

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
v.)	No. 1:19-cr-10043-STA
)	
JAY SHIRES, M.D.)	
LORAN KARLOSKY, M.D.)	
MARY ANN BOND)	

**MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE PRACTICE FUSION
RECORDS AND SUMMARIES OF PRACTICE FUSION RECORDS BASED ON
EVIDENTIARY AND DUE PROCESS RELIABILITY CONCERNS**

The defendant, LORAN KARLOSKY, M.D., through counsel and pursuant to the Due Process Clause of the Fifth Amendment, Fed. R. Evid. 401, Fed. R. Evid. 1006, the other authorities cited below and their progeny, has respectfully moved this Court to exclude the government’s summary evidence of the electronic medical records seized from Practice Fusion.

I. Background.

A. Downtown Medical Clinic maintained patient records in electronic storage, which the government obtained repeatedly due to problems with the productions.

Downtown Medical Clinic used Practice Fusion, an electronic medical records company, to create and maintain its patient files. In December 2016, the Tennessee Bureau of Investigation obtained a state court order to obtain the clinic’s patient records stored with Practice Fusion pursuant to 18 U.S.C. §§ 2703(c)(1)(B),¹ (d). (DOJ_0009521).² The state court granted the

¹ Whereas § 2703(b) governs order for the “contents” of electronic communications, § 2703(c) governs records of electronic communications “not including the contents of communications.” 2703(c)(1). The issues with the manner in which the government obtained the Practice Fusion records is the subject of Dr. Karlosky’s separately-filed motion to suppress.

² These bates numbers refer to the government’s discovery production in this case; the discovery materials concerning acquisition of Practice Fusion records cited in this motion are attached as collective **EXHIBIT 1**.

application and ordered Practice Fusion to disclose “the complete and accurate medical records” of 91 patients. (DOJ_0009526–30.) “Practice Fusion responded that it was unable to provide the records in the patient-by-patient format requested....” (Gv’t Response, Doc. 138, PageID 579).

In January 2017, the TBI re-applied for a state court order to obtain Practice Fusion records, again pursuant 18 U.S.C. §§ 2703(c)(1)(B), (d). (DOJ_0009540).

In April 2017, Practice Fusion delivered the requested materials by sending a link to the government to access the documents. (DOJ_0009577). “The production was voluminous and included numerous spreadsheets, images of scans, and other files.” (Government’s Response, Doc. 138, PageID 579). Communication between the government and Practice Fusion has continued over the course of this prosecution, resulting in references to at least one “most recent production.” (*Id.*, PageID 580). The communication appears to have stemmed, in part or in whole, from the fact that Practice Fusion’s productions caused “frustration” in that “the records provided by Practice Fusion were produced to the government in a fashion that makes them difficult to navigate, synthesize and, sometimes, understand.” (Government’s Response, Doc. 138, PageID 578).

Practice Fusion indicated that the format provided was the only way in which the company could export the data. Practice Fusion also represented that **no formal instructions or guide to its productions had ever been created**. Frank Bryant, a forensic analyst with TBI, began working on an interface that—he and investigators hoped—would facilitate analysis of Practice Fusion production, both for the investigation team and, if applicable, for the lawyers who would need to present that evidence at a trial. Without a map of the data from Practice Fusion, however, Mr. Bryant was never able to complete the interface. The government has—like Defendant—been forced to make do with the evidence in its native format. From a usability standpoint, **the government’s efforts to improve upon what Practice Fusion provided have been extensive**. In addition to Analyst Bryant’s efforts, in early 2019, when prosecutors from the Department of Justice, Criminal Division, Fraud Section became involved with the case, undersigned counsel reached out to DEA Senior Digital Forensic Examiner David Roose, who has worked on numerous investigations involving Practice Fusion records. At the same time, undersigned counsel began a dialog with Practice Fusion’s in-house counsel, Jim Harwood, to gain an understanding of what Practice Fusion produced and to explore how it might be re-produced in a more workable format. These discussions, among

undersigned counsel, Messrs. Roose and Harwood, Analyst Bryant, defense counsel and, most recently, outside counsel for Practice Fusion, have continued into the present. They have borne some fruit. **Part of the 2017 production was re-issued in July to correct inconsistencies in formatting identified by the government.** Pursuant to discussions with outside counsel for Practice Fusion about formatting improvement, the government recently issued a trial subpoena commanding Practice Fusion to reproduce all of the Downtown Medical records, which were provided to the government on October 4, 2020, and were produced to the defendants today.

(*Id.* PageID 579–80). *See also* (Tr., Doc. 179, PageID 942) (AUSA Pennebaker: “And we’ve had them reproduce to use the data in a more mailable format.”). *Accord* (Shires Motion, Doc. 126, PageID 459–60) (“Those records consist of literally tens of thousands of lines of data – much of it indecipherable. Further complicating matters, this data is separated into different categories of information without any readily apparent means of synchronizing each category.”).

B. The government has investigated and resolved claims against Practice Fusion.

At a hearing before this Court in May, the government stated that: “When Downtown Medical chose [Practice Fusion] as its EMR software, it was free to use. It generated revenue through adds that were inside of the software. And they’ve gotten in a little bit of trouble about that, but that’s neither here nor there.” (Transcript, Doc. 179, PageID 940). In fact, in January 2020, Practice Fusion agreed to resolve criminal and civil investigations concerning its electronic health records software and allegations including that it “caused its users to submit false claims for federal incentive payments by misrepresenting the capabilities of its EHR software.” *See* Dep’t of Justice, Electronic Health Records Vendor to Pay \$145 Million to Resolve Criminal and Civil Investigations (Jan. 27, 2020) (hereafter “DOJ Practice Fusion Statement”).³ Practice Fusion

³ Available at <https://www.justice.gov/usao-vt/pr/electronic-health-records-vendor-pay-largest-criminal-fine-vermont-history-and-total-145>. The government later entered into a resolution with Purdue Pharma concerning the Practice Fusion allegations, and one Practice Fusion employee has pleaded guilty. *See* Dep’t of Justice, Former Practice Fusion Sales Executive Pleads

admitted soliciting and receiving kickbacks from an opioid company and agreed to pay \$145 million. Practice Fusion further agreed “to cooperate fully” with the government including wide disclosures of Practice Fusion’s information, records, and documents.⁴ Cf. (Doc. 179, PageID 944) (AUSA Pennebaker: “[T]he Practice Fusion programmers and lawyers are committed to helping on this issue.”). In announcing the joint criminal and civil resolution, the DOJ explained:

When a software vendor claims to be providing unbiased medical information – especially information relating to the prescription of opioids – we expect honesty and candor to the physicians making treatment decisions based on that information . . . [Practice Fusion and an opioid company] illegally conspired to allow the drug company to have its thumb on the scale at precisely the moment a doctor was making incredibly intimate, personal, and important decisions about a patient’s medical care, including the need for pain medication and prescription amounts.

DOJ Practice Fusion Statement (Jan. 27, 2020).

C. The government will be using summaries of the Practice Fusion Records to attempt to show “what the precepting physicians knew.”

According to the government, they are “forced to present summary exhibits off of that data” from Practice Fusion because the company “doesn’t keep archived copies of prior iterations of its software” and “tinkers with the code in realtime”:

We recently were able to, once again, after getting to the outside counsel, point of **holding Practice Fusion’s feet to the fire, we were recently able to get them to provide for us what we kind of call affectionately “pretty patient files”**. Meaning that -- exactly what Mr. Johnson was just describing. It’s the data exported in a format that looks like a medical records. **Now is it the medical record that the doctor was looking at? It isn’t, because that’s in the cloud.** And my understanding, slightly different. But they say that it’s kind of like Microsoft Word Version 1, Version 2, Version 3. You can go get the box for Version 2. It’s a hard copy. You can plug that back in and load it up. And if you have a Version 2 file, you can open it through that Version 2. **Well, Practice Fusion doesn’t keep**

Guilty to Obstructing Government Investigations Into Purdue Pharma And Practice Fusion (Mar. 8, 2021), <https://www.justice.gov/usao-vt/pr/former-practice-fusion-sales-executive-pleads-guilty-obstructing-government> (“Practice Fusion solicited and received kickbacks from Purdue Pharma to arrange for an increase in prescriptions of extended release opioids by healthcare providers who used Practice Fusion’s EMR software.”).

⁴ See (Deferred Prosecution Agreement, attached hereto as **EXHIBIT 2**, ¶¶ 6, 7).

archived copies of prior iterations of its software. It tinkers with the code in realtime. So they would have to completely build the software again to accommodate what Mr. Johnson is talking about. **And then you get to the problem that, what if they make a mistake? Is it really the same record that the doctor was looking at?** So what they are doing is they are exporting the guts of what they have. And that -- and so what animated that visual picture that the doctor was seeing on the screen at the office, what was animating that was a bunch of stuff in a database. So they gave us that database, but **they can't recreate the picture that the doctor was looking at at the time. Because, apparently, that train has left the station. Their software has been altered enough times. They, apparently, don't keep great records of doing that.** So, you know, what we have is this database. So what they have agreed to do, and what they have done for us, and what we have now provided to defense counsel recently -- I mean, this is like within the last few months. And this is just right -- you know, when we got it, we provided it. But they were able -- what they agreed to do and did was to produce the patient files -- what they were able to get out of that database that they had, they exported that data into discreet patient files, if you will. Now like Mr. Johnson said, they're not the exact same patient files that the doctors were looking at. But at the very least it's a -- you can print them all out, and you can look through them page by page, and you can see what was in that medical record. Because they're using the data inside of Practice Fusion from that database to put it all together in a format that looks like a patient record. **So it's an approximation** of the patient record visually that the doctor was looking at. They're using the exact same data that would have populated that template that they were using to display the data in Practice Fusion. It's the same data. So the data is actually the real data that would have been populated in the template that the doctor saw, it's just that they're approximating the physical appearance of it, the presentation of it. And so, obviously, that's -- that's a whole other kettle of fish for, you know, admissibility purposes and authenticity and everything else. That's why we've kind of learned to love the bomb, and we are going to have to call a Practice fusion witness. So that when Mr. Leventis sees a summary exhibit that's glossy, he can talk to the -- he can cross-examine the person that put together that summary exhibit and find out all about it, right through the neck.

