UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of	)	
	)	**DOCKET NO. C-4591**
Practice Fusion, Inc.	)	
	)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Practice Fusion, Inc. ("Respondent") 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 Practice Fusion, Inc. ("Practice Fusion" or "Respondent") is a Delaware corporation with its principal office or place of business at 650 Townsend Street, Suite 500, San Francisco, California 94103.

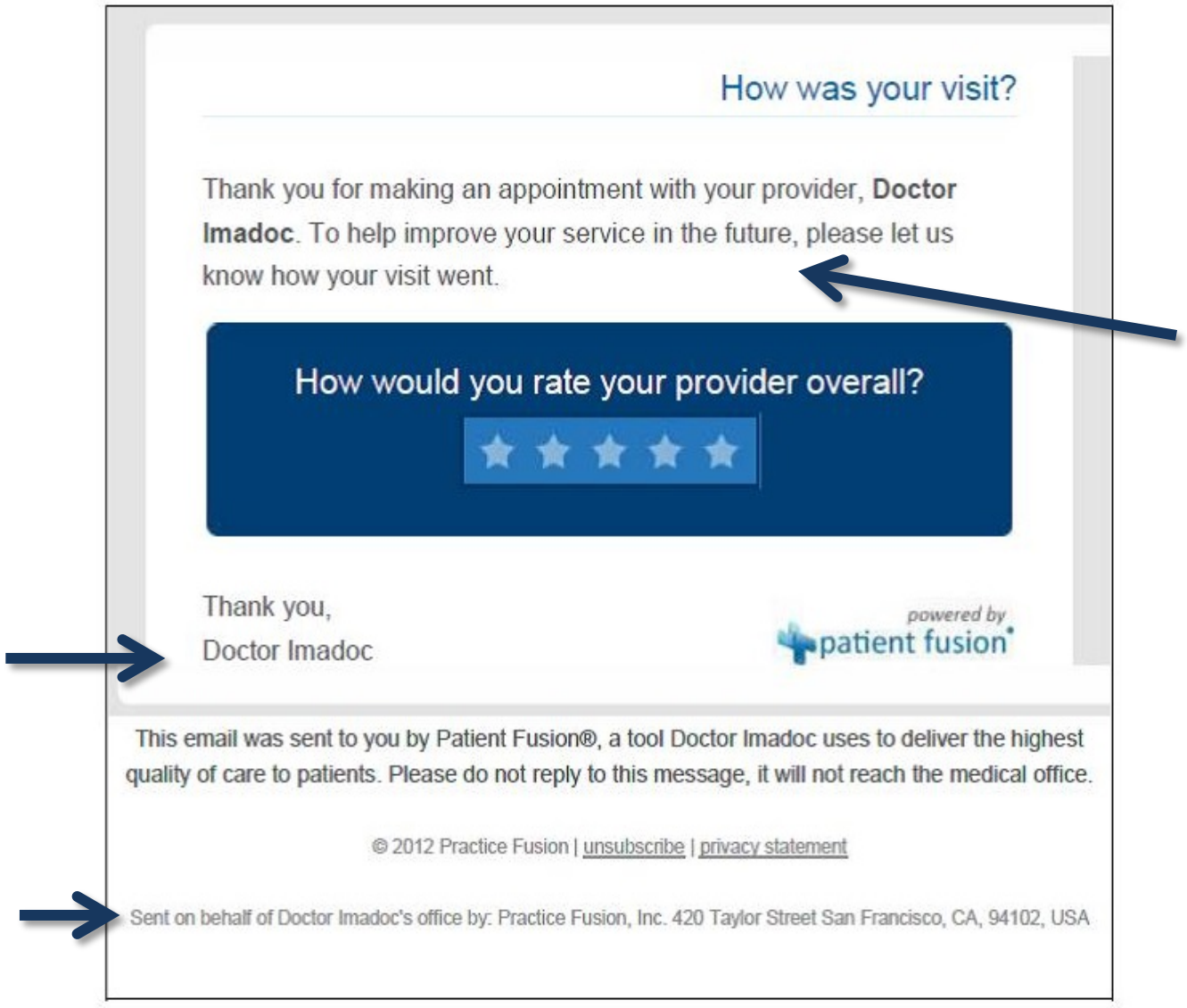
2. The acts and practices of Respondent as alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

RESPONDENT'S BUSINESS PRACTICES

3. Since 2007, Respondent has provided services for healthcare providers. Its core service is a cloud-based electronic health record ("EHR") that allows healthcare providers in the ambulatory/out-patient setting to store and utilize health information.

