

Jury awards patient \$5 million after botched spinal surgery

BY MARK MUELLER
STAR-LEDGER STAFF

A jury has awarded nearly \$5 million to a Union County man who lost the use of his limbs after undergoing spinal surgery at Newark's University Hospital.

In a verdict late Friday, the Essex County jury found that surgeon Robert Heary botched a 1997 operation on Joseph Howard, 60, who had been suffering from a degenerative spinal condition.

"Joe walked into that hospital on the morning of March 5, 1997, and he's never walked again," Howard's lawyer, Bruce H. Negel, said yesterday. "He's led a dreadful life ever since."

Howard, a former auto parts salesman who lives in Union Township, can move his legs only a few inches, suffers from uncontrolled spasms in his left arm and can move only some of the fingers on his right hand, Negel said. He requires a wheelchair and round-the-clock care.

Heary's lawyer, Scott Eichhorn, said he planned to appeal the decision, contending Superior Court Judge Stephen Bernstein improperly withheld key information from the eight-person jury during a 2½-week trial in Newark.

"We were extremely upset throughout the trial with the rulings that were made," Eichhorn said. "We felt they were erroneous and that they prevented the jury from hearing the whole story."

Specifically, Eichhorn said, the

judge prohibited him from telling jurors that Howard, who suffered from cervical spine disease, had been warned by a different doctor six years earlier that corrective surgery carried a 15 percent risk of paralysis. Since that warning, the lawyer said, the danger of paralysis increased because of Howard's deteriorating condition.

Heary similarly alerted Howard of the risks involved, Eichhorn said.

Heary is a professor of neurology at the University of Medicine and Dentistry of New Jersey, which oversees University Hospital, and the director of UMDNJ's Spine Center of New Jersey. He remains in good standing at both the hospital and university, Eichhorn said.

Negel argued during the trial that Heary, in replacing several ver-

tebrae with a bone graft, applied too much pressure to the spinal column, damaging it and causing Howard's paralysis. Eichhorn countered that Heary performed the surgery correctly.

"The spinal cord was already so damaged that in spite of the fact that he did it right, the cord couldn't handle it," he said.

After deliberating for seven hours, the jury awarded Howard \$2.1 million in expected care costs, \$2.2 million for pain and suffering, and \$200,000 in lost wages. Howard's wife, Marie, was awarded \$300,000.

Because UMDNJ is state-run, the state must pay the first \$2 million of the award, while insurance will cover the rest, both lawyers said.