

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeny**

)		
In the Matter of)		
Michael C. Hughes,)	DOCKET NO.	
individually.)		
)		

COMPLAINT

The Federal Trade Commission, having reason to believe that Michael C. Hughes (“Respondent”), individually, through his direction, control, and ownership of PaymentsMD, LLC (“PaymentsMD”) has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Michael C. Hughes was the Chief Executive Officer, sole employee, and part owner of PaymentsMD, a Georgia limited liability company, until July 2014. Individually or in concert with others, he controlled or had the authority to control, or participated in the acts and practices alleged in this complaint. He resides in Atlanta, Georgia.
2. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

PAYMENTSMD’S BUSINESS PRACTICES

3. From August 2008 to July 2014, respondent, through his direction and control of PaymentsMD, has provided billing services to medical providers. Medical providers that have contracted with PaymentsMD direct their patients to the PaymentsMD website, where consumers are able to enter their invoice number and credit card information to pay their medical bills.

4. In December 2011, respondent, through his direction and control of PaymentsMD, launched a free “Patient Portal” product that provided consumers with a place to view their billing history. Unlike the bill-payment service, which enables consumers only to make a one-time payment, the billing history service of the Patient Portal enables consumers to access and view records of the consumers’ past and upcoming payment obligations for any medical providers that use PaymentsMD’s billing services. The Patient Portal service enabled consumers to pay their bills and to view their balance, payments made, adjustments taken, and information for other service dates.
5. 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. PaymentsMD and Metis Health agreed to split the profits. Both companies participated in developing the disclosures and authorizations for the service, and how and when this information would be presented to consumers during the Patient Portal registration process.
6. As described further below, in order to populate the Patient Health Report, respondent, through his direction and control of PaymentsMD, tried to obtain the sensitive health information of consumers registering for the Patient Portal from health insurance plans, pharmacies, and a medical testing lab, without appropriate authorization from those consumers. Indeed, many consumers registering for the Patient Portal had no idea that PaymentsMD, under respondent’s direction and control, would seek to collect their sensitive health information from third parties for use in the Patient Health Report service.

**THE PATIENT PORTAL INTERFACE FAILED TO DISCLOSE THAT
PAYMENTSMD WOULD COLLECT CONSUMERS’ SENSITIVE HEALTH
INFORMATION FOR THE PATIENT HEALTH REPORT**

7. PaymentsMD’s home page described the Patient Portal as a medical billing related service. It stated that “At PaymentsMD, we can help you navigate through the maze of medical billing, reimbursement and payment processes. We also make it easy for you to maintain current information about your insurance coverage and to make payments over the Internet, at your convenience.” In order to register for the Patient Portal, a consumer could click on a button labeled “Patient Portal Login.” (Exhibit A).

A leading provider
of healthcare billing
& payment services



Currently, in the United States, healthcare costs continue to increase, patients continue to pay more for less coverage and physicians continue to receive less for services provided.

Automating and simplifying the healthcare financial processes of billing, reimbursement and payments are essential to the survival of quality care at an affordable cost. Using leading-edge technology, PaymentsMD is laser-focused on delivering solutions to address these issues.

[READ MORE](#)

PATIENT PORTAL

- [PAY ONLINE](#)
- [PATIENT PORTAL LOGIN](#)
- [View Account History with Patient Portal \(New\)](#)
- [Update Insurance Information](#)
- [Request Medical Records](#)
- [Questions](#)
- [Contact Us](#)



Having difficulty understanding your last doctor's statement or Explanation of Benefits? At PaymentsMD, we can help you navigate through the maze of medical billing, reimbursement and payment processes. We also make it easy for you to maintain current information about your insurance coverage and to make payments over the Internet, at your convenience.

[READ MORE](#)

Patient Health Report Now Available!

Create an account in PaymentsMD's Patient Portal to access our NEW Patient Health Report.

[CLICK HERE TO LEARN MORE](#)

[View a Sample Report](#)



PROVIDERS

The New PaymentsMD Patient Portal is here!
Physicians...Let your patients pay you online!

