

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Advanced Practice: Court Says Nurse Midwife Complied With Standard Of Care.

The patient's pregnancy was being followed by a nurse midwife employed by the patient's HMO.

Because of her age (thirty-seven) the patient had an amniocentesis at a university hospital, at the nurse midwife's suggestion. All the testing indicated a normal healthy fetus.

Eighteen days later the patient began having a vaginal discharge while doing housework. She phoned the nurse midwife. Based on the patient's description of the discharge the nurse midwife advised her to rest. She told her she did not have to come to the hospital, but should call back again if she was still concerned.

Twelve days later the patient began bleeding and phoned the physician at the university hospital. He told her to go to the nearest hospital. There premature rupture of the amniotic membrane was diagnosed. Labor was induced but the fetus was born dead.

The couple sued their HMO for the death of their child. The jury ruled in favor of the HMO and exonerated the nurse midwife from negligence. The Supreme Court of Connecticut upheld the jury's decision.

The central point of contention was how the trial judge instructed the jury on the legal standard of care.



***A nurse midwife employed by a health maintenance organization is held to the prevailing standard of care that is recognized as acceptable and appropriate for a reasonably prudent nurse midwife engaged in the practice of obstetrics and gynecology.***

***A nurse midwife is not judged by the standard of care for ob/gyn physicians.***

SUPREME COURT OF CONNECTICUT

July 30, 2002

### Advanced Practice Standard of Care

Rejecting the long-standing common-law rule, the court decided that advanced nursing practice is legally distinct from the practice of medicine.

When the clinical judgment and actions of a nurse with advanced standing are called into question in a civil malpractice lawsuit, the nurse is to be judged by the accepted standards for nurses with comparable standing in the nurse's specific field of clinical expertise, not by the standards for physicians practicing in the field, the court ruled.

### Nurse Midwife as Expert Witness

The court accepted the nurse midwife's testimony as an expert witness in her own defense. She testified that a thick milky vaginal discharge is not consistent with release of amniotic fluid. Were it a clear watery discharge, the nurse midwife indicated the standard of care would be to send the patient to the hospital immediately, but that is not what happened in this case.

The court accepted the opinion of an ob/gyn physician that the nurse midwife's judgment was correct. He did not go into the issue of what an ob/gyn physician might have done differently. ***Ali v. Community Health Care Plan, Inc., 261 Conn. 143, 801 A. 2d. 775, 2002 WL 1608344 (July 30, 2002).***

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