(Tr., Doc. 179, PageID 951–53) (emphasis added).

The documents will be used by the government to attempt to show what the supervising physicians knew and when:

The real reason that -- for the centrality of Practice Fusion in this case, Judge, is there are, there are disputes over what the precepting physicians knew, and what they did inside of the Practice Fusion software -- and forgive me for just really simplifying over simplifying this. But the government's theory is that the physicians were going in and cleaning up after Nurse Practitioner Bond inside Practice Fusion.

And so that's not really something that -- you know, if you want to know about a patient's treatment, if you want to know what was found in the medical file, that's one issue. If you want to know who changed the data in the medical file, when did they change the data in the medical file, how long did it take for the doctor to change the data in a certain way from one file to the next file to the next file? That is all -- that all lives in what's called the audit log. **So Practice Fusion -- every time somebody does a key stroke, somebody logs in, somebody uses a different IP address, this stuff is in a spread sheet called an audit log. And it identifies the user that did the action and it has a summary of what the user did inside of the software.** And so the reason that Practice Fusion itself is a central issue in the eyes of the government and the parties in this case, is that the information in the audit log tells a story about who knew what when.

(Tr., Doc. 179, PageID 958–59) (emphasis added).

And then the rest of the Practice Fusion piece, I know it sounds complicated. It is. It's burdensome and onerous. And I don't like Practice Fusion any better than anybody else sitting here. And I don't care if they know it. And they do know that that's how I feel about it, because **we've gone through a whole lot of, you know, trying to make sense of all of this** and make sense of how they operate their business like this.

(Tr., Doc. 179, PageID 962–63) (emphasis added).

D. A prior motion in this case concerning the Practice Fusion records did not question their reliability.

Dr. Shires filed a “Motion to Exclude Practice Fusion Summary and Expert Testimony Regarding Practice Fusion Records,” (Doc. 126), which argued that (1) any summary exhibit of Practice Fusion records provided to the defendants at this point would be untimely and would preclude them from a meaningful opportunity to challenge the exhibit and the underlying methodology used to create it, and (2) any expert testimony regarding the Practice Fusion records would be untimely, would preclude the defendants from a meaningful opportunity to challenge the same, and would not comply with Fed. R. Crim. P. 16.

The Court denied the motion. (Order, Doc. 173). The Court identified the two issues presented as “whether the government met its obligation to disclose the underlying data it intends to present in a summary exhibit as part of its case-in-chief and whether the government has made

a timely disclosure of the witness through whom it will introduce the summary as a trial exhibit.” (*Id.*, PageID 876–77). The Court concluded that the motion was moot because the government’s October 2020 production of Practice Fusion materials addressed some of the defense’s concerns, no supplemental relief was requested following the production, and the continued trial date meant there was additional time to review the materials. (*Id.*, PageID 878–79). Finally, the Court noted that the issues raised are “[g]enerally speaking,” considered motions in limine, and so the Court “need not make a final determination” because “any concerns Defendant may have about the Practice Fusion evidence, a Rule 1006 summary of the evidence, or the admissibility of any possible testimony from Mr. Roose” can be addressed just prior to or during trial. (*Id.* 879–80).

II. Legal Standards.

Federal Rule of Evidence 1006 governs “Summaries to Prove Content” and provides that a party “may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.” Fed. R. Evid. 1006. As summarized by the Sixth Circuit, “A party seeking the admission of a summary under Rule 1006 must demonstrate, inter alia, that the recordings are ‘so “voluminous” that they “cannot conveniently be examined in court” by the trier of fact’ and that the summary is accurate and nonprejudicial.” *United States v. Bailey*, 973 F.3d 548, 567 (6th Cir. 2020) (quoting *United States v. Bray*, 139 F.3d 1104, 1109 (6th Cir. 1998) (quoting *United States v. Seelig*, 622 F.2d 207, 214 (6th Cir. 1980))).

“‘[T]he summary should be accompanied by a limiting instruction which informs the jury of the summary’s purpose and that it does not constitute evidence.’ Because summary evidence

poses risks that ‘[t]he jury might rely upon the alleged facts in the summary as if these facts had already been proved,’ that the jury will use the summary ‘as a substitute for assessing the credibility of witnesses,’ or that the summary might ‘emphasiz[e] too much certain portions of the Government’s case,’ district courts are to provide juries a limiting instruction whenever summary evidence is presented.” *Id.* at 567–68 (finding district court erred when it permitted use of summary evidence without limiting instruction but error harmless where recordings used in summary already in evidence and other ample evidence of guilt) (quoting *United States v. Vasilakos*, 508 F.3d 401, 412 (6th Cir. 2007), and *United States v. Scales*, 594 F.2d 558, 564 (6th Cir. 1979)). “the document must summarize the underlying documents ‘accurately, correctly, and in a nonmisleading manner’ and should not be ‘embellished’ with ‘inferences drawn by the proponent[.]’” *United States v. Quintana*, 466 F. App’x 533, 536 (6th Cir. 2012) (quoting *Bray*, 139 F.3d at 1110). The admission of summaries into evidence “is a matter within the discretion of the district court, whose decisions in such matters will be upheld absent an abuse of discretion.” *Bray*, 139 F.3d at 1109 (quoting *United States v. Williams*, 952 F.2d 1504 (6th Cir. 1991)).

As construed by the Sixth Circuit, Rule 1006 imposes five requirements for the admission of a summary: (1) the underlying documents must be so voluminous that they cannot be conveniently examined in court, (2) the proponent of the summary must have made the documents available for examination or copying at a reasonable time and place, (3) the underlying documents must be admissible in evidence, (4) the summary must be accurate and nonprejudicial, and (5) the summary must be properly introduced through the testimony of a witness who supervised its preparation. *United States v. Modena*, 302 F.3d 626, 633 (6th Cir. 2002). These five factors have been dubbed the *Bray* factors. *United States v. Harris*, 881 F.3d 945, 950 (6th Cir. 2018) (citing *United States v. Bray*, 139 F.3d 1104, 1109–10 (6th Cir. 1998)).

The Fifth Amendment to the U.S. Constitution provides that, “No person shall [...] be deprived of life, liberty, or property, without due process of law....” “

The Sixth Amendment provides that “In all criminal prosecutions, the accused shall enjoy the right [...]to be confronted with the witnesses against him...and to have the Assistance of Counsel for his defense.”

A. The government must establish that the records it seeks to summarize are voluminous, not just that the records it obtained are voluminous.

The government must show that the records it seeks to summarize are voluminous. “A summary is not admissible under Rule 1006 if the underlying information can be examined conveniently in court.” 5 Federal Rules of Evidence Manual § 1006.02 (2021).

Because the defense does not have copies of the proposed summary exhibits yet, it is not possible to determine this factor’s applicability for every summary. However, the government has previously described the summaries as “likely include (1) pivot tables and categorical excerpts/summaries of the data contained in the Practice Fusion Excel spreadsheets; and (2) compilations of data and scanned documents comprising the ‘medical records’ of Downtown Medical patients.” (Doc. 138, PageID 584). The first category of summaries potentially meets the test for voluminousness, but the second category does not. Instead, the government’s plan appears to be that it will use summaries as a means of recreating a discrete number of records that no longer exist. In May, the government asserted that the need for summary records is due to the format of the information, not the voluminousness of the records from Practice Fusion.

But they were able -- what they agreed to do and did was to produce the patient files -- what they were able to get out of that database that they had, they exported that data into discreet patient files, if you will....So the data is actually the real data that would have been populated in the template that the doctor saw, it’s just that they’re approximating the physical appearance of it, the presentation of it....But presenting it, we don’t have a portal that we can use to present it. So the parties are going to be forced to present summary exhibits off of that data at trial.

See (Tr., Doc. 179, PageID 952–54). It is not clear how many patient records the government will seek to summarize, though there have been references to “patients of import.” (*Id.*, PageID 958). If the government’s summaries are seeking to references a small percentage of the patient records obtained from Practice Fusion, the government should not be able to rely on Rule 1006 merely because the records obtained from Practice Fusion could be considered voluminous themselves or are stored electronically. *See United States v. Dunnican*, 961 F.3d 859, 873 (6th Cir. 2020) (finding the government compiled with Rule 1006 where it presented data extracted from the defendant’s cell phone as a summary because “[I]t appears that Rule 1006 was designed to govern this exact scenario: where, upon downloading the contents of Dunnican’s cellular telephone, the forensic examiner possessed over 11,038 pages of potential evidence—a number so unwieldy and robust that it would take multiple months (possibly, even years) for a court to examine all of this content.”).

B. The government has not yet identified the records underlying its summaries.

The second *Bray* factor is the requirement that the government must make “the documents available for examination or copying, or both, by other parties at [a] reasonable time and place.” *Bray*, 139 F.3d at 1109 (citations omitted). The Sixth Circuit has explained that “[t]he purpose of this requirement is to provide the opposing party who desires to attack the authenticity or accuracy of a chart, summary, or calculation, with an opportunity to prepare for cross-examination, or to offer exhibits of its own as rebuttal evidence, which would serve to counteract the impression made on the jury by the proponent’s witness.” *Id.* (citing 6 Weinstein’s Federal Evidence § 1006.06[1], p. 1006-14 (Joseph M. McLaughlin ed., 2d ed.1997)).

According to the current scheduling order, the government will provide the defense with a witness list and exhibit list by September 1, 2021. (Doc. 181, PageID 982). To the extent that the

government's exhibit list includes the summary exhibits and identifies the underlying records, the government may meet this *Bray* factor. However, for the reasons more fully set forth in Dr. Karlosky's motion to continue, even if the government makes a disclosure in early September, that will not be soon enough. *See Jade Trading, LLC v. United States*, 67 Fed. Cl. 608, 615 (2005) ("Exhibit Nos. 691-694 were tendered late and summarize voluminous documents that were not identified with any specificity until approximately one month before a complex two-week trial. Because Defendant's proffered summaries failed to comply with FED. R. EVID. 1006 and RCFC Appendix A, P13, they are excluded.").