4. In 2009, Respondent launched the Patient Fusion website, www.patientfusion.com ("Patient Fusion"), with an online portal that allows patients, who have been granted access by their healthcare providers, to view, download, and transmit to other providers their health information and send and receive secure messages directly to and from their providers. Respondent planned to launch a public-facing healthcare provider directory portion of the Patient Fusion website in 2013. The directory would allow current and prospective patients to search for providers by specialty or in a specific geographic area, read patient reviews of providers, and request appointments with providers through the website.

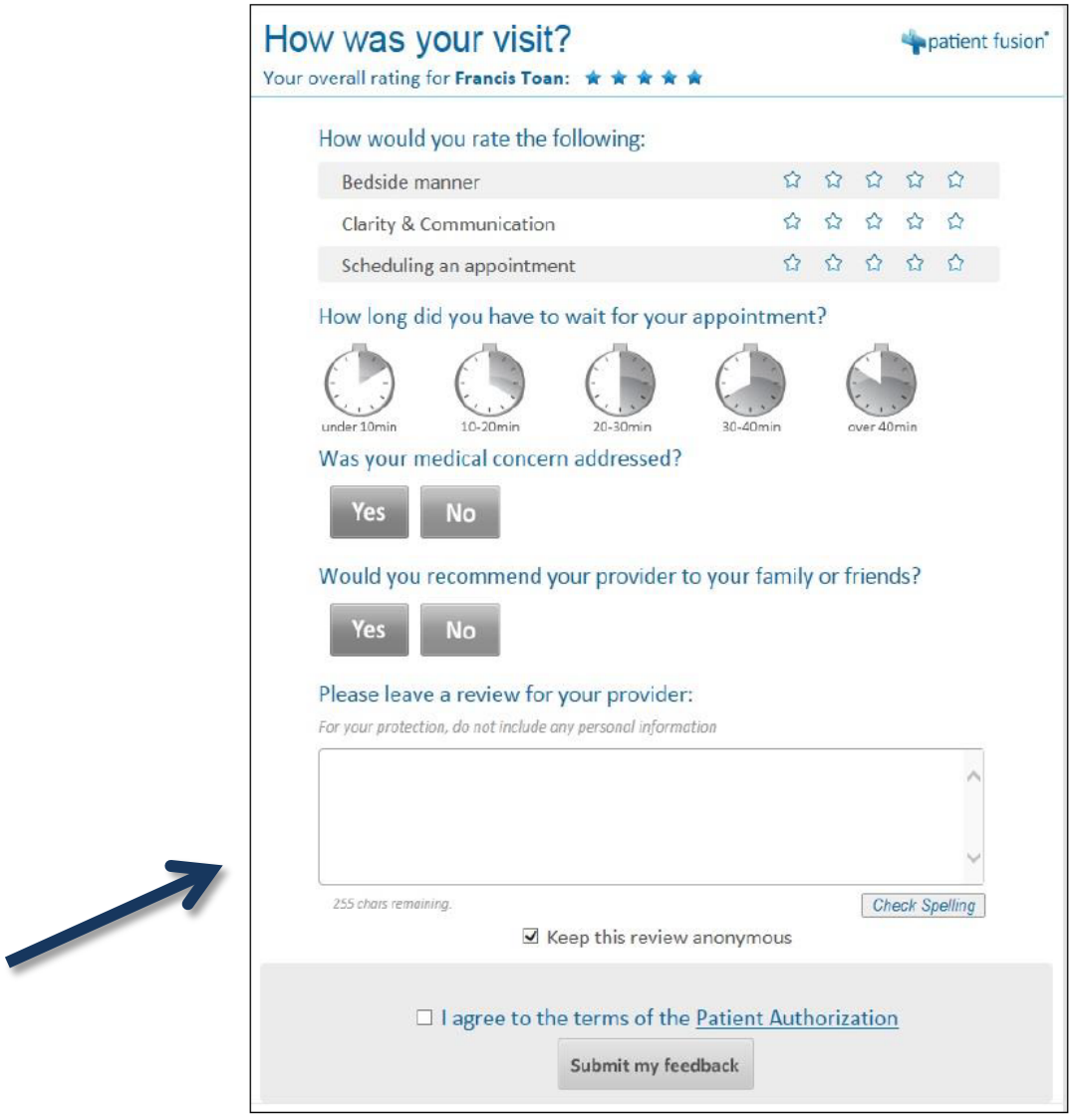
5. In order to populate the Patient Fusion website with provider reviews, starting in April 2012, Respondent emailed healthcare providers' patients post-visit satisfaction surveys seeking reviews of the providers' service. Practice Fusion described these surveys as a tool to "help improve your service in the future," (as depicted below). The emails asked the patient to "please let us know how your visit went," with a closing stating "Thank you, [Healthcare Provider's Name]" at the end of the email. A disclosure at the bottom stated that the "email was sent to you by Patient Fusion®, a tool Doctor [Healthcare Provider's Name] uses to deliver the highest quality of care to patients." The email also indicated that it was "Sent on behalf of Doctor [Healthcare Provider's Name]'s office" by Practice Fusion.



