Report on Patient Privacy Volume 19, Number 2. February 28, 2019 MD Who Gave Drug Rep EMR Access Begins Probation, Expresses Remorse for Criminal Act

By Theresa Defino

Eduardo Montaña, M.D., had never encountered a representative from Aegerion Pharmaceuticals before a woman walked into the pediatric cardiologist's Atlanta-area practice one day in February 2013. After she met his office staff, Montaña gave approval for her to come and talk to him.

Over the next two months, Montaña and the rep, and another individual from Aegerion, would work together to identify nearly three hundred patients who might be candidates for Juxtapid, an orphan drug approved that previous December for a rare type of inherited high cholesterol—in adults. In a decision he now calls a "mistake" and an "extreme outlier," Montaña shared protected health information (PHI) with the woman, and even gave the woman access to his electronic medical records (EMR) system.

Thus began a chapter that led to Montaña being charged with a rare criminal, albeit misdemeanor, violation of HIPAA, for which he was sentenced to six months' probation last month. He pled guilty in February 2018. In his first public comments on the ordeal, Montaña, through his attorney, tells *RPP* that his is a "cautionary tale."

Montaña is "disappointed and upset that this ever happened and wants to make sure that no one else makes the same mistake," T.C. Spencer Pryor, a partner with Alston & Bird LLP, tells *RPP*. Pryor says Montaña didn't learn he was under investigation until three years after his dealings with Aegerion.

Aegerion itself was also accused of HIPAA violations, but prosecution on felony charges was deferred under a broad $35 million plea agreement in 2017 that also addressed False Claims Act allegations. The case against Aegerion stemmed from a whistleblower suit brought by three former employees of the company.

As part of Aegerion's settlement, announced a year before Montaña's guilty plea, "Aegerion admitted that it conspired to obtain patients' personally identifiable health information, without patient authorization, for commercial gain," the U.S. Attorney's Office for Massachusetts announced. The firm agreed to adopt "enhanced compliance provisions" related to HIPAA.

The government accused Aegerion of pushing the medication for patients who did not have the disease, known as HoFH , and the specific diagnosis for which Juxtapid was approved, failing to "give health care providers complete and accurate information" about the condition and its diagnosis, and violating the terms of a safety plan (Juxtapid carries a black-box warning). At the time of approval in 2012, Juxtapid was estimated to cost $300,000 annually, and Aegerion employees were under pressure to make sales.