C. The government must establish that the Practice Fusion records are admissible.

Summary exhibits must be admissible. *See United States v. Daneshvar*, 925 F.3d 766, 780 (6th Cir. 2019) (approving district court's ruling that excluded summary exhibit for lack of relevance). So must their underlying documents. "[I]f the underlying documents are hearsay and not admissible under any exception, a chart or other summary based on those documents is likewise inadmissible. *See generally* Fed. R. Evid. 801-805. The same principle would render inadmissible a summary based on documents that are inadmissible for any other reason, such as irrelevancy, unfair prejudice, or lack of authenticity. *See generally* Fed. R. Evid. 401-403, 901(a)." *Bray*, 139 F.3d at 1109–10. Indeed, the rules of evidence contain many provisions that allow evidence to be admitted unless there are questions about authenticity and accuracy. *See* Fed. R. Evid 1003 ("A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate."); Fed. R. Evid. 106 ("If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time."); Fed. R. Evid. 901(a) ("To

satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.”); Fed. R. Evid. 901(b)(8) (“For a document or data compilation, evidence that it: (A) is in a condition that creates no suspicion about its authenticity; (B) was in a place where, if authentic, it would likely be; and (C) is at least 20 years old when offered.”); Fed. R. Evid. 1001(d) (“An ‘original’ of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, ‘original’ means any printout—or other output readable by sight—if it accurately reflects the information.”); Fed. R. Evid. 803(6)(E) (“A record of an act, event, condition, opinion, or diagnosis if [] the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.”).

Similarly (and also related to the fifth *Bray* factor), the proponent of a piece of evidence has the burden of proof and must lay an appropriate foundation. *See generally Cobbins v. Tenn. DOT*, 566 F.3d 582, 588 (6th Cir. 2009); *Auto Indus. Supplier ESOP v. Ford Motor Co.*, 435 F. App’x 430, 452 (6th Cir. 2011) (finding witness not qualified to introduce documents under Rule 1006 where his report included “data manipulations, adjustments, and calculations using the data presented”) (citing *Eichorn v. AT&T Corp.*, 484 F.3d 644, 650 (3d Cir. 2007) (noting that witness’s calculations were better described as a synthesis rather than a summary of charts because the “calculations went beyond the data they summarized and included several assumptions, inferences, and projections about future events,” which represented the witness’s opinion, rather than the underlying information, and were therefore subject to the rules governing opinion testimony)). Therefore, because admissibility turns on reliability, the arguments in the following subsection suggest the government will not be able to meet this burden.

D. The government will not be able to establish that Practice Fusion records are accurate and non-prejudicial.

The accuracy element of the *Bray* test requires:

first that the information on the document summarizes the information contained in the underlying documents accurately, correctly, and in a nonmisleading manner. Nothing should be lost in the translation. It also means, with respect to summaries admitted in lieu of the underlying documents, that the information on the summary is not embellished by or annotated with the conclusions of or inferences drawn by the proponent, whether in the form of labels, captions, highlighting techniques, or otherwise.

Bray, 139 F.3d at 1110. In the leading cases on Rule 1006 within the Sixth Circuit, the defendants did not contend that the summaries were inaccurate, so the issues were reviewed for plain error. See *United States v. Modena*, 302 F.3d 626, 633 (6th Cir. 2002) (“[B]ecause Modena does not contend that the summaries inaccurately reported the Russell Brothers’ financial dealings, we would be hard-pressed to determine that the admission of the summaries ‘seriously affected the fairness, integrity, or public reputation of the judicial proceedings.’”); *Bray*, 139 F.3d at 1110-11 (concluding that the improper admission of summaries was not plain error where the appellant never claimed that the summaries were inaccurate). In other jurisdictions, a consideration related to the fourth *Bray* factor is the prohibition on summary evidence referring to evidence not contained in the original. See *Pritchard v. Liggett & Myers Tobacco Co.*, 295 F.2d 292, 301 (3d Cir. 1961) (summary must accurately “summarizes the materials involved by not referring to information not contained in the original”); *United States v. Hart*, 295 F.3d 451, 458–59 (5th Cir. 2002) (district court erred reversibly, in prosecution for making material false statements on farm loan applications, in allowing government, through a summary witness, to present expert testimony in guise of summary evidence); *Standard Oil Co. of California v. Moore*, 251 F.2d 188, 223 (9th Cir. 1957) (summary of ledger entries inadmissible because it contained information not present in originals).

Here, the government admits that the re-created patient records are not what a practitioner would have seen and that Practice Fusion has produced records contain discrepancies. *See Pugliese v. Prof'l Recovery Serv.*, No. 09-12262, 2010 U.S. Dist. LEXIS 64111, at *12 (E.D. Mich. June 29, 2010) (striking exhibit where, among other reasons, “comparison of the original call log [summary] and the newly created one reveals numerous obvious discrepancies”). After all, in response to the government’s first request, Practice Fusion said it was “unable” to provide the records in the requested format. Practice Fusion then produced the records in a fashion that made them difficult to navigate, synthesize and, sometimes, understand. As a result, the government undertook “extensive” efforts “to improve upon what Practice Fusion provided.” Along the way, the government identified “inconsistencies” that required “part” of the production to be “re-issued” and described the data as having been provided “without any readily apparent means of synchronizing each category.” Eventually, after “holding Practice Fusion’s feet to the fire,” the government obtained “data exported in a format that looks like medical records,” though they are not the same medical records that the provider at Downtown Medical Clinic would have seen. The government has “tr[ie]d to make sense of all this” and is now “forced to present summary exhibits off of that data.” Many of these issues are traceable to the fact that Practice Fusion “doesn’t keep archived copies of prior iterations of its software.” That matters here because the indictment in this case concerns conduct alleged to have occurred in 2014–16, but Practice Fusion “tinkers with the code in realtime” and now cannot “recreate the picture that the doctor was looking at” because the software “has been altered enough times” and they “don’t keep great records of that.”

E. The Practice Fusion summary must be introduced by the preparer.

As the Court of Appeals explained in *Bray*, “a summary document must be properly introduced before it may be admitted into evidence.” *Id.* at 110 (citations omitted). And “[i]n order

to lay a proper foundation for a summary, the proponent should present the testimony of the witness who supervised its preparation,” a witness who in this case would seem to be David Roose. *Id.* Dr. Karlosky does not know who will introduce the summary exhibits and so reserves his argument on this point until the government has identified the witness through whom the summaries will be introduced.

F. The issues with Practice Fusion records’ reliability implicates constitutional protection.

The Practice Fusion records should be excluded from the trial of this matter because the manner in which they were obtained by the government and the issues with their contents would allow any potential conviction in this case to rest on constitutionally unreliable evidence.

First, “Due process does not permit a conviction based on no evidence, or on evidence so unreliable and untrustworthy that it may be said that the accused had been tried by a kangaroo court.” *California v. Green*, 399 U.S. 149, 203 n.20 (1970) (internal citations omitted). *Cf. Taylor v. Illinois*, 484 U.S. 400, 414–15 (1988) (“The integrity of the adversary process, which depends both on the presentation of reliable evidence and the rejection of unreliable evidence, the interest in the fair and efficient administration of justice, and the potential prejudice to the truth-determining function of the trial process must also weigh in the balance.”); *Jackson v. Denno*, 378 U.S. 368, 376–77 (1964) (“It is now axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession....Equally clear is the defendant’s constitutional right...to have a fair hearing and a reliable determination on the issue of voluntariness, a determination uninfluenced by the truth or falsity of the confession.”).

Second, reliability is also a component of Sixth Amendment jurisprudence. Whether an exhibit is admissible may, for example, implicate a defendant’s constitutional confrontation rights.

See California v. Green, 399 U.S. 149, 155 (1970) (“[W]e have more than once found a violation of confrontation values even though the statements in issue were admitted under an arguably recognized hearsay exception”); *United States v. Oros*, 578 F.3d 703, 708–09 (7th Cir. 2009) (in bribery prosecution, charts offered by government summarizing telephone and bank records should not have been admitted, absent showing by government that underlying records were admissible under hearsay exception for business records); *Peat, Inc. v. Vanguard Research, Inc.*, 378 F.3d 1154, 1163–65 (11th Cir. 2004) (trial court committed reversible error in its erroneous and prejudicial admission, under Rule 1006, of summary exhibit based on inadmissible hearsay). *See also Maryland v. Craig*, 497 U.S. 836, 845 (1990) (“The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant.”). *Cf. Perry v. New Hampshire*, 565 U.S. 228, 245–46 (2012) (“Our unwillingness to enlarge the domain of due process as Perry and the dissent urge rests, in large part, on our recognition that the jury, not the judge, traditionally determines the reliability of evidence. We also take account of other safeguards built into our adversary system that caution juries against placing undue weight on eyewitness testimony of questionable reliability. These protections include the defendant’s Sixth Amendment right to confront the eyewitness. Another is the defendant’s right to the effective assistance of an attorney, who can expose the flaws in the eyewitness’ testimony during cross-examination and focus the jury’s attention on the fallibility of such testimony during opening and closing arguments.”) (internal citations omitted).

Therefore, whether or not the Court finds Rule 1006 satisfied in this case, the evidence obtained from Practice Fusion and summarized by the government should be excluded from this case because a criminal conviction cannot rest on evidence with a clear history of unreliability.

III. Conclusion.

The Practice Fusion records are unreliable and should neither be allowed to form the basis for summary exhibits nor introduced as stand-alone evidence.

Respectfully submitted this 17th day of August 2021, by:

RITCHIE, DAVIES, JOHNSON & STOVALL, P.C.

