormone replacement therapy is akin to pouring gasoline on a fire.



Jane Doe's chance for a timely diagnosis and treatment of breast cancer was decreasing at every turn. The nurse practitioner had failed to recognize the critical risk of a family history of the disease, and then directed Jane to obtain a mammogram and ultrasound tests that are not as conclusive as a biopsy would have been. The radiologist failed Jane by not reporting the ultrasound findings and by not recommending a biopsy. And now the nurse practitioner's second chance to alert Jane to the possibility of breast cancer failed because the nurse practitioner did not act timely or respond knowledgeably to the situation. Instead, the nurse practitioner added to the risk with further delay and inappropriately prescribed treatment.

Seven months later, on April 2, 2001, Jane returned to her gynecologist's office, as she had been directed to do. She reported that the *(Continued on page four)*

$1.2 Million Settlement

MEDICAL MALPRACTICE: NEGLIGENCE IN TMELY DIAGNOSIS RESULTED IN SPREAD OF CANCER

Seven-month delay in diagnosis results in loss of breast, plus grueling chemotherapy

(Continued from page one)

lump had started growing and that she had recently begun having shooting pains in her right breast. Jane was promptly referred to a surgeon who performed a biopsy which revealed the breast cancer. The mass measured 13 x 8 centimeters in size – five times larger than it was seven months earlier.

Jane immediately began a grueling course of chemotherapy in an attempt to shrink the tumor so that breast-conserving therapy (lumpectomy) could be performed instead of a mastectomy. Unfortunately, the tumor did not shrink enough to allow only removal of the mass, saving the other breast tissue. Jane underwent a mastectomy. The seven-month delay in a proper diagnosis cost Jane her breast.

A timely diagnosis would have saved her breast and statistically improved her chance of survival.

The mastectomy revealed a very aggressive breast cancer that had spread to the lymph nodes. Because of the high stage of the tumor and its aggressive nature, Jane's treatment required a bone marrow transplant which was performed at the University of South Florida in 2002. The treatment was painful and life-threatening, and Jane spent the four months following the transplant terribly sick and unable to work or care for herself. Today, however, six years later, Jane has not had a recurrence of breast cancer. She has endured multiple surgeries in an effort to reconstruct her right breast, but the surgeries have all failed due to the damage to her skin caused by her high-dose radiation treatment.

After years of hard-fought litigation, attorneys Earl Denney and Jim Gustafson were able to resolve Jane's case for $1.2 million. Jane's case exemplifies how the American civil justice system helps society and improves health care. As a result of this lawsuit, the nurse practitioner that failed to provide proper care to Jane has changed her procedures. She no longer relies on a radiologist to recommend when clinical follow-up should take place, and she sends patients with a dominant breast mass to a surgeon if the mass persists for one month. Jane didn't just stand up for herself when she filed the lawsuit. Jane's courage and determination resulted in better health care for countless women. ■