

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of

**HENRY SCHEIN
PRACTICE SOLUTIONS, INC.,
a corporation.**

**AGREEMENT CONTAINING
CONSENT ORDER**

DOCKET NO.

The Federal Trade Commission has conducted an investigation of certain acts and practices of Henry Schein Practice Solutions, Inc. ("Henry Schein"). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Henry Schein, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Henry Schein Practice Solutions, Inc. is a Utah corporation with its principal office or place of business at 1220 South 630 East, American Fork, Utah 84003.
2. Proposed respondent neither admits nor denies any of the allegations in the complaint, except as specifically stated in the order. Only for purposes of this action, proposed respondent admits the facts necessary to establish jurisdiction.
3. Proposed respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30)

days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

6. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Affected Customer(s)" means any consumer, including any dental practice, that purchased the Dentrix G5 dental office practice management software.
2. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. "Clear(ly) and Conspicuous(ly)" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 - A. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication, even if the representation requiring the disclosure is made in only one means.

- B. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
- C. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
- D. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
- E. On a product label, the disclosure must be presented on the principal display panel.
- F. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

4. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Pub.L. 104-191, 110 Stat. 1936.

5. “Personal Information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name; (c) online contact information, such as an email address, instant messaging user identifier, or screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s license number or other government-issued identification number; (g) a bank account, debit card, or credit card account number; (h) a photograph; and (i) medical information about a consumer including, but not limited to, prescription information, clinical laboratory testing information, health insurance information, physician examination notes, and medical history.

6. “Respondent” shall mean Henry Schein Practice Solutions, Inc. and its successors and assigns.

I.

IT IS ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service designed to collect or store Personal Information, in or affecting commerce, shall not misrepresent, in any matter, expressly or by implication:

- A. whether or to what extent the product or service offers industry-standard encryption;

- B. the ability of the product or service to help customers meet regulatory obligations related to privacy or security; or
- C. the extent to which a product or service maintains the privacy, security, confidentiality, and integrity of Personal Information.

II.

IT IS FURTHER ORDERED that Respondent must notify Affected Customers, Clearly and Conspicuously, that Dentrix G5 uses a less complex encryption algorithm to protect patient data than Advanced Encryption Standard (“AES”), which is recommended as an industry standard by the National Institute of Standards and Technology (“NIST”). Notification must include the following:

- A. Respondent must identify all Affected Customers who purchased Dentrix G5 prior to January 2014 (“eligible customers”).
 - 1. Such eligible customers, and their contact information, must be identified to the extent such information is in Respondent’s possession, custody, or control.
 - 2. Eligible customers include those identified at any time through the eligibility period, which runs for one (1) year after the date of service of this order.
- B. Respondent must notify all identified eligible customers by mailing each a notice:
 - 1. The letter must be in the form shown in Attachment A.
 - 2. The envelope containing the letter must be in the form shown in Attachment B.
 - 3. The mailing of the notification letter must not include any other enclosures.
 - 4. The mailing must be sent by first-class mail, postage prepaid, address correction service requested with forwarding and return postage guaranteed. For any mailings returned as undeliverable, Respondent must use standard search methodologies such as re-checking Respondent’s records and the Postal Service’s National Change of Address database and re-mailing to the corrected address within eight days.
- C. Respondent must notify all eligible customers within sixty (60) days after service of this order and any eligible customers identified thereafter within thirty (30) days of their identification.
- D. Respondent must establish a toll-free telephone number and an email address dedicated to responding to inquiries about the order and must respond promptly and accurately to such inquiries.
- E. Respondent must submit reports on its notification program under penalty of perjury:

1. Respondent must submit a report, within one hundred and twenty (120) days after the date of service of this order, annually thereafter, and at the conclusion of the program summarizing its compliance to date, including: the total number of eligible customers identified, notices mailed, and notices re-mailed, the number of mailings returned as undeliverable, and efforts taken to locate the customers for whom mailings were returned and deliver them the notice, as well as the number of calls and emails received and their disposition. For customers for whom mailings were returned as undeliverable, Respondent shall make reasonable efforts to locate and notify those customers.
2. If a representative of the Commission requests any information regarding the notice program, including any of the underlying customer data, Respondent must submit it within ten (10) days of the request.

III.

IT IS FURTHER ORDERED that:

- A. Respondent must pay to the Commission \$250,000, which Respondent stipulates its undersigned counsel holds in escrow for no purpose other than payment to the Commission.
- B. Such payment must be made within eight (8) days of the effective date of this order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.

IV.