/s/Stephen Ross Johnson
STEPHEN ROSS JOHNSON [BPR No. 022140]
606 W. Main Street, Suite 300
Knoxville, TN 37902
(865) 637-0661
johnson@rdjs.law
www.rdjs.law

THE LAW OFFICE OF MASSEY, MCCLUSKY,
MCCLUSKY & FUCHS

/s/William D. Massey
WILLIAM D. MASSEY [BPR No. 9568]
3074 East Road
Memphis, TN 38128
(901) 384-4004
www.masseymcclusky.com
w.massey3074@gmail.com

Counsel for Loran Karlosky, M.D.

CERTIFICATE OF SERVICE

I certify that on August 17, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

/s/Stephen Ross Johnson
STEPHEN ROSS JOHNSON

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**
Case #: JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 12/15/2016**Case Agent:** Pate, Douglas Byron**Report Date:** 12/16/2016**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Judicial Proceeding – Motion and Application for Court Order

(S) MARY A BOND,FNP, W/F, [REDACTED]
 (S) GLENN R BONIFIELD,JR, W/M, [REDACTED]
 (S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On December 15, 2016, this agent appeared before Judge Clayburn Peeples, Circuit Court of the 28th Judicial District, in Brownsville, Tennessee. The purpose of the judicial proceeding was to present an application for a court order in accordance with 18 United States Code § 2703(d). Judge Peeples swore this agent to the facts as provided in the application and signed the order for the production of specific TennCare patient medical records from Practice Fusion, Inc. of San Francisco, California. Jason Scott, Assistant District Attorney, District Attorney General's Office, 28th Judicial District, submitted a motion to seal and Judge Peeples so ordered to seal the documents. A copy of the signed documents was provided to Judge Peeples' administrative assistant as requested.

DBP/II

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**

Case # : JA-16G-000020
[REDACTED]

Author: Pate, Douglas Byron

Activity Date: 12/15/2016

Case Agent: Pate, Douglas Byron

Report Date: 12/16/2016

SAC/ASAC: Reed, Terry

Approved By: Reed, Terry

Description: Document - Application for Court Order

(S) MARY A BOND,FNP, W/F, [REDACTED]
(S) GLENN R BONIFIELD,JR, W/M, [REDACTED]
(S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On December 15, 2016, this agent presented and swore to an application for a court order in accordance with 18 United States Code § 2703(d) before Judge Clayburn Peebles, Circuit Court of the 28th Judicial District, in Brownsville, Tennessee. A copy of the signed application is attached.

DBP/II

Attachment #36



Document Seq: 1556934, Document Title: Sub10Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT
OF CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

2703(d) APPLICATION

The State of Tennessee, by and through its criminal investigators, hereby makes application for an order pursuant to Title 18, United States Code, §§ 2703(c)(1)(B) and (d) directing Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, CA 94103, a provider of electronic communication service or remote computing service, to disclose records and other information pertaining to a customer or subscriber. It is further requested that the order apply to any other providers of electronic communication service or remote computing service whose assistance is needed to provide the records or other information sought.

1. RECORDS AND OTHER INFORMATION SOUGHT

The State of Tennessee requests that the provider disclose the information and records described in Attachment A to the proposed order submitted with this application. Based upon prior contact with the provider, the applicant verifies that the description and format of the records and other information sought are acceptable to the provider, that the types of records and other information are readily available to the provider.

2. REASONABLE GROUNDS FOR ISSUANCE OF ORDER

In support of this request, the applicant states the following:

1. The Tennessee Bureau of Investigation is conducting a criminal investigation of violations of Tennessee Code Annotated § 71-5-2601 (a)(2)(A), TennCare Fraud, and Tennessee

Document Seq: 1556934, Document Title: Sub10Att1.pdf

Code Annotated § 39-17-417, Conspiracy to Distribute Controlled Substances. There are reasonable grounds to believe that the requested electronic records are relevant and material to the ongoing criminal investigation as demonstrated below:

Loran Karlosky, MD, owns a medical clinic, Downtown Medical Clinic, located at 113 Hopkins Street, Bells, TN. Mary Ann Bond, FNP, was employed by Karlosky as the primary licensed healthcare provider at the Downtown Medical Clinic. Information provided to the Tennessee Department of Health by Loran Karlosky, MD, indicate medical records at the Downtown Medical Clinic are maintained in an electronic format, Electronic Medical Record (EMR), on a "cloud" server(s) through an account with Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, CA 94103. The specific patient medical records listed in Attachment A are narrow in scope and specific to a criminal investigation in violation of Tennessee Code Annotated § 71-5-2601 (a)(2)(A), TennCare Fraud, Tennessee Code Annotated § 39-17-417, Conspiracy to Distribute Controlled Substances, and Tennessee Code Annotated § 39-14-602 Tennessee Personal and Commercial Computer Act of 2003. Independent investigations conducted by the Tennessee Department of Health, Office of Investigations, Health Related Boards, and the 28th Judicial District Violent Crime and Drug Task Force has exposed an extraordinary quantity of prescriptions written for controlled substances originating at the Downtown Medical Clinic diverted for illicit non-medical purposes. Evidence seized during a search warrant executed on April 19, 2016, at the pharmacy operated by Glenn Bonifield, Jr., Mehr Drug Store located at 81 Main Street, Bells, TN, demonstrated a high volume of narcotic prescriptions written by Mary Ann Bond, FNP. A former employee of Downtown Medical clinic alleged to agents of the Tennessee Bureau of Investigation and 28th Judicial District Violent Crime and Drug Task Force that Mary Ann Bond, FNP, was overprescribing narcotic prescriptions

Document Seq: 1556934, Document Title: Sub10Att1.pdf

to an abnormally large number of patients from an extensive geographical area while the clinic owner, Loran Karlosky, MD, was complacent and instructed the employee to bill healthcare insurance companies for services she alleged were fraudulent. The former employee alleges Loran Karlosky, MD, directed the use of a mobile phone app, Epocrates, to enter narcotic prescriptions prescribed by Mary Ann Bond, FNP, to reveal the medical diagnosis code necessary to bill healthcare insurance for services. Persons practicing medicine in the State of Tennessee, pursuant to Tennessee Code Annotated § 63-6-204, have a duty to create and maintain medical records as a component of a standard of care and minimum competency. A medical provider must cause to be created or cause to be maintained a medical record for each patient receiving medical care pursuant to Rules of the Tennessee State Board of Medical Examiners 0880-2.15. Also required under Rule 0880-2.15, medical providers are required to maintain the patient medical record for ten (10) years from the last professional contact. Medical providers, pursuant to Tennessee Code Annotated § 71-5-2503, are required to provide the Tennessee Bureau of Investigation's Medicaid Fraud Control Unit and TennCare Office of Inspector General, the medical records specific to Medicaid / TennCare patients for inspection in connection with an investigation. The Tennessee Bureau of Investigation's Medicaid Fraud Control Unit agents may have access to medical records pursuant to 45 Code of Federal Regulations §164.512 of the Health Insurance Portability and Accountability Act (HIPPA) as part of their health oversight duties.

3. PRECLUSION OF NOTIFICATION

Pursuant to Title 18, United States Code, Sections 2705(b), the applicant further requests that the Court order the applicable providers, their agents and employees, not to notify any other persons of the existence of the requested court order because there is reason to believe that notification of the existence of the requested court order will result in assisting Loran Karlosky,

Document Seq: 1556934, Document Title: Sub10Att1.pdf

MD, and Mary Ann Bond, FNP, operating Downtown Medical Clinic, 113 Hopkins Street, Bells, TN, with the destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation or unduly delaying a trial based on the nature and scope of the investigation described in subsection B above.

WHEREFORE, it is respectfully requested that the Court grant the proposed order submitted with this application.

Sworn to at Brownsville, Tennessee, this 15th day of December, 2016.



**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**

Case # : JA-16G-000020
[REDACTED]

Author: Pate, Douglas Byron

Activity Date: 12/15/2016

Case Agent: Pate, Douglas Byron

Report Date: 12/16/2016

SAC/ASAC: Reed, Terry

Approved By: Reed, Terry

Description: Document - Court Order

(S) MARY A BOND,FNP, W/F, [REDACTED]
(S) GLENN R BONIFIELD,JR, W/M, [REDACTED]
(S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On December 15, 2016, Judge Clayburn Peebles, Circuit Court of the 28th Judicial District, signed a court order subsequent to an application presented by this agent. A copy of the signed order is attached.

DBP/II

Attachment #37

Document Seq: 1556941, Document Title: Sub11Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT OF
CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

§ 2703(d) ORDER

This matter comes before the Court pursuant to an application for the production of electronic medical records, for an order pursuant to Title 18, United States Code, §§ 2703(c)(1)(B) and (d), for the production of certain records and other information; the Court finds that the applicant has offered specific and articulable facts showing that there are reasonable grounds to believe that the records and information sought by the applicant are relevant and material to an ongoing criminal investigation, and that disclosure to any person of this investigation or of this application and order will result in assisting Loran Karlosky, MD, and Mary Ann Bond, FNP, operating Downtown Medical Clinic, 113 Hopkins Street, Bells, TN, with the destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation or unduly delaying a trial.


IT IS HEREBY ORDERED, pursuant to Title 18, United States Code, §§ 2703(c)(1)(B) and (d), that Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, CA 94103 and any other providers of electronic communication service or remote computing service whose assistance is needed to comply with this order, shall disclose to the Tennessee Bureau of Investigation the records and other information described on Attachment A, which is attached to and incorporated into this order;

Document Seq: 1556941, Document Title: Sub11Att1.pdf

IT IS FURTHER ORDERED the Tennessee Bureau of Investigation shall compensate the providers for such costs as are reasonably necessary and which have been directly incurred in complying with this order, as required by Title 18, United States Code, Section 2706;

IT IS FURTHER ORDERED, pursuant to Title 18, United States Code, Section 2705(b), that the providers, their agents and employees, shall not notify any other person of the existence of this Court order for a period of 6 months from the date of this order or until otherwise ordered by the Court.

