

Varian Radiation Treatment Lawsuit Settled for \$15M

The Associated Press

The family of a lung cancer patient who suffered injuries after he was exposed to overdoses of radiation has settled a lawsuit for \$15 million in compensation.

Zacarias Chichioco Jr. received about 2.5 times the appropriate amount of radiation he should have received because of a programming error in software developed and sold by a medical services company, according to the lawsuit. He died May 19, 2011.

His family sued Varian Medical Systems Inc. and doctors from the Pacific Cancer Institute in Wailuku, where he received the radiation treatments.

The family will receive \$1 million from institute founder and president Dr. Bobby Baker and \$1 million from institute physician Dr. Daryl Makishi, which is the limit of their insurance policies, the Maui News (<http://bit.ly/1cZhwdo>) reported.

Chichioco family attorney Michael Tateishi said Palo Alto, Calif.-based Varian will pay \$13.25 million. The Chichioco family also was represented by Seattle-based Luvera, Barnett, Brindley, Beninger & Cunningham, a law firm with experience in medical device litigation.

Chichioco was diagnosed with cancer in February 2008. A plan developed by Makishi used Varian's Eclipse system. Radiation treatment was delivered by a linear accelerator designed by Varian, according to the lawsuit. The plan called for 35 treatments.

Chichioco quickly suffered significant side effects, Tateishi said. He had pain swallowing and suffered hallucinations, hearing loss and paralysis on the left side of his face. He underwent operations for skin grafts.

The lawsuit claimed Varian discovered a programming error in its treatment planning software in about May 2007 and updated software used by Pacific Cancer Institute but did not provide notes to the institute about how to avoid the programming error.

A review by Pacific Cancer Institute indicated that Chichioco had received more than twice his appropriate dose of radiation during his first 21 treatments, according to the lawsuit.

Chichioco died of lung cancer, Tateishi said.

"Our position was that it may have been related because his system was so

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weakened by the over-radiation," Tateishi said. "He didn't want to see the doctors. He didn't want any treatment. He didn't want to get treatment for it because he lost trust for the medical system."

Baker said what happened to Chichioco "was a single incident."

"As soon as I learned about this, I immediately instigated a thorough review of every case that had been treated here," Baker said. "We found that in every other case, the prescription was absolutely correct."

Corlis Chang, an attorney representing Varian, declined comment.

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