View our online demo and register for the new patient portal now!

[VIEW DEMO](#)

[REGISTER](#)

- [Provider Services](#)
- [Hospitals](#)
- [Provider Portal Login](#)
- [Interested in More Info?](#)



Managing a billing office is not why you chose to practice medicine. PaymentsMD allows you to focus on patient care while we ensure you get paid in a timely and accurate manner. Reducing your office administrative and personnel burden is a significant benefit of our services, but increasing revenue collections as much as 30% is not uncommon for our clients.

[READ MORE](#)

8. Consumers could then either enter their login credentials or click on a link that stated "Don't have an account? Create one now." (See Exhibit B).

PATIENT PORTAL

[Login](#)

[Questions](#)

[Contact Us](#)

If you are a patient and are experiencing issues with making a payment, please contact us via **email** or by phone at (877) 882-5176 (ER) or (866) 822-3370 (Anes).

If you are a provider interested in learning more about using PaymentsMD in your practice, please contact us via **email** or by phone at 1 (770) 874-6830.

If you prefer you can simply fill out our **contact form** and we will send you more information about the services we provide.

[CONTACT US](#)



Welcome to the PaymentsMD Patient Portal

Patient Health Report Now Available!

Create an account in PaymentsMD's Patient Portal to access your **FREE** Patient Health Report.

[CLICK HERE TO LEARN MORE](#)

[View a Sample Report](#)

Log into the Patient Portal

Email

Don't have an account?
[Create one now](#)

Password

Forget your password?
[Receive an emailed reminder](#)

[LOGIN](#)

Interested in using the Patient Portal at your Practice or Billing Company? Visit our [registration page](#) or view our [online demo](#) to learn more about what the PaymentsMD Patient Portal can do for you.

Consumers that followed the link would then be taken to the Payment Portal registration page, which appeared as follows. (Exhibit C).

PATIENT PORTAL

- [Login](#)
- [Questions](#)
- [Contact Us](#)

If you are a patient and are experiencing issues with making a payment, please contact us via **email** or by phone at (877) 882-5176 (ER) or (866) 822-3370 (Anes).

If you are a provider interested in learning more about using PaymentsMD in your practice, please contact us via **email** or by phone at 1 (770) 874-6830.

If you prefer you can simply fill out our **contact form** and we will send you more information about the services we provide.

[CONTACT US](#)

Patient Portal Account Creation

New Users: Create an Account

<p>Creating an account will allow you to:</p> <ul style="list-style-type: none"> • View your original balance • View any payments made • View any adjustments taken • View your current balance • View information for other service dates 	<p>In addition, from within your account you can:</p> <ul style="list-style-type: none"> • Update your demographic information (address, phone number, email, etc.) • Update your insurance information • Set up recurring payments • Request your ER medical record
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Note: It is not necessary to create an account in order to make a payment (simply click [here](#) to do so).

To create an account, please fill in the following:

Email Address
(This will be your username)

If you experience difficulty creating an account, please send us an email: a member of our Patient Advisory Team will be happy to assist you.

First Name

Last Name

Address

City

Country

State

Postal Code [What is this?](#)

Phone Number - -

Patient's Date of Birth / /

[SUBMIT](#)

The registration page stated that registering for the Payment Portal service would “allow you to: View your original balance; View any payments made; View any adjustments taken; View your current balance; View information for other service dates.” At no point in this process was it stated that PaymentsMD, under respondent’s direction and control, would be seeking consumers’ sensitive health information from third parties for use in a Patient Health Report service.

9. Consumers who clicked the “Submit” button were taken to a “Patient Portal Account Authorization” page, which required four authorizations. The page presented the authorizations in four boxes that showed only six lines of text at a time. (Exhibit D).

PATIENT PORTAL

Login

Questions

Contact Us

If you are a patient and are experiencing issues with making a payment, please contact us via **email** or by phone at (877) 882-5176 (ER) or (866) 822-3378 (Avera).