SO ORDERED this 15th of December, 2016.



Clayburn Peoples
Judge of the Circuit Court of the
Twenty-Eighth Judicial District
State of Tennessee

Document Seq: 1556941, Document Title: Sub11Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT OF
CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

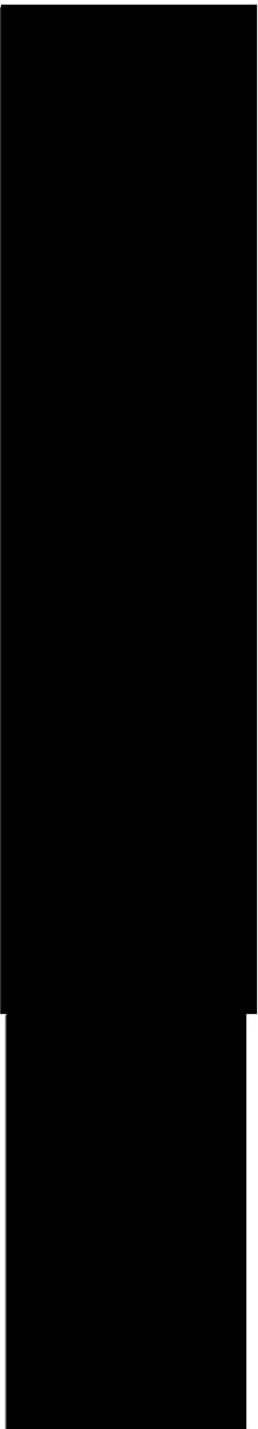
ATTACHMENT A

Complete and accurate medical records, to include administrative activity logs indicating date, time and username record entries, for the following Medicaid / TennCare patients:

	NAME	DOB	SSN Last 4
1.			5874
2.			0227
3.			9770
4.			5620
5.			7712
6.			9484
7.			7820
8.			6003
9.			2791
10.			0693
11.			9795
12.			2172
13.			7725
14.			7964
15.			9723
16.			2675
17.			9460
18.			7233
19.			9363
20.			3505
21.			0873
22.			3293
23.			5059
24.			4268
25.			6866
26.			9206
27.			7224
28.			6386
29.			5529
30.			0613
31.			2760
32.			7054
33.			5698

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0753
9821
9921
6456
8934
0809
6504
4813
9720
2070
9748
8195
9763
0357
3427
3933
0539
6105
8185
2134
7446
9656
8287
0787
5196
3759
6642
9822
7799
3071
0315
5736
6513
0102
0913
2891
5087
1105
0502
7010
7512
1146

Document Seq: 1556941, Document Title: Sub11Att1.pdf

86.		5858
87.		4583
88.		9421
89.		8069
90.		7117
91.		7154

Include a notarized true copy attestation signed by the Practice Fusion, Inc. custodian of records. The records described above shall be provided to agents of the Tennessee Bureau of Investigation in electronic format during regular business hours for the duration of the order at the following:

Douglas Pate, Special Agent
Tennessee Bureau of Investigation
121 Executive Drive
Jackson, TN 38305
731-984-6644 office
731-668-9769 fax
doug.pate@tn.gov

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**

Case # : JA-16G-000020
[REDACTED]

Author: Pate, Douglas Byron

Activity Date: 12/15/2016

Case Agent: Pate, Douglas Byron

Report Date: 12/16/2016

SAC/ASAC: Reed, Terry

Approved By: Reed, Terry

Description: Document – Motion to Seal

(S) MARY A BOND,FNP, W/F, [REDACTED]
(S) GLENN R BONIFIELD,JR, W/M, [REDACTED]
(S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On December 15, 2016, at the request of this agent, Jason Scott, Assistant District Attorney, District Attorney General's Office, 28th Judicial District, submitted a motion to seal an order signed by Judge Peebles. A copy of the signed motion to seal is attached.

DBP/II

Attachment #38

Document Seq: 1556947, Document Title: Sub12Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT OF
CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

MOTION TO SEAL

The State of Tennessee, by its attorneys, hereby moves the Court to seal all documents filed or issued under the above-captioned application number. As a basis for said motion, the government relies upon the facts and circumstances described in the Application filed with this motion.

A proposed order accompanies this motion.

Dated at Brownsville, Tennessee, this 15th day of December, 2016.

Respectfully submitted,

By:

Jason C. Scott
Assistant District Attorney

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**

Case # : JA-16G-000020
[REDACTED]

Author: Pate, Douglas Byron

Activity Date: 12/15/2016

Case Agent: Pate, Douglas Byron

Report Date: 12/16/2016

SAC/ASAC: Reed, Terry

Approved By: Reed, Terry

Description: Document – Order to Seal

(S) MARY A BOND,FNP, W/F, [REDACTED]
(S) GLENN R BONIFIELD,JR, W/M, [REDACTED]
(S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On December 15, 2016, Judge Clayburn Peebles signed an order to seal at the request of Jason Scott, Assistant District Attorney, District Attorney General's Office, 28th Judicial District. A copy of the signed order to seal is attached.

DBP/II

Attachment #39

Document Seq: 1556949, Document Title: Sub13Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT OF
TENNESSEE IN CROCKET COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

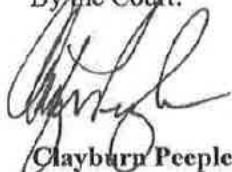
Application No(s)

SEALING ORDER

Upon consideration of the State's Motion to Seal and its 2703(d) Application in the above-captioned matter, the Court finds that this matter is appropriately kept under seal and, therefore, **ORDERS** that the Clerk of Court accept for filing under seal the submissions made by the government under the above-captioned application number, and all orders issued by the Court, for a period of six months.

Dated at Brownsville, Tennessee this 15th day of December, 2016.

By the Court:



Clayburn Peoples
Judge of the Circuit Court of the
Twenty-Eighth Judicial District
State of Tennessee

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**
Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 12/15/2016**Case Agent:** Pate, Douglas Byron**Report Date:** 12/16/2016**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Document – Return of Service: Court Order

(S) MARY A BOND,FNP, W/F, [REDACTED]

(S) GLENN R BONIFIELD,JR, W/M, [REDACTED]

(S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On December 15, 2016, this agent served a court order in accordance with 18 United States Code § 2703(d) signed by Judge Clayburn Peebles, Circuit Court of the 28th Judicial District. The court order, for the production of electronic medical records, was served to Custodian of Records, Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, California, by Fedex, tracking number: 8103 1181 3982. Direct signature by a person at the address was required. This agent was requested to be contacted for any costs to produce the records prior to the production of the records. A copy of the shipping receipt is attached.

DBP/II

Attachment #:40

FedEx Express Package **US Airbill** FedEx Tracking Number **8103 1181 3982**

1 From Please print and press hard.Date **8/15/16**

Sender's FedEx Account Number

Sender's Name **SA Doug Pate**Phone **731**Company **TENN BUREAU OF INVESTIGATION**Address **121 EXECUTIVE DR**

Dept./Floor/Suite/Room

City **JACKSON**State **TN** ZIP **38305-2318****2 Your Internal Billing Reference**

First 21 characters will appear on invoice.

3 ToRecipient's Name **Custodian of Records** Phone **415 757-4670**Company **Practice Fusion, Inc**Address **731 Market St. - Suite 400**

We cannot deliver to P.O. boxes or F.O. ZIP codes.

Dept./Floor/Suite/Room

Address

Use this line for the HOLD local address or for confirmation of your shipping address.

City **San Francisco**State **CA** ZIP **94103**

0123855293



Ship it. Track it. Pay for it. All online.
Go to fedex.com

MUR3
Part 0215
Sender's Copy

4 Express Package Service

* To meet deadlines

Packages up to 150 lbs.
For packages over 70 lbs., use the
FedEx Express Freight US Airbill.

Next Business Day

☐ **FedEx First Overnight**
Guaranteed next business morning delivery to select locations. Friday shipments will be delivered on Monday unless Saturday Delivery is selected.

☐ **FedEx Priority Overnight**
Guaranteed next business morning delivery to select locations. Friday shipments will be delivered on Monday unless Saturday Delivery is selected.

☐ **FedEx Standard Overnight**
Next business afternoon.*
Saturday Delivery NOT available.

2 or 3 Business Days

☒ **FedEx 2Day A.M.**
Second business morning.*
Saturday Delivery NOT available.

☐ **FedEx 2Day**
Second business afternoon.* Thursday shipments will be delivered on Monday unless Saturday Delivery is selected.

☐ **FedEx Express Saver**
Third business day.*
Saturday Delivery NOT available.

5 Packaging

* Declared value limit \$500.

☒ **FedEx Envelope***☐ **FedEx Pak***☐ **FedEx Box**☐ **FedEx Tube**☐ **Other****6 Special Handling and Delivery Signature Options**

Fees may apply. See the FedEx Service Guide.

☐ **Saturday Delivery**

NOT available for FedEx First Overnight, FedEx Priority Overnight, FedEx 2Day A.M., or FedEx Express Saver.

☐ **No Signature Required**
Package may be left without
obtaining a signature for delivery.

☒ **Direct Signature**
Someone at the delivery address
must sign for delivery.

☐ **Indirect Signature**
If no one is available at recipient's
address, someone at a neighboring
address may sign for delivery. For
residential deliveries only.

Does this shipment contain dangerous goods?

☒ **No** ☐ **Yes**
One line must be checked.
As per attached
Shipper's Declaration.

☐ **Yes**
Shipper's Declaration
is required.

☐ **Dry Ice**
Dry Ice & UN 1845 _____ x _____ kg
☐ **Cargo Aircraft Only**

Fees may apply for dangerous goods — see the current FedEx Service Guide.

7 Payment Bill to:

☒ **Sender**
Account No. in Section
1 will bill 1845.