6. A link at the bottom of the email labeled "privacy statement" took the consumer to Practice Fusion's Privacy Policy. The Privacy Policy included a section titled "Surveys, questionnaires, and polls." Until April 8, 2013, Respondent did not indicate in this

section or elsewhere in its privacy policy that it would publicly post reviews by patients of their providers.

7. Consumers who clicked on the stars in the email message were taken to the survey form, which among other things included a free text box at the bottom of the page prompting consumers to "Please leave a review for your provider:" (as depicted below). In light grey type just above the text box, the survey form indicated, "For your protection, do not include any personal information." Below the free text box was a pre-checked box next to the phrase "Keep this review anonymous." Leaving this box checked did not anonymize anything a consumer wrote in the free text box, including a consumer's identifying information. Instead, the "Keep this review anonymous" selection only affected whether a review was posted on the Patient Fusion website under the handle "Anonymous" or under a patient's first name. A button at the bottom of the survey enabled the consumer to "Submit my feedback."



8. Consumers were required to check the box next to the phrase, "I agree to the terms of the Patient Authorization," in order to submit their feedback, but were not required to *view* the Patient Authorization. Consumers who clicked through to the Patient Authorization would have seen the following statements: "I authorize my provider and Practice Fusion, Inc. to publish my review on the Practice Fusion website . . . . The purpose of publishing my review is to make it available to patients and prospective patients of my provider, and other members of the public." The Patient Authorization also stated that information submitted by the consumer would not be protected under the Health Insurance Portability and Accountability Act, or HIPAA.

9. Since survey information was collected for a full year before the Patient Fusion website went live, consumers who visited Respondent's website would not have found any posted reviews, so they would not have any historical or contextual reference to alert them to the fact that their feedback would be publicly posted rather than provided to their physician, mental health specialist, or other healthcare provider for his or her sole use.

10. In April 2013, Practice Fusion publicly launched the healthcare provider directory portion of the www.patientfusion.com website. At that time, Practice Fusion posted approximately 613,000 reviews it had collected from consumers during the previous year. At the same time, Respondent revised its email communications to consumers soliciting survey responses to indicate that reviews they submitted "may be publicly visible on Patient Fusion to help patients find doctors in the area." Respondent also revised the section on "Surveys and Ratings" in the Patient Fusion privacy policy to state for the first time that survey responses would be made public: "From time to time we ask users to submit surveys or ratings to assist healthcare providers and others in improving their operations or to assist other users in making informed choices. The content of such surveys or ratings, therefore, should be presumed public."

