

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGE



_____)
In the Matter of)

PUBLIC

LabMD, Inc.,)
a corporation,)

Docket No. 9357

Respondent.)
_____)

**RESPONDENT'S OBJECTIONS AND RESPONSES TO
COMPLAINT COUNSEL'S REQUESTS FOR ADMISSION**

OBJECTIONS

Respondent hereby objects to Complaint Counsel's definition of "consumer". Complaint Counsel's definition of consumer, as "any natural person" is so broad as to render the term useless and outside of its common meaning. In response to the requests which use the term consumers, LabMD utilizes the term to mean its Physician Client's patients.

Respondent objects to Complaint Counsel's definition of Personal Information. LabMD receives Protected Health Information ("PHI") from its Physician Clients about their individual patients. This PHI was received from LabMD's Physician Clients in anticipation of and/or for the purpose of providing lab results as per the requests of the Physician Clients. The categories of information listed in subparts (a) through (k) of Complaint Counsel's definition as received by LabMD is PHI as that term is defined under HIPAA.

LabMD objects to the definition assigned to the term "collected" by the FTC and hereby states that in response to any request for admission that uses the term "collected", LabMD's answer will use the word received.

REQUESTS FOR ADMISSION

1. Admit that LabMD is a corporation organized under the laws of the State of Georgia.

Response Admit

2. Admit that Michael J. Daugherty is President and Chief Executive Officer of LabMD.

Response Admit

3. Admit that Michael J. Daugherty is the sole shareholder of LabMD.

Response Admit

4. Admit that, prior to April 2009, LabMD had its principal place of business at 1117 Perimeter Center West, Atlanta, Georgia 30338.

Response Admit

5. Admit that, between April 2009 and January 2014, LabMD had its principal place of business at 2030 Powers Ferry Road, Building 500, Suite 520, Atlanta, Georgia 30339.

Response Admit

6. Admit that, since January 2014, LabMD has operated its business from two offices in the State of Georgia, one located in a condominium owned by Michael J. Daugherty, and the other located in the personal residence of Michael J. Daugherty.

Response Respondent denies that LabMD is operated out of two offices. LabMD admits that it operates out of 1250 Parkwood Circle, Unit 2201, Atlanta, GA 30339

7. Admit that, since at least 2001, LabMD has been in the business of conducting Clinical Laboratory Tests and providing Clinical Laboratory Test results to LabMD's Physician Clients.

Response Admit

8. Admit that LabMD has provided Clinical Laboratory Test results to Physician Clients whose offices are located in States other than Georgia.

Response Admit

9. Admit that LabMD has provided Clinical Laboratory Test results to Physician Clients whose offices are located in at least seven (7) different States.

Response Admit

10. Admit that LabMD has conducted Clinical Laboratory Tests on specimen samples of Consumers who reside in States other than Georgia.

Response Admit

11. Admit that LabMD has conducted Clinical Laboratory Tests on specimen samples of Consumers who reside in at least seven (7) different States.

Response Admit

12. Admit that LabMD files insurance claims for charges relating to Clinical Laboratory Tests that LabMD has conducted with health insurance companies whose offices are located in States other than Georgia.

Response Admit

13. Admit that LabMD has conducted Clinical Laboratory Tests on specimen samples of more than 100,000 different Consumers.

Response Admit

14. Admit that LabMD has conducted Clinical Laboratory Tests on specimen samples of fewer than 500,000 different Consumers.

Response Deny

15. Admit that LabMD has conducted Clinical Laboratory Tests on specimen samples of fewer than 250,000 different Consumers.

Response Deny

16. Admit that LabMD has collected Consumers' Personal Information from its Physician Clients.

Response Admits that LabMD has received PHI from its Physician Clients

17. Admit that LabMD has used Respondent's Computer Network to collect Consumers' Personal Information from its Physician Clients.

Response Admits that LabMD has used its computer network to receive PHI from its Physician Clients

18. Admit that LabMD has Collected Personal Information about more than 500,000 different Consumers from its Physician Clients.

Response Admits that LabMD has received PHI from its Physician Clients about more than 500,000 different patients

19. Admit that LabMD has Collected Personal Information about more than 750,000 different Consumers from its Physician Clients.

Response Admits that LabMD has received PHI from its Physician Clients about more than 700,000 different patients

20. Admit that LabMD has Collected Personal Information about more than 1,000,000 different Consumers from its Physician Clients.

Response Denies that LabMD has received PHI from its Physician Clients about more than 1,000,000 different patients

21. Admit that LabMD Maintains Consumers' Personal Information on Respondent's Computer Network.

Response Admit

22. Admit that LabMD Maintains on Respondent's Computer Network Personal Information about more than 500,000 different Consumers.

Response Admit

23. Admit that LabMD Maintains on Respondent's Computer Network Personal Information about more than 750,000 different Consumers.

Response Admit

24. Admit that LabMD Maintains on Respondent's Computer Network Personal Information about more than 1,000,000 different Consumers.

Response Deny

25. Admit that LabMD Maintains on Respondent's Computer Network Consumers' specific diagnoses and laboratory results.

Response Admit

26. Admit that LabMD Maintains on Respondent's Computer Network specific diagnoses and laboratory results about more than 100,000 different Consumers.

Response Admit

27. Admit that LabMD Maintains on Respondent's Computer Network specific diagnoses and laboratory results about fewer than 500,000 different Consumers.

Response Deny

28. Admit that LabMD Maintains on Respondent's Computer Network specific diagnoses and laboratory results about fewer than 250,000 different Consumers.

