

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Practice Fusion, Inc., File No. 1423039

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from Practice Fusion, Inc. (“Practice Fusion”).

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 or make final the agreement’s proposed order.

Since 2007, Practice Fusion has provided services for healthcare providers. Since 2007, its core service has been a cloud-based electronic health record (“EHR”) that allows healthcare providers in the ambulatory/out-patient setting to store and utilize health information. In 2009, Practice Fusion 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 their providers.

Practice Fusion planned to launch a public-facing healthcare provider directory portion of the Patient Fusion website in 2013. The directory would, among other things, allow current and prospective patients to read patient reviews of providers. To populate this website with reviews, starting on April 5, 2012, Practice Fusion sent emails to the patients of its healthcare provider clients soliciting those patients to take surveys to rate and review their provider. The email – and the survey itself – suggested that the health care provider was directly seeking the survey responses to improve the consumer’s experience on future visits. Neither the email nor the survey clearly indicated that the reviews would be posted publicly. Practice Fusion solicited reviews for a full year – collecting information from over 600,000 patients during that time – before launching the review service on April 8, 2013, at which time all of the reviews previously collected were posted publicly on the Internet. Many of the reviews contained highly sensitive information, combined with identifying information, indicating that many patients likely thought they were communicating directly with their doctors, and did not intend for their feedback to be posted publicly.

The Commission’s proposed complaint alleges that Practice Fusion violated Section 5(a) of the Federal Trade Commission Act from April 2012 through April 2013 by failing to adequately disclose that survey responses would be made publicly available on Patient Fusion’s healthcare provider review website. This fact, according to the proposed complaint, would be material to consumers in deciding whether or how to respond to the survey. The Commission’s complaint alleges that Practice Fusion’s failure to adequately disclose this material information is a deceptive act or practice in violation of Section 5.

The proposed order contains provisions designed to prevent Practice Fusion from engaging in the same or similar acts or practices in the future. Part I of the proposed order prohibits Practice Fusion from misrepresenting the extent to which it uses, maintains, and

protects the privacy and confidentiality of any covered information, including the extent to which covered information is made publicly available.

Part II of the proposed order requires Practice Fusion, prior to making any consumer's covered information publicly available, to (A) clearly and conspicuously disclose to the consumer, separate and apart from "privacy policy," "terms of use" page, or similar document, that such information is being made publicly available; and (B) obtain the consumer's affirmative express consent.

Part III of the proposed order prohibits Practice Fusion from displaying any healthcare provider review information obtained from consumers between April 5, 2012 and April 8, 2013. Part III of the proposed order also prohibits Practice Fusion from maintaining such information, except for review and retrieval by its healthcare provider customers, or their respective agents, contractors, assigns, or as permitted to comply with applicable law, regulation, or legal process.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires acknowledgment of the order and dissemination of the order now and in the future to persons with supervisory responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status and mandates that Practice Fusion submit an initial compliance report to the FTC. Part VI requires Practice Fusion to retain documents relating to its compliance with the order for a five-year period. Part VII mandates that Practice Fusion make available to the FTC information or subsequent compliance reports, as requested. Part VIII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.