If you are a provider interested in learning more about using PaymentsMD in your practice, please contact us via **email** or by phone at 1 (778) 874-6539.

If you prefer you can simply fill out our **contact form** and we will send you more information about the services we provide.

[CONTACT US](#)

Patient Portal Account Authorization Print

Please review the following authorization documents and indicate in the provided sections that you accept the terms and conditions stated below:

I AGREE. By checking this box I acknowledge that I have received, read and understand and agree to be bound by the consent pieces listed below:

E-Sign Consent - Medical Records Download Agreement

E-SIGN CONSENT

This disclosure is being provided to you pursuant to the federal Electronic Signatures in Global and National Commerce Act ("E-Sign Act") (15 U.S.C. § 7001) and applicable state law. The E-Sign Act requires that certain disclosures be made to consumers prior to providing certain information to those consumers electronically. Please review the following terms carefully.

I AGREE. By checking this box I acknowledge that I have received, read, and understand and agree to be bound by the terms & conditions as set forth in the "E-Sign Consent" agreement.

Authorization For Use or Disclosure of Protected Health Information Download Agreement

AUTHORIZATION FOR USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION

The PaymentsMD Patient Portal (the "Program") is a technology service that will help you obtain your personal medical records. For purposes of this Authorization, "you" means the individual whose protected health information ("PHI") will be used or disclosed in connection with the Program.

I AGREE. By checking this box I acknowledge that I have received, read, and understand and agree to be bound by the terms & conditions as set forth in the "Authorization For Use or Disclosure of Protected Health Information" agreement.

E-Sign Consent - Patient Health Report Download Agreement

E-SIGN CONSENT

This disclosure is being provided to you pursuant to the federal Electronic Signatures in Global and National Commerce Act ("E-Sign Act") (15 U.S.C. 7001) and applicable state law. The E-Sign Act requires that certain disclosures be made to consumers prior to providing certain information to those consumers electronically. Please review the following terms carefully.

I AGREE. By checking this box I acknowledge that I have received, read, and understand and agree to be bound by the terms & conditions as set forth in the "E-Sign Consent" agreement.

Authorization For Use or Disclosure of Protected Health Information Download Agreement

AUTHORIZATION FOR USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION

Metix Health LLC ("Metix Health") provides a service that will help you obtain and manage your personal medical records ("Metix Service") pursuant to access requests to your physicians, pharmacies, labs and health plan. Through knowledge of your personal medical records, Metix Health empowers you to make more informed decisions regarding your health and wellness. For purposes of this Authorization, "you"

I AGREE. By checking this box I acknowledge that I have received, read, and understand and agree to be bound by the terms & conditions as set forth in the "Authorization For Use or Disclosure of Protected Health Information" agreement.

Electronic Signature

Please type in your name, association to the patient, and today's date and then click "Next" to submit your agreements.

Signature: Name of Signee
 Relationship: Self, 3rd Party etc.
 Date: 4/24/2013

[BACK](#) [NEXT](#)

Under each text box was a check box that consumers could select in order to proceed with the registration process. Alternatively, consumers could select a single box at the top of the page, which would populate all four boxes to indicate that each of the four was

authorized. Although consumers who scrolled through the second and fourth boxes would have seen a statement that “[H]ealth records related to your treatment . . . may be used or disclosed pursuant to this Authorization,” the site design simultaneously made it hard to read the authorizations in their entirety, and easy to skip over them by clicking a single check box that preceded all of the authorizations.

10. Consumers would reasonably believe that all four authorizations were to be used to provide the Patient Portal billing services for which they were registering. In fact, two of the four purported authorizations were used to collect sensitive health information from third parties for use with the Patient Health Report service.
11. Although PaymentsMD’s home page and login page included links that allowed consumers to “click here to learn more” about the Patient Health Report service (*see* Exhibit A), these links conveyed that the Patient Health Report was a separate service from the Patient Portal. At no point in registering for the Patient Portal would it have been clear to consumers that they were purportedly giving PaymentsMD permission to obtain their sensitive health information from third parties for use in the Patient Health Report service.