☐ **Recipient**

☐ **Third Party**

☐ **Credit Card**

☐ **Cash/Check**

Total Packages

Total Weight

Total Declared Value*

lb. \$

*Your liability is limited to \$500/lb. unless you declare a higher value. See back for details. By using this airbill you agree to the service conditions on the back of the airbill and in the current FedEx Service Guide, including those that limit our liability.

Rev. Case 5/15 • Part 11/2014 • ©2014-2015 FedEx • PRINTED IN U.S.A. 0161

611

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**
Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 12/16/2016**Case Agent:** Pate, Douglas Byron**Report Date:** 12/16/2016**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Telephone conversation - JIM HARWOOD

(S) MARY A BOND,FNP, W/F, [REDACTED]
 (S) GLENN R BONIFIELD,JR, W/M, [REDACTED]
 (S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On December 16, 2016, this agent received a telephone call from attorney Jim Harwood, legal counsel for Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, California. Harwood contacted this agent from the telephone number [REDACTED]. Harwood stated he had received the signed court order for the production of medical records by Practice Fusion, Inc. Harwood said he would like to discuss the court order with the Assistant District Attorney working on the investigation. Harwood said the order to seal the court order was citing 18 United States Code 2703(d), but he did not think the statute applied to the court order he received. Harwood said 18 United States Code 2705(a) would cover the sealing of the release of records in his opinion. Harwood also said the number of patient medical records requested could be problematic for the company's technical department, but he would discuss the issues before talking to the Assistant District Attorney. This agent advised the information would be provided to Assistant District Attorney Hilary Parham with his contact number.

DBP/II

Agent's notes: A message was left with Assistant District Attorney Hillary Parham on December 16, 2016 regarding the above information. On December 20, 2016, Assistant District Attorney Parham contacted this agent to discuss the issues brought forth by Harwood and stated she would make contact with him.

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**Case #: JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 01/09/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 01/13/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Judicial Proceeding – Motion and Application for Court Order

(S) MARY A BOND,FNP, W/F, [REDACTED]
 (S) GLENN R BONIFIELD,JR, W/M, [REDACTED]
 (S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On January 9, 2017, this agent appeared before Judge Clayburn Peebles, Circuit Court of the 28th Judicial District, in Humboldt, Tennessee. The purpose of the judicial proceeding was to present an application for a court order in accordance with 18 United States Code § 2703(d). The documents presented were revised from an earlier court order signed on December 15, 2016. Attorney Jim Harwood representing Practice Fusion, Inc. and Hillary Parham, Assistant District Attorney, District Attorney General's Office, 28th Judicial District, negotiated and agreed to changes that required a new order to be signed by the judge.

Judge Peebles swore this agent to the facts as provided in the application and signed the order for the production of patient medical records from Practice Fusion, Inc. of San Francisco, California. Jerald Campbell, Assistant District Attorney, District Attorney General's Office, 28th Judicial District, submitted a motion to seal and Judge Peebles so ordered to seal the documents. A copy of the signed documents was provided to Judge Peebles' administrative assistant as requested.

DBP/II

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**

Case # : JA-16G-000020
[REDACTED]

Author: Pate, Douglas Byron

Activity Date: 01/09/2017

Case Agent: Pate, Douglas Byron

Report Date: 01/13/2017

SAC/ASAC: Reed, Terry

Approved By: Reed, Terry

Description: Document - Application for Court Order

(S) MARY A BOND,FNP, W/F, [REDACTED]
(S) GLENN R BONIFIELD,JR, W/M, [REDACTED]
(S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On January 9, 2017, this agent presented and swore to an application for a court order in accordance with 18 United States Code § 2703(d) before Judge Clayburn Peeples, Circuit Court of the 28th Judicial District, in Humboldt, Tennessee. A copy of the signed application is attached.

DBP/II

Attachment #43

Document Seq: 1565232, Document Title: Sub7Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT
OF CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

FILED
TIME 10:45 AM/PM
JAN 09 2017

2703(d) APPLICATION

AMANDA BROWN, CLERK
BY: , D.C.

The State of Tennessee, by and through its criminal investigators, hereby makes application for an order pursuant to Title 18, United States Code, §§ 2703(c)(1)(B) and (d) directing Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, CA 94103, a provider of electronic communication service or remote computing service, to disclose records and other information pertaining to a customer or subscriber. It is further requested that the order apply to any other providers of electronic communication service or remote computing service whose assistance is needed to provide the records or other information sought.

1. RECORDS AND OTHER INFORMATION SOUGHT

The State of Tennessee requests that the provider disclose the information and records described in Attachment A to the proposed order submitted with this application. Based upon prior contact with the provider, the applicant verifies that the description and format of the records and other information sought are acceptable to the provider, that the types of records and other information are readily available to the provider.

2. REASONABLE GROUNDS FOR ISSUANCE OF ORDER

In support of this request, the applicant states the following:

1. The Tennessee Bureau of Investigation is conducting a criminal investigation of violations of Tennessee Code Annotated § 71-5-2601 (a)(2)(A), TennCare Fraud, and Tennessee

Document Seq: 1565232, Document Title: Sub7Att1.pdf

Code Annotated § 39-17-417, Conspiracy to Distribute Controlled Substances. There are reasonable grounds to believe that the requested electronic records are relevant and material to the ongoing criminal investigation as demonstrated below:

Loran Karlosky, MD, owns a medical clinic, Downtown Medical Clinic, located at 113 Hopkins Street, Bells, TN. Mary Ann Bond, FNP, was employed by Karlosky as the primary licensed healthcare provider at the Downtown Medical Clinic. Information provided to the Tennessee Department of Health by Loran Karlosky, MD, indicate medical records at the Downtown Medical Clinic are maintained in an electronic format, Electronic Medical Record (EMR), on a "cloud" server(s) through an account with Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, CA 94103. The specific patient medical records listed in Attachment A are narrow in scope and specific to a criminal investigation in violation of Tennessee Code Annotated § 71-5-2601 (a)(2)(A), TennCare Fraud, Tennessee Code Annotated § 39-17-417, Conspiracy to Distribute Controlled Substances, and Tennessee Code Annotated § 39-14-602 Tennessee Personal and Commercial Computer Act of 2003. Independent investigations conducted by the Tennessee Department of Health, Office of Investigations, Health Related Boards, and the 28th Judicial District Violent Crime and Drug Task Force has exposed an extraordinary quantity of prescriptions written for controlled substances originating at the Downtown Medical Clinic diverted for illicit non-medical purposes. Evidence seized during a search warrant executed on April 19, 2016, at the pharmacy operated by Glenn Bonifield, Jr., Mehr Drug Store located at 81 Main Street, Bells, TN, demonstrated a high volume of narcotic prescriptions written by Mary Ann Bond, FNP. A former employee of Downtown Medical clinic alleged to agents of the Tennessee Bureau of Investigation and 28th Judicial District Violent Crime and Drug Task Force that Mary Ann Bond, FNP, was overprescribing narcotic prescriptions

Document Seq: 1565232, Document Title: Sub7Att1.pdf

to an abnormally large number of patients from an extensive geographical area while the clinic owner, Loran Karlosky, MD, was complacent and instructed the employee to bill healthcare insurance companies for services she alleged were fraudulent. The former employee alleges Loran Karlosky, MD, directed the use of a mobile phone app, Epocrates, to enter narcotic prescriptions prescribed by Mary Ann Bond, FNP, to reveal the medical diagnosis code necessary to bill healthcare insurance for services. Persons practicing medicine in the State of Tennessee, pursuant to Tennessee Code Annotated § 63-6-204, have a duty to create and maintain medical records as a component of a standard of care and minimum competency. A medical provider must cause to be created or cause to be maintained a medical record for each patient receiving medical care pursuant to Rules of the Tennessee State Board of Medical Examiners 0880-2.15. Also required under Rule 0880-2.15, medical providers are required to maintain the patient medical record for ten (10) years from the last professional contact. Medical providers, pursuant to Tennessee Code Annotated § 71-5-2503, are required to provide the Tennessee Bureau of Investigation's Medicaid Fraud Control Unit and TennCare Office of Inspector General, the medical records specific to Medicaid / TennCare patients for inspection in connection with an investigation. The Tennessee Bureau of Investigation's Medicaid Fraud Control Unit agents may have access to medical records pursuant to 45 Code of Federal Regulations §164.512 of the Health Insurance Portability and Accountability Act (HIPPA) as part of their health oversight duties.

3. PRECLUSION OF NOTIFICATION

Pursuant to Title 18, United States Code, Sections 2705(a), the applicant further requests that the Court order the applicable providers, their agents and employees, not to notify any other persons of the existence of the requested court order because there is reason to believe that notification of the existence of the requested court order will result in assisting Loran Karlosky,

Document Seq: 1565232, Document Title: Sub7Att1.pdf

MD, and Mary Ann Bond, FNP, operating Downtown Medical Clinic, 113 Hopkins Street, Bells, TN, with the destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation or unduly delaying a trial based on the nature and scope of the investigation described in subsection B above for at least ninety (90) days.

WHEREFORE, it is respectfully requested that the Court grant the proposed order submitted with this application.

Sworn to at Humboldt, Tennessee, this 9th day of January, 2017.



**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**

Case # : JA-16G-000020
[REDACTED]

Author: Pate, Douglas Byron

Activity Date: 01/09/2017

Case Agent: Pate, Douglas Byron

Report Date: 01/13/2017

SAC/ASAC: Reed, Terry

Approved By: Reed, Terry

Description: Document - Court Order

(S) MARY A BOND,FNP, W/F, [REDACTED]
(S) GLENN R BONIFIELD,JR, W/M, [REDACTED]
(S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On January 9, 2017, Judge Clayburn Peebles, Circuit Court of the 28th Judicial District, signed a court order subsequent to an application presented by this agent. A copy of the signed order is attached.

