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Judge Orders New Trial On Malpractice Damages

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A federal judge has reversed a jury's defense verdict in a medical malpractice case against a northeastern New Mexico hospital.

Chief U.S. District Judge Juan Burciaga said a reasonable jury could not have reached the verdict it did — finding no liability on the part of the hospital in the case of Robert Ruiz.

In documents filed with the court clerk Tuesday, Burciaga said the law was on Ruiz's side even if the jury wasn't, and ordered a new trial on damages.

Ruiz, now 20, was hit over the head with a steel fencepost in a fight on Jan. 14, 1991, and taken to the emergency room of Union County General Hospital in Clayton. He was treated by the emergency room doctor, M. Oliver Kepler, who ordered head X-rays, stitched up his head lacerations and sent him home about two hours later.

Ruiz's mother filed suit on behalf of her son, who has been found legally incapable of handling his own affairs because of brain damage.

She alleged Kepler and the hospital discharged her son in an unstable condition, a violation of the Emergency Medical Treatment and Active Labor Act.

The unstable condition they alleged was the failure to see and treat Ruiz for

a depressed skull fracture, an injury in which skull fragments break off from surrounding bone and press against the brain.

When his fracture was diagnosed five days later, he underwent surgery at a hospital in Amarillo.

Albuquerque attorney/M.D. Carl Bettinger, who represented Ruiz, said in court documents that the delay caused the brain damage.

Kepler's treatment of Ruiz fell below the accepted standard of care and the hospital was negligent in granting Kepler hospital privileges, the plaintiffs contended.

Kepler and the hospital said Ruiz's problems were not a result of the delay. Rather, they said, his injuries resulted from the fight in which he was involved.

Attorneys told court officials they had reached an agreement with Kepler after the second day of trial and the jury considered only liability claims against the hospital. The jury found in favor of the hospital.

But Burciaga said in a brief memorandum opinion that "no reasonable jury could find Mr. Ruiz was not discharged in an unstable condition."

He noted the uncontradicted testimony of Dr. Thomas Cohn, who said that "at least some of Mr. Ruiz's damages were caused by brain edema following discharge in an unstable condition."