11. Based on the highly sensitive content of some consumers' survey responses, combined with identifying information, they likely believed the communication was private. Consumers submitted hundreds of survey responses where they disclosed identifying information such as their full name or phone number combined with a sensitive health condition, medications taken, medical procedures performed, or treatments received. Examples of responses publicly posted include:

    - "Dr [healthcare provider name intentionally redacted by FTC staff], My Xanax prescription that I received on Monday was for 1 tablet a day but usually it's for 2 tablets a day. I have not taken it to the pharmacy yet. Can I pick up a new one, or can I get a prescription called into a pharmacy? Thanks, [patient name intentionally redacted by FTC staff]" Date: May 21, 2012 (Xanax (alprazolam) is a medication typically prescribed to treat anxiety disorders, panic disorders, and anxiety caused by depression.)

    - "I was pleased with Dr. [healthcare provider name intentionally redacted by FTC staff]'s information on getting a facelift. I will call if I have further questions. Thank you, [patient name intentionally redacted by FTC staff]" Date: May 5, 2012

- "I called today and left a message regarding my daughter and no one has returned my call. I think she is depressed and has stated several times this week that she wishes she was dead. Could someone please call me [phone number intentionally redacted by FTC staff]" Date: September 27, 2012

- "The cefuroxime axetil does not seem to be doing anything for me. I did a little research and I think I have a yeast infection called candida. Not sure what to do about it yet. I guess I will first try to change my diet. Medication? [patient name intentionally redacted by FTC staff]" Date: June 9, 2012

- "My left foot was so much better after the wart was removed from under the callus! There may be one growing on the right foot…….we'll see! My feet always feel so much better when leaving the office. [patient name intentionally redacted by FTC staff]" Date: July 12, 2012

- "I would like to make an appointment for my back pain and possible shingles. Can you please call me @[phone number intentionally redacted by FTC staff] Thank you! [patient name intentionally redacted by FTC staff]" Date: December 31, 2012

- "I HAVE NO INFECTION [healthcare provider name intentionally redacted by FTC staff] EVERYTHING WENT FINE AFTER MY VISIT, SO IT'S A GO FOR MY CHEMO DAY…..THANKS HOPEFULLY I WILL SEE YOU TOMARROW AT METHODIST HOSPITAL…..THANKS… [patient name intentionally redacted by FTC staff]" Date: March 15, 2013

12. An October 21, 2013 article in *Forbes Technology Blog* highlighted the sensitive nature of some of the information posted on the Patient Fusion website (*available at* http://www.forbes.com/sites/kashmirhill/2013/10/21/practice-fusion-patient-privacy-explicit-reviews/).

13. In November 2013, Respondent for the first time implemented automated procedures to identify reviews where consumers had entered personal information in the open text fields in the survey. Respondent did not post reviews that contained such personal information; Respondent also used this process to take down reviews containing personal information that had already been posted on the website.

14. Communications between healthcare providers and Practice Fusion indicate that some healthcare providers were surprised that feedback they received was also posted publicly. Others were surprised that patients were being asked for feedback in the first place.

PRACTICE FUSION'S DECEPTIVE FAILURE TO DISCLOSE

15. As described in Paragraphs 5-9, from April 5, 2012 through April 8, 2013, Respondent represented, directly or indirectly, expressly or by implication, that responses to a healthcare provider satisfaction survey would be communicated to the consumer's healthcare provider.

16. Respondent failed to disclose adequately that, if consumers provided responses to the satisfaction survey, Respondent would also publish the responses on its public healthcare provider review website, as described in Paragraphs 10-14. This fact would be material to consumers in deciding whether or how to respond to the survey, including, for example, what type of information to include in their responses.

17. Respondent's failure to disclose adequately the material information described in Paragraph 16, in light of the representation set forth in Paragraph 15, is a deceptive act or practice.

VIOLATIONS OF SECTION 5

18. 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.

THEREFORE, the Federal Trade Commission this fifteenth day of August, 2016, has issued this complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: