

Judge orders new trial, citing false testimony

► *Case against Española Hospital will be tried again because of statistics error*

By **WENDY WALSH**
The New Mexican

State District Court Judge Jim Hall has set aside a jury verdict and ordered a new trial after finding that an Española Hospital nursing director testified falsely during a personal-injury trial.

"We're looking forward to trying this case again with truthful evidence," said Carl Bettinger, an Albuquerque lawyer working for Lennett Rendon, whose mother, Sophia Maestas, broke her hip while staying at Española Hospital in May 1998.

Hall did not find that hospital nursing director Brenda Romero intentionally testified falsely about fall rates

at the hospital during the June trial in Tierra Amarilla County.

However, Romero's conduct does fall within the scope of a court rule that allows judges to set aside a jury verdict if misconduct or misrepresentation has occurred during trial, Hall said at a hearing Friday in state District Court in Santa Fe.

Romero had testified that the hospital's fall rate was 16 per 1,000 patient days when it was actually significantly higher, Bettinger said.

The correct rate is probably closer to about 3.5 per 1,000 patient days, but lawyers are still trying to determine the exact rate, Bettinger said.

"My opinion is that a director of nursing should know what the fall rates are before she gets up to testify to them," Bettinger said.

Mark Komer, defense attorney for Presbyterian Healthcare Services, the

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company that operates Española Hospital, declined comment.

"My client prefers that I don't discuss ongoing litigation," he said.

In an Oct. 1 affidavit filed with the court, Komer explained how the mistake occurred. Komer asked Romero to call the hospital during the trial and get the fall rates, the affidavit states.

"This was all very much last-minute," Komer stated.

Komer had a fall-rate report in front of him when Romero testified, and his figures coincided with Romero's, but the mistake occurred when they both misinterpreted how the figures are calculated, Komer stated.

Española Hospital statisticians figure fall rates on admissions rates, not patient days, and that is how Komer and Romero were mistaken,

Komer stated.

In May 1998, Maestas, who died in March but was 77 years old at the time, was about ready to go home after having a mild stroke and spending about a week in Española Hospital.

On May 29, 1998, hospital personnel found Maestas on the floor next to her bed with a broken hip, court records state.

The railing on Maestas' bed was broken, but no one has

been able to determine if that's what caused the fall, Bettinger said.

Soon after, Maestas suffered a heart attack and went into shock, but eventually recovered, Bettinger said.

Rendon is seeking an unspecified amount of damages, and the second trial is scheduled to start June 17, 2002, in Tierra Amarilla County before Judge Hall, Bettinger said.