

September 19, 1996

Eye Doctor Must Pay \$75,000

Fed Judge Rules Surgery Botched

By SCOTT SANDLIN
Journal Staff Writer

Dr. Gary Hall, a Phoenix eye doctor, botched an eye surgery designed to correct the vision of an Albuquerque man and must pay him \$75,000, a federal judge has ruled.

The case is the first of many filed in New Mexico against Hall to go to trial, an attorney said.

U.S. District Judge Bruce Black found Hall "deviated from the recognized standard of care" — that is, committed medical malpractice — when he performed a second corrective surgery on James Davis on July 1, 1994.

The surgery was an "astigmatic keratotomy," in which the cornea is changed surgically to improve vision.

Black, ruling this week based on evidence from a nonjury trial in August, found Hall and the Gary Hall Eye Surgery Institute P.C. liable for Hall's negligence and ordered compensatory

damages. The court denied punitive damages.

Davis' attorney, Dan Shapiro, was out of the country and couldn't be reached for comment, but his law partner, Carl Bettinger, said he was pleased with the verdict, especially because the only other case to go to trial resulted in a defense verdict.

"It's very technical, but ultimately it's an acknowledgement that (Hall's) sort of mass-production system of seeing patients is wrong," Bettinger said. "That's certainly something Dan was arguing strongly at trial. These (procedures) are done in 10 or 20 minutes and they charge thousands of dollars."

Hall said in deposition testimony that he charged \$995 an eye in the early 1990s but the price had dropped to \$495 an eye by late 1995, primarily because of increased competition and competitive pricing.

Hall's attorney, Arthur Beach, didn't answer a request for comment Wednesday, but previously has said Hall's actions were reasonable and appropriate. In formal answers, Hall has denied such substantive allegations as negligence, reckless conduct and misrepres-

entations or omissions.

Hall runs advertisements in Albuquerque about seminars he holds on eye surgery.

More than a dozen New Mexicans have sued Hall in state and federal court claiming his radial keratotomy surge left them with injuries ranging from damaged marital relationships to near blindness.

Some 11 malpractice lawsuits have been filed in Maricopa County Superior Court in Arizona as of last October.

Hall is serving a three-year probation imposed by the Arizona Board of Medical Examiners, a board spokeswoman said Wednesday. She said he was placed on probation earlier this year for "unprofessional conduct" and ordered to pay a \$10,000 fine, obtain informed patient consent and submit to a formal hearing.

In a 10-page document listing his factual findings and legal conclusions, Black said that Davis, a 54-year-old meat-cutter at Smith's, had gone to Hall for a successful surgery on his right eye in 1993, and decided to return the follo-

See EYE on PAGE C

Eye Doctor Must Pay \$75,000

from PAGE C1

ing year to see if Hall could make his left eye as good as his right.

In July 1994, Hall performed surgery enhancement in each eye.

Given Davis' "expressed wish to have surgery only on his left eye and the inconsistencies between the preoperative tests evidencing an instability in (Davis') eyes, Dr. Hall should not have performed the enhancement surgery," Black found.

Black found that the surgery caused the astigmatism in Davis' right eye to increase.

Although Davis can see adequately to work and was able to get a driver's license in January,

limitations on his vision mean he can no longer enjoy golf and has given up many of his social activities, the judge found.

Bettinger said that while they had asked for more money in damages, the judgment was fair and is consistent with the typical medical malpractice judgment nationally of \$100,000 or less.

Hall, who specializes in radial keratotomy, has performed more than 30,000 eye surgeries.

Bettinger said Hall wasn't telling patients the procedures they were undergoing were in effect experimental. "He called it 'biosensitive radial keratotomy' (but) he was just sort of cutting until it felt right," Bettinger said. "Calling a cow a horse doesn't make it a horse."