DBP/II

Attachment #44

Document Seq: 1565235, Document Title: Sub8Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT OF
CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

§ 2703(d) ORDER

This matter comes before the Court pursuant to an application for the production of data and electronic medical records, for an order pursuant to Title 18, United States Code, §§ 2703(c)(1)(B) and (d), for the production of certain records and other information; the Court finds that the applicant has offered specific and articulable facts showing that there are reasonable grounds to believe that the records and information sought by the applicant are relevant and material to an ongoing criminal investigation, and that disclosure to any person of this investigation or of this application and order will result in assisting Loran Karlosky, MD, and Mary Ann Bond, FNP, operating Downtown Medical Clinic, 113 Hopkins Street, Bells, TN, with the destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation or unduly delaying a trial.


IT IS HEREBY ORDERED, pursuant to Title 18, United States Code, §§ 2703(c)(1)(B) and (d), that Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, CA 94103 and any other providers of electronic communication service or remote computing service whose assistance is needed to comply with this order, shall disclose to the Tennessee Bureau of Investigation the records and other information described on Attachment A, which is attached to and incorporated into this order;

Document Seq: 1565235, Document Title: Sub8Att1.pdf

IT IS FURTHER ORDERED the Tennessee Bureau of Investigation shall compensate the providers for such costs as are reasonably necessary and which have been directly incurred in complying with this order, as required by Title 18, United States Code, Section 2706;

IT IS FURTHER ORDERED, pursuant to Title 18, United States Code, Section 2705(a), that the providers, their agents and employees, shall not notify any other person of the existence of this Court order for a period of 6 months from the date of this order or until otherwise ordered by the Court.

SO ORDERED this 9th day of January, 2017.



Clayburn Peoples
Judge of the Circuit Court of the
Twenty-Eighth Judicial District
State of Tennessee

Document Seq: 1565235, Document Title: Sub8Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT OF
CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

ATTACHMENT A

Complete and accurate records maintained and stored by Practice Fusion, Inc., for the Downtown Medical Clinic located at 113 Hopkins Street, Bells, TN, to include, but not limited to, administrative activity logs indicating date, time and username record entries, content of accounts, internal secure communications, activity feed, internet protocol (IP) log, customer service communications, medical records for the Downtown Medical Clinic in the custody and control of Practice Fusion.

Include a notarized true copy attestation signed by the Practice Fusion, Inc. custodian of records. The records described above shall be provided to agents of the Tennessee Bureau of Investigation in electronic format during regular business hours for the duration of the order at the following:

Douglas Pate, Special Agent
Tennessee Bureau of Investigation
121 Executive Drive
Jackson, TN 38305
731-984-6644 office
731-668-9769 fax
doug.pate@tn.gov

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**
Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 01/09/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 01/13/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Document – Motion to Seal

(S) MARY A BOND,FNP, W/F, [REDACTED]
 (S) GLENN R BONIFIELD,JR, W/M, [REDACTED]
 (S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On January 9, 2017, at the request of this agent, Jerald Campbell, Assistant District Attorney, District Attorney General's Office, 28th Judicial District, submitted a motion to seal an order signed by Judge Peebles. A copy of the signed motion to seal is attached.

DBP/II

Attachment #45

Document Seq: 1565237, Document Title: Sub9Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT OF
CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

MOTION TO SEAL

The State of Tennessee, by its attorneys pursuant to 18 U.S.C § 2705(a), hereby moves the Court to seal all documents filed or issued under the above-captioned application number for at least ninety (90) days. As a basis for said motion, the government relies upon the facts and circumstances described in the Application filed with this motion.

A proposed order accompanies this motion.

Dated at Humboldt, Tennessee, this 9th day of January, 2017.

Respectfully submitted,

By:



**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 01/09/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 01/13/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Document – Order to Seal

(S) MARY A BOND,FNP, W/F, DOB: 12/31/1956
(S) GLENN R BONIFIELD,JR, W/M, DOB: 11/03/1939
(S) LORAN EDWARD KARLOSKY, W/M, DOB: 08/26/1979

On January 9, 2017, Judge Clayburn Peeples signed an order to seal at the request of Jerald Campbell, Assistant District Attorney, District Attorney General's Office, 28th Judicial District. A copy of the signed order to seal is attached.

DBP/II

Attachment #46



Document Seq: 1565240, Document Title: Sub10Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT OF
TENNESSEE IN CROCKET COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

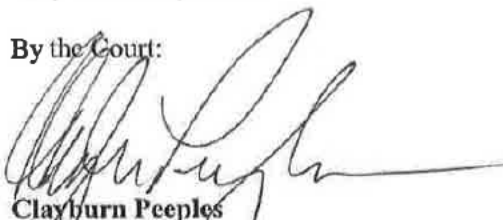
Application No(s)

SEALING ORDER

Upon consideration of the State's Motion to Seal, under 18 U.S.C. § 275(a), and its 2703(d) Application in the above-captioned matter, the Court finds that this matter is appropriately kept under seal and, therefore, **ORDERS** that the Clerk of Court accept for filing under seal the submissions made by the government under the above-captioned application number, and all orders issued by the Court, for a period of ninety (90) days or until further orders of this court.

Dated at Humboldt, Tennessee this 9th day of January, 2017.

By the Court:



Clayburn Peoples
Judge of the Circuit Court of the
Twenty-Eighth Judicial District
State of Tennessee

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 01/09/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 01/13/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Document – Return of Service: Court Order

(S) MARY A BOND,FNP, W/F, [REDACTED]
(S) GLENN R BONIFIELD,JR, W/M, [REDACTED]
(S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On January 9, 2017, this agent served a court order in accordance with 18 United States Code § 2703(d) signed by Judge Clayburn Peebles, Circuit Court of the 28th Judicial District. The court order, for the production of electronic medical records, was served to Custodian of Records, Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, California, by Fedex, tracking number: 8103 1181 3971. Direct signature by a person at the address was required. This agent was requested to be contacted for any costs to produce the records prior to the production of the records. A copy of the shipping receipt is attached.

DBP/II

Attachment #47

FedEx Express Package **US Airbill**
 FedEx Tracking Number **8103 1181 3971**

1 From Please print and press hard.
 Date **1/9/17** Sender's FedEx Account Number **[REDACTED]-6**
 Sender's Name **SA Doug Pate** Phone (731) **[REDACTED]**
RECEPTION

Company **TENN BUREAU OF INVESTIGATION**

Address **121 EXECUTIVE DR**

City **JACKSON** State **TN** ZIP **38305-2318**

2 Your Internal Billing Reference
 First 24 characters will appear on invoice.

3 To Recipient's Name **Custodian of Records** Phone **415.757-4670**

Company **Practice Fusion, Inc.**

Address **731 Market Street Suite 400** Hold Weekday
 FedEx location address REQUIRED, NOT available for
 FedEx First Overnight. ☐ **Hold Saturday**
 FedEx location address REQUIRED, Available ONLY for
 FedEx Priority Overnight and FedEx 2Day in select locations.

City **San Francisco** State **CA** ZIP **94103**

0123855293



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 Form 10 No. **0215** **MUR3 39011003** Sender's Copy

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☐ FedEx Standard Overnight
 Next business afternoon. Saturday Delivery NOT available.

2 or 3 Business Days
☒ FedEx 2Day A.M.
 Second business morning. Saturday Delivery NOT available.
☐ FedEx 2Day
 Second business afternoon. Thursday shipments will be delivered on Monday unless Saturday Delivery is selected.
☐ FedEx Express Saver
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☒ Direct Signature
 Signature of recipient or address may sign for delivery.
☐ Indirect Signature
 If no one is available at recipient's address, someone at a neighboring address may sign for delivery, for residential deliveries only.

Does this shipment contain dangerous goods?
 One box must be checked.
☒ No ☐ Yes
 Yes: Is per attached Shipper's Declaration? ☐ Yes Shipper's Declaration not required. ☐ Dry Ice
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Document Seq: 1565242, Document Title: Sub11Att1.pdf



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**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**
Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 02/01/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 02/13/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Investigative Lead - Contact with Practice Fusion – 02/01/2017

(S) MARY A BOND,FNP, W/F, [REDACTED]
 (S) GLENN R BONIFIELD,JR, W/M, [REDACTED]
 (S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On February 1, 2017, this agent was contacted by Jim Harwood, staff attorney for Practice Fusion, Inc. of San Francisco, CA. Harwood had returned a message previously left by this agent. The conversation with Harwood was regarding the production of Electronic Health Records by Practice Fusion, Inc. pursuant to a court order. Harwood stated he was waiting on documentation regarding proof of notice sent to the providers LORAN EDWARD KARLOSKY and MARY ANN BOND from Hillary Parham, Assistant District Attorney General, District Attorney General's Office, 28th Judicial District. Harwood was assured Parham would be advised of the requirements before providing the information.

DBP/II

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 03/21/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 03/23/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Document - Notice – ADA Parham

(S) MARY A BOND,FNP, W/F, [REDACTED]
(S) GLENN R BONIFIELD,PHARM D, W/M, [REDACTED]
(S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On March 21, 2017, Assistant District Attorney Hillary Parham, District Attorney General's Office, 28th Judicial District, forwarded a document to this agent. The document provided by ADA Parham was a Notice she had drafted and requested to be filed and served. A copy of the Notice is attached.

DBP/II

Attachment #48

Document Seq: 1588493, Document Title: Sub5Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT
OF CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

NOTICE

The State of Tennessee and through its criminal investigators, hereby gives notice that it has made application for an order pursuant to Title 18, United States Code, §§ 2703(c)(1)(B) and (d) directing Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, CA 94103, a provider of electronic communication service or remote computing service, to disclose records and other information pertaining to a subscriber to wit: Downtown Medical Clinic, located at 113 Hopkins Street, Bells, TN owned and operated by Dr. Loran Karlosky, M.D.

On this this ____ day of _____, 2017.

CERTIFICATE OF SERVICE

I, _____, hereby do certify that I have served a copy of the foregoing on Downtown Medical Clinic, Loran Karlosky, M.D., _____ Jackson, TN _____ by

_____ placing a copy in the U.S. Mail, First Class, postage prepaid,
_____ via facsimile at _____, or
_____ via hand delivery
on this the ____ day of _____, 20__.