**RESPONDENT, THROUGH HIS OWNERSHIP AND CONTROL OF
PAYMENTSMD, SOUGHT CONSUMERS’ SENSITIVE HEALTH
INFORMATION WITHOUT THEIR KNOWLEDGE OR CONSENT**

12. Respondent, through his direction and control of PaymentsMD, requested sensitive health information from a large number of health plans, pharmacies, and a medical lab about everyone who registered for the Patient Portal. These requests used consumers’ name, birth date, address, and sex. The information requested was as follows:
 - a. Pharmacies: Medication dispensed, dispense date, instructions, prescription number, prescribing physician, quantity dispensed, refill ability, co-pay amount, amount payable as co-insurance or deductible, and amount paid by health plan.
 - b. Health plans: Medical information (procedures, diagnoses, dates of service, medical providers, co-pay amount, amount payable for co-insurance or deductible, and the amount paid by health plan); prescription information (medications dispensed, dispense dates, prescription number, prescribing physician, quantity dispensed, refill ability, co-pay amount, amount payable as coinsurance or deductible, and the amount paid by health plan); and lab information (test performed, date, laboratory, physician, co-pay, amount payable as co-insurance or deductible, and amount paid by health plan).
 - c. Laboratory: Lab test performed, date, laboratory, test results, normal range for test values, ordering physician, co-pay, amount payable as co-insurance or deductible, and the amount paid by health plan.
13. Metis Health sent requests to health plans that were identified using PaymentsMD’s billing records. For the pharmacies, Metis Health sent requests to all major commercial

pharmacies with locations near the consumers' home address, notwithstanding that neither PaymentsMD nor Metis Health had any reason to believe that the consumer had used any of those pharmacies.

14. Metis Health sent approximately 5,500 requests for consumers' health information to 31 different companies. One company fulfilled the requests. The others, concerned about the validity of the requests – which in some cases related to minors or consumers who were not in fact a customer of the company receiving the request – refused to fulfill the requests.

PAYMENTMD'S SUBSEQUENT COMMUNICATIONS TO CONSUMERS GENERATED NUMEROUS COMPLAINTS

15. Initially, PaymentsMD did not inform consumers that Metis Health was attempting to collect their sensitive health information. When PaymentsMD, under respondent's direction and control, began informing consumers, via an email sent a day after users registered for Patient Portal, numerous consumers filed complaints with PaymentsMD regarding the collection of their sensitive health information. The common themes of the complaints were that consumers did not want their information collected, and that they had only registered for the Patient Portal to track their bills. PaymentsMD ultimately did not sell any Patient Health Reports.

DECEPTIVE OMISSION

(Count 1)

16. As described in Paragraphs 3-15, respondent, through his direction and control of PaymentsMD, represented, directly or indirectly, expressly or by implication, that consumers registering for the free Patient Portal billing service could access and review their medical payment history.
17. Respondent, through his direction and control of PaymentsMD, failed to disclose adequately that, if consumers registered for the free Patient Portal billing service, PaymentsMD would also engage in a comprehensive collection from third parties of consumers' sensitive health information for the Patient Health Report service.
18. This fact would be material to consumers in deciding whether to register for the Patient Portal. Respondent's failure to disclose adequately this fact, in light of the representations made, is a deceptive act or practice.

DECEPTIVE REPRESENTATION

(Count 2)

19. As described in Paragraphs 3-15, respondent, through his direction and control of PaymentsMD, represented, directly or indirectly, expressly or by implication, that the

authorizations were to be used exclusively to provide the free Patient Portal billing history service for which consumers were registering.

20. In fact, the authorizations were not used exclusively to provide the free Patient Portal billing history service for which consumers were registering. Instead, all of the authorizations were also used by PaymentsMD, under respondent's direction and control, to attempt to collect sensitive health information for use with the Patient Health report service, and two were only used for this purpose. Therefore, this representation is false or misleading.

VIOLATIONS OF SECTION 5

21. The acts and practices of respondent as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this ___ day of _____, 2014, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary