



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 132 3088]

Michael C. Hughes; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before January 2, 2015.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/michaelchughesconsent> online or on paper, by

following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write "Michael C. Hughes - Consent Agreement; File No.

132 3088" on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/michaelchughesconsent> by following the instructions on

the web-based form. If you prefer to file your comment on paper, write "Michael C. Hughes -

Consent Agreement; File No. 132 3088" on your comment and on the envelope, and mail your

comment to the following address: Federal Trade Commission, Office of the Secretary, 600

Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your

comment to the following address: Federal Trade Commission, Office of the Secretary,

Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC

20024.

FOR FURTHER INFORMATION CONTACT: Jacqueline Connor, Bureau of Consumer Protection, (202-326-2844), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 3, 2014), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 2, 2015. Write “Michael C. Hughes - Consent Agreement; File No. 132 3088” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include

any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/michaelchughesconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write “Michael C. Hughes - Consent Agreement; File No. 132 3088” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR § 4.9(c).

Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 2, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent order applicable to Michael C. Hughes ("Hughes").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Michael C. Hughes is the former Chief Executive Officer, sole employee, and part owner of PaymentsMD, LLC ("PaymentsMD"). PaymentsMD's principal line of business is the delivery of electronic billing records and the collection of accounts receivable for medical providers. In December 2011, PaymentsMD launched a free "Patient Portal" product that enabled consumers to pay their bills and to view their balance, payments made, adjustments taken, and information for other service dates.

The Commission's complaint alleges that PaymentsMD, under Hughes' direction and control, deceived consumers regarding the collection of consumers' sensitive health information

from third parties. In June 2012, PaymentsMD entered into an agreement with Metis Health LLC (“Metis Health”) to develop an entirely new service called Patient Health Report, a fee-based service that would enable consumers to access, review, and manage their consolidated health records through a Patient Portal account. In order to populate the Patient Health Report, PaymentsMD, under Hughes’ direction and control, obtained consumers’ authorization to collect sensitive health information for one purpose – to track their medical bills – and then used that authority to attempt to collect a massive amount of sensitive health information, including treatment information, from third parties without consumers’ knowledge or consent. Based on such authorization, sensitive health information about everyone who registered for the Patient Portal was then requested from a large number of health plans, pharmacies, and a medical lab.

The first count of the Commission’s complaint alleges that Hughes, through his direction and control of PaymentsMD, represented that consumers registering for their free Patient Portal billing service could access and review their medical payment history, but failed to disclose adequately that PaymentsMD would also engage in a comprehensive collection of consumers’ sensitive health information for a Patient Health Report. The second count alleges that Hughes, through his direction and control of PaymentsMD, deceptively represented that the consumers’ authorizations were to be used exclusively to provide the billing service.

The proposed order contains provisions designed to prevent Hughes from engaging in the future in practices similar to those alleged in the complaint. Part I prohibits Hughes or any entity he owns or controls from misrepresenting the extent to which he or any entity he owns or controls uses, maintains, and protects the privacy, confidentiality, and security of covered information collected from or about consumers, including but not limited to (1) the services for which consumers are being enrolled as part of any sign-up process; (2) the extent to which he will share covered information with, or seek covered information from, third parties; and (3) the

purpose(s) for which covered information collected from third parties will be used. Part II requires Hughes or any entity he owns or controls to clearly and prominently disclose practices regarding the collection, use, storage, disclosure or sharing of health information prior to seeking authorization to collect health information from a third party, and to obtain affirmative express consent from consumers prior to collecting health information from a third party.

Part III prohibits Hughes or any entity he owns or controls from using, collecting, or permitting any third party to use or maintain any covered information pursuant to any authorization obtained prior to the date of the order from consumers registering for the Patient Portal. Hughes also must, within sixty days, delete all covered information in his possession or control that was collected in relation to the Patient Health Report service.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires Hughes to retain documents relating to his compliance with the order. The order requires that Hughes retain all of the documents for a five-year period. Part V requires dissemination of the order for a period of five years to all current and future subsidiaries, principals, officers, directors, and managers, and to persons with responsibilities relating to the subject matter of the order for any business that Hughes is the majority owner of or controls directly or indirectly. Part VI ensures notification, for a period of five years, to the FTC of changes to Hughes' current business or employment, or his affiliation with any new business or employment. Part VII mandates that Hughes submit a compliance report to the FTC within 60 days, and periodically thereafter as requested. Part VIII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,
Secretary.

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