

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Michael C. Hughes,
File No. 132 3088

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 proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.