IT IS FURTHER ORDERED that:

- A. All money paid to the Commission pursuant to this order may be deposited into a fund administered by the Commission or its designee to be used for relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to Affected Customers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other relief (including consumer information remedies) as it determines to be reasonably related to Respondent's practices alleged in the complaint. Any money not used is to be deposited to the U.S. Treasury. Respondent may, upon request, be notified whether the money has been deposited to the U.S. Treasury, but has no right to challenge any activities pursuant to this provision. No portion of any payment under this Part shall be deemed a payment of any fine, penalty, or punitive assessment.
- B. In the event of default on any obligation to make payment under this order, interest, computed as if pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for ten (10) days beyond the date that payment is due, the entire amount will immediately become due and payable.

C. Each day of nonpayment is a violation through continuing failure to obey or neglect to obey a final order of the Commission and thus will be deemed a separate offense and violation for which a civil penalty shall accrue.

D. Respondent acknowledges that its Taxpayer Identification Number, which Respondent has previously provided to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this order, in accordance with 31 U.S.C. § 7701.

V.

IT IS FURTHER ORDERED that Respondent must directly or indirectly provide sufficient customer information to enable the Commission to efficiently administer consumer redress to all Affected Customers. Respondent represents that it has provided this redress information to the Commission. If a representative of the Commission requests in writing any information related to redress, Respondent must provide it, in the form prescribed by the Commission representative, within fourteen (14) days.

VI.

IT IS FURTHER ORDERED that Respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VII.

IT IS FURTHER ORDERED that Respondent shall deliver a copy of this order to all current and for the next five (5) years future principals, officers, directors, and managers, and to all current and future employees having managerial responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part VIII, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

VIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must be: *In re Henry Schein Practice Solutions, Inc.*

IX.

IT IS FURTHER ORDERED that Respondent, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, Respondent shall submit additional true and accurate written reports.

X.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is

filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this day of , 2015

MICHAEL ETTINGER
Vice President,
Henry Schein Practice Solutions, Inc.

CHRISTOPHER E. ONDECK
Counsel for Henry Schein Practice Solutions, Inc.

JESSICA L. LYON
Counsel for the Federal Trade Commission

KRISTIN J. MADIGAN
Counsel for the Federal Trade Commission

APPROVED:

MANEESHA MITHAL, Associate Director
Division of Privacy and Identity Protection

LAURA RIPOSO VANDRUFF, Acting Assistant Director
Division of Privacy and Identity Protection

JESSICA L. RICH, Director
Bureau of Consumer Protection

Attachment A

[To appear on Henry Schein Practice Solutions, Inc. letterhead]

[Date]

[Name of customer]

[Mailing address of customer
Including zip code]

SUBJECT: Important Information Regarding the Security of Patient Records
Stored in Dentrrix G5

Dear Valued Customer:

Our records show you purchased Dentrrix G5, which is sold by our company, Henry Schein Practice Solutions, Inc. (“HSPS”), prior to January 2014.

From early 2012 to January 2014, we advertised that Dentrrix G5 “encrypts” patient data and helps dentists meet the security requirements of HIPAA, the Health Insurance Portability and Accountability Act. But according to the Federal Trade Commission, the nation’s consumer protection agency, our claims were deceptive. To resolve the case, we have agreed to not make those claims in the future and to contact our customers so they can take appropriate steps to protect patient records, if necessary.

We understand that the security of your patients’ records is important to you. So here’s what you need to know if you use our software.

The Department of Health and Human Services (“HHS”) looks to the National Institute of Standards and Technology for guidance on how healthcare providers should encrypt sensitive information. NIST recommends a method called Advanced Encryption Standard (AES) and says, “Whenever possible, AES should be used for the encryption algorithm because of its strength and speed.”

This is important because if a dental practice using AES encryption experiences a data breach, it may not have to contact patients under HHS’ Breach Notification Rule. Our software uses a less complex method that doesn’t meet the AES encryption standard recommended by HHS and NIST. Therefore, practices relying on Dentrrix G5 software alone would not qualify for the safe harbor under the Breach Notification Rule. If you experience a data breach, you may have to contact each affected patient personally – and depending on the size of the breach, you may have to notify HHS and others, too. Of course, you should obtain your own legal advice in the event of a data breach.

As of January 2014, our marketing materials state that our software “masks” data, but doesn’t encrypt it. That description is more accurate and will help dentists make informed decisions about protecting their patients’ data. We also strongly recommend that dentists consider multiple safeguards to secure access to patient data and work with both IT and security policy experts to create and implement a comprehensive security plan for their practice.

If you have questions, please call us at [toll-free telephone number and email address dedicated to responding to inquiries regarding this notice]. To learn more about the FTC's case, please call the FTC at 1-877-FTC-HELP.

Sincerely,

[Signature]

[Name – printed]

[Title – President]

Henry Schein Practice Solutions, Inc.

Attachment B

Henry Schein Practice Solutions, Inc.
[Return Address]

First-class
postage
stamp

FORWARDING AND RETURN POSTAGE GUARANTEED

Dennis Dentist
123 Main Street
Anytown, Anystate 00000

GOVERNMENT ORDERED NOTICE
[14 pt. bold type]