Response Deny

29. Admit that LabMD receives personal checks from Consumers as payment for charges relating to Clinical Laboratory Tests that LabMD has conducted.

Response Admits that LabMD receives personal checks from patients of its Physician Clients as payment relating to Clinical Laboratory tests that LabMD conducted.

30. Admit that LabMD makes paper copies of personal checks that it receives from Consumers as payment for charges relating to Clinical Laboratory Tests that LabMD has conducted.

Response Admits that LabMD receives personal checks from patients of its Physician Clients as payment relating to Clinical Laboratory tests that LabMD conducted.

31. Admit that LabMD Maintains paper copies of personal checks that it receives from Consumers as payment for charges relating to Clinical Laboratory Tests that LabMD has conducted.

Response Admits that LabMD maintains paper copies of personal checks from patients of its Physician Clients as payment relating to Clinical Laboratory tests that LabMD conducted.

32. Admit that LabMD Maintains paper copies of hundreds of personal checks that it has received from Consumers as payment for charges relating to Clinical Laboratory Tests that LabMD has conducted.

Response Admits that LabMD maintains paper copies of hundreds personal checks from patients of its Physician Clients as payment relating to Clinical Laboratory tests that LabMD conducted.

33. Admit that LabMD Maintains paper copies of thousands of personal checks that it has received from Consumers as payment for charges relating to Clinical Laboratory Tests that LabMD has conducted.

Response Denies that LabMD maintains paper copies of thousands personal checks from patients of its Physician Clients as payment relating to Clinical Laboratory tests that LabMD conducted.

34. Admit that the copied checks and money orders included in the Sacramento Documents are copies of checks and money orders that LabMD received from Consumers as payment for charges relating to Clinical Laboratory Tests that LabMD conducted.

Response LabMD cannot admit or deny the request as LabMD outsourced to other laboratories some tests which LabMD did not conduct and those checks could be for payment for those tests.

35 Admit that LabMD's billing department has used computers on Respondent's Computer Network to generate spreadsheets of insurance claims and payments, which include Personal Information such as Consumers' names, dates of birth,

and SSNs; the American Medical Association current procedural terminology ("CPT") codes for laboratory tests conducted; and health insurance company names, addresses, and policy numbers.

Response Admit

36. Admit that LabMD's billing department has used computers on Respondent's Computer Network to generate spreadsheets of payments received from Consumers titled "Day Sheets," which include Personal Information such as Consumers' names and SSNs; and information concerning methods, amounts, and dates of payments.

Response Admit

37. Admit that the 1,1718 File contains Personal Information about approximately 9,300 Consumers, including names; dates of birth; SSNs; the American Medical Association current procedural terminology ("CPT") codes for laboratory tests conducted; and, in some instances, health insurance company names, addresses, and policy numbers.

Response Admit

38. Admit that the Documents titled "Day Sheets" included in the Sacramento Documents contain Personal Information about at least 500 Consumers, including: names; SSNs; and in some cases, diagnosis codes.

Response Admit

39. Admit that on May 13, 2008, LabMD received from Tiversa a copy of the 1,718 File.

Response Admit

40. Admit that LabMD determined that LimeWire had been downloaded to a computer used by Respondent's billing department manager.

Response Admit

41. Admit that LabMD determined that LimeWire had been installed on a computer used by Respondent's billing department manager.

Response Admit

42. Admit that LabMD determined that a copy of the 1,718 File had been Maintained on a computer used by Respondent's billing department manager, on which LimeWire had been installed.

Response Admit

43. Admit that, prior to May 2008, LabMD did not detect the installation of LimeWire on any LabMD computer.

Response Admit

44. Admit that, prior to May 2008, LabMD detected the installation of LimeWire on a LabMD computer.

Response Deny

45. Admit that, prior to May 2008, LabMD did not detect the use of LimeWire on any LabMD computer.

Response Admit

46. Admit that, prior to May 2008, LabMD detected the use of LimeWire on a LabMD computer.

Response Deny

47. Admit that the 1,718 File was created by or for LabMD.

Response Admit

48. Admit that the 1,718 File is the property of LabMD.

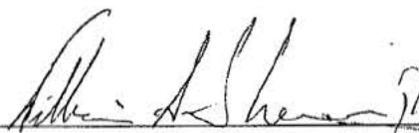
Response Admit

49. Admit that, prior to 2013, none of LabMD's Communications to Consumers included information about the measures Respondent has taken to protect Personal Information from unauthorized disclosure while the information is Maintained on Respondent's Computer Network or in transit to or from Respondent's Computer Network.

Response Admits that none of LabMD's Communications to patients of its Physician Clients included information about the measures Respondent has taken to protect Personal Information from unauthorized disclosure while the information is Maintained on Respondent's Computer Network or in transit to or from Respondent's Computer Network.

50. Admit that LabMD has not identified to its Physician Clients the measures Respondent has taken to protect Personal Information from unauthorized disclosure while the information is Maintained on Respondent's Computer Network or in transit to or from Respondent's Computer Network.

Response Admit



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Practice limited to cases in federal court and
administrative proceedings before federal
agencies.

Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2014, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark, Esq.
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail and first-class mail a copy of the foregoing document to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail and first-class mail a copy of the foregoing document to:

Alain Sheer, Esq.
Laura Riposo VanDruff, Esq.
Megan Cox, Esq.
Margaret Lassack, Esq.
Ryan Mehm, Esq.
John Krebs, Esq.
Division of Privacy and Identity Protection
Federal Trade Commission
600 Pennsylvania Ave., N.W.
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CERTIFICATE OF ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: March 3, 2014

By: 
William A. Sherman, II