

# Man Wins Liver-Damage Judgment

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On a spring day in 1988, the day he turned 23, Jose A. "Archie" Martinez of Española visited the Health Centers of Northern New Mexico.

Martinez, who had at least three arrests for driving while intoxicated, was complying with a court-ordered therapy program involving the use of Antabuse, a prescription drug used to treat alcohol problems, according to court documents. The drug can cause liver disease in one out of every 100,000 to 200,000 patients who take it.

Martinez was one of them.

Before the summer was over, Martinez had suffered a near-fatal liver disease that required an airlift to Pennsylvania for an emergency liver transplant — the result, a federal judge found in 1992, of malpractice by two doctors who treated him at the clinic.

Last week, U.S. District Judge Edwin L. Mechem, who heard testimony in the case during a non-jury trial in Albuquerque three years ago, entered a judgment awarding \$747,402 to Martinez. The amount would be paid by the federal government and compensates him for pain and suffering and future medical costs, which his

attorney said are likely to include a second liver transplant.

Assistant U.S. Attorney Jan Mitchell, who defended the government-funded health clinic in the case, said Monday a decision on an appeal will be made by Justice Department officials in Washington.

But the case has been to the 10th Circuit Court of Appeals and back once already, making an appeal less likely, said Albuquerque attorney Carl Bettinger, who represented Martinez.

The case was one of an oversight with tragic consequences, according to court documents.

According to Mechem's findings, Martinez, obeying a magistrate court order, showed up at the clinic to be evaluated by a doctor. He was seen by Dr. Gershon Bergeisen, a board-certified family practice physician and an employee in the U.S. Public Health Service.

Bergeisen examined Martinez and took blood and other tests to see whether Martinez was suitable for Antabuse treatment. On a second visit, he prescribed enough Antabuse to last Martinez a month and told him to return for followup liver function tests.

But Bergeisen failed to put a written note on his chart, and when Martinez returned on July 5,

he saw a different doctor, Dr. Ronald Press, who refilled the prescription without ordering liver tests.

Press is a family practice doctor and is a non-federal employee of the Health Centers of Northern New Mexico.

On July 27, Martinez entered the Española hospital and was diagnosed with an Antabuse-caused hepatitis.

Four days later, Martinez underwent a liver transplant operation at Presbyterian University Hospital in Pittsburgh, Pa.

Mechem concluded that it was foreseeable that a different doctor than Bergeisen would see Martinez when he returned to the clinic, so his failure to chart a written order for followup tests fell below the acceptable standard of care and constituted malpractice.

By failing to independently assess Martinez and have liver function tests performed on Martinez's July 5 visit, Press also failed to follow the standard of care, Mechem found.

Martinez, whose entire work history at the time he developed the disease consisted of 3½ months, was not compensated for past medical expenses, because those were paid by Medicaid and the state.

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