**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**
Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 03/22/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 03/23/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Document - Notice served – LORAN KARLOSKY

(S) MARY A BOND,FNP, W/F, [REDACTED]
 (S) GLENN R BONIFIELD,PHARMD, W/M, [REDACTED]
 (S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On March 22, 2017, this agent served a Notice, as directed by Assistant District Attorney General Hillary Parham, District General's Office, 28th Judicial District, to LORAN KARLOSKY. The Notice was served by United States Postal Service, Certified Mail, Return Receipt, 7005 1160 0003 9213 4491 to LORAN KARLOSKY, [REDACTED] Jackson, Tennessee. A copy of the executed Notice and Certified Mail receipt is attached.

DBP/II

Attachment #50, #51



Document Seq: 1588503, Document Title: Sub7Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT
OF CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

NOTICE

The State of Tennessee and through its criminal investigators, hereby gives notice that it has made application for an order pursuant to Title 18, United States Code, §§ 2703(c)(1)(B) and (d) directing Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, CA 94103, a provider of electronic communication service or remote computing service, to disclose records and other information pertaining to a subscriber to wit: Downtown Medical Clinic, located at 113 Hopkins Street, Bells, TN owned and operated by Dr. Loran Karlosky, M.D.

On this this 22nd day of March, 2017.

Douglas B. Pate

CERTIFICATE OF SERVICE

I, Douglas B. Pate, hereby do certify that I have served a copy of the foregoing on Downtown Medical Clinic, Loran Karlosky, M.D., [REDACTED] Jackson, TN [REDACTED] by

ABP placing a copy in the U.S. Mail, First Class, postage prepaid,
[REDACTED] via facsimile at [REDACTED], or
[REDACTED] via hand delivery

on this the 22nd day of March, 2017.

Douglas B. Pate

FILED
CIRCUIT COURT OF CROCKETT CO.
Date: 3-22-17
Time: 9 am
Kim Kail, Circuit Court Clerk
S Phillips O.C.

NORTH JACKSON
 161 W UNIVERSITY PKWY
 JACKSON
 TN
 38305-9998
 4744060496
 03/22/2017 (800)275-8777 10:32 AM
 Product Sale Final
 Description Qty Price
 Prepaid Mail 1
 (Weight: 0 lbs. 0.40 oz.)
 (Destination: JACKSON, TN 38305)
 (Acceptance Date: 03/22/2017 10:32
 :49)
 (Label #: 70051160000392134491)
 Total \$0.00

 BRIGHTEN SOMEONE'S MAILBOX. Greeting
 cards available for purchase at select
 Post Offices.

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 quick and easy check-out. Any Retail
 Associate can show you how.

Order stamps at usps.com/shop or call
 1-800-Stamp24. Go to
usps.com/clicknship to print shipping
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 information call 1-800-ASK-USPS.

 Get your mail when and where you want.
 It with a secure Post Office Box. Sign
 up for a box online at
usps.com/poboxes.

All sales final on stamps and postage
 Refunds for guaranteed services only
 Thank you for your business

HELP US SERVE YOU BETTER

TELL US ABOUT YOUR RECENT
POSTAL EXPERIENCE

Go to:
<https://postal.experience.com/Pos>

840-5370-0821-002-00022-15423-02

or scan this code with
 your mobile device:



or call 1-800-410-7420.

YOUR OPINION COUNTS

Bill 840-53700821-2-1215423-2
 Clerk 24

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 49
Certified Fee	3.25
Return Receipt Fee (Endorsement Required)	2.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.99

Sent To: Loren Karlosky
 Street, Apt. No.,
 or PO Box No. [REDACTED]
 City, State, ZIP+4 Jackson, TN

PS Form 3800, June 2002 (See Reverse for Instructions)

Document Seq: 1588510, Document Title: Sub7Att2.pdf

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**
Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 03/22/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 03/23/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Document - Notice forwarded to Practice Fusion– ADA Parham

(S) MARY A BOND,FNP, W/F, [REDACTED]
 (S) GLENN R BONIFIELD,PHARM.D, W/M, [REDACTED]
 (S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On March 22, 2017, at the direction of Assistant District Attorney Hillary Parham, District Attorney General's Office, 28th Judicial District, this agent forwarded an executed Notice to Jim Harwood, Attorney, Practice Fusion, Inc. by email to the address: jharwood@practicefusion.com. ADA Parham and Harwood had negotiated that a Notice be served prior to Practice Fusion's production of Electronic Health Records from a previous court order.

DBP/II

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**
Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 03/22/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 03/23/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Document - Notice filed – Crockett County Circuit Court Clerk

(S) MARY A BOND,FNP, W/F, [REDACTED]
 (S) GLENN R BONIFIELD,PHARMD, W/M, [REDACTED]
 (S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On March 22, 2017, this agent filed a document, 2703(d) Application and Order, with the Crockett County Circuit Court Clerk. The document was stamped Filed, 3-22-17, 9:00 A.M., by Sandra Phillips, Deputy Clerk, Crockett County Circuit Court Clerk's office. The document was signed by Judge Clayburn Peeples, Circuit Court of the 28th Judicial District, on January 9, 2017. Judge Peeples instructed this agent to not file the document with the clerk's office until a court file was opened for the case documents. A copy of the signed and filed document is attached.

DBP/II

Attachment #52

Document Seq: 1588515, Document Title: Sub9Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT
OF CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

FILED
TIME 10:45 AM/PM
JAN 09 2017

2703(d) APPLICATION

AMANDA BROWN, CLERK
BY: [Signature], D.C.

The State of Tennessee, by and through its criminal investigators, hereby makes application for an order pursuant to Title 18, United States Code, §§ 2703(c)(1)(B) and (d) directing Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, CA 94103, a provider of electronic communication service or remote computing service, to disclose records and other information pertaining to a customer or subscriber. It is further requested that the order apply to any other providers of electronic communication service or remote computing service whose assistance is needed to provide the records or other information sought.

1. RECORDS AND OTHER INFORMATION SOUGHT

The State of Tennessee requests that the provider disclose the information and records described in Attachment A to the proposed order submitted with this application. Based upon prior contact with the provider, the applicant verifies that the description and format of the records and other information sought are acceptable to the provider, that the types of records and other information are readily available to the provider.

2. REASONABLE GROUNDS FOR ISSUANCE OF ORDER

In support of this request, the applicant states the following:

1. The Tennessee Bureau of Investigation is conducting a criminal investigation of violations of Tennessee Code Annotated § 71-5-2601 (a)(2)(A), TennCare Fraud, and Tennessee

FILED
CIRCUIT COURT OF CROCKETT CO.
Date: 3-22-17
Time: 9:00 AM
Kim Kail, Circuit Court Clerk [Signature]

Document Seq: 1588515, Document Title: Sub9Att1.pdf

Code Annotated § 39-17-417, Conspiracy to Distribute Controlled Substances. There are reasonable grounds to believe that the requested electronic records are relevant and material to the ongoing criminal investigation as demonstrated below:

Loran Karlosky, MD, owns a medical clinic, Downtown Medical Clinic, located at 113 Hopkins Street, Bells, TN. Mary Ann Bond, FNP, was employed by Karlosky as the primary licensed healthcare provider at the Downtown Medical Clinic. Information provided to the Tennessee Department of Health by Loran Karlosky, MD, indicate medical records at the Downtown Medical Clinic are maintained in an electronic format, Electronic Medical Record (EMR), on a "cloud" server(s) through an account with Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, CA 94103. The specific patient medical records listed in Attachment A are narrow in scope and specific to a criminal investigation in violation of Tennessee Code Annotated § 71-5-2601 (a)(2)(A), TennCare Fraud, Tennessee Code Annotated § 39-17-417, Conspiracy to Distribute Controlled Substances, and Tennessee Code Annotated § 39-14-602 Tennessee Personal and Commercial Computer Act of 2003. Independent investigations conducted by the Tennessee Department of Health, Office of Investigations, Health Related Boards, and the 28th Judicial District Violent Crime and Drug Task Force has exposed an extraordinary quantity of prescriptions written for controlled substances originating at the Downtown Medical Clinic diverted for illicit non-medical purposes. Evidence seized during a search warrant executed on April 19, 2016, at the pharmacy operated by Glenn Bonifield, Jr., Mehr Drug Store located at 81 Main Street, Bells, TN, demonstrated a high volume of narcotic prescriptions written by Mary Ann Bond, FNP. A former employee of Downtown Medical clinic alleged to agents of the Tennessee Bureau of Investigation and 28th Judicial District Violent Crime and Drug Task Force that Mary Ann Bond, FNP, was overprescribing narcotic prescriptions

Document Seq: 1588515, Document Title: Sub9Att1.pdf

to an abnormally large number of patients from an extensive geographical area while the clinic owner, Loran Karlosky, MD, was complacent and instructed the employee to bill healthcare insurance companies for services she alleged were fraudulent. The former employee alleges Loran Karlosky, MD, directed the use of a mobile phone app, Epocrates, to enter narcotic prescriptions prescribed by Mary Ann Bond, FNP, to reveal the medical diagnosis code necessary to bill healthcare insurance for services. Persons practicing medicine in the State of Tennessee, pursuant to Tennessee Code Annotated § 63-6-204, have a duty to create and maintain medical records as a component of a standard of care and minimum competency. A medical provider must cause to be created or cause to be maintained a medical record for each patient receiving medical care pursuant to Rules of the Tennessee State Board of Medical Examiners 0880-2.15. Also required under Rule 0880-2.15, medical providers are required to maintain the patient medical record for ten (10) years from the last professional contact. Medical providers, pursuant to Tennessee Code Annotated § 71-5-2503, are required to provide the Tennessee Bureau of Investigation's Medicaid Fraud Control Unit and TennCare Office of Inspector General, the medical records specific to Medicaid / TennCare patients for inspection in connection with an investigation. The Tennessee Bureau of Investigation's Medicaid Fraud Control Unit agents may have access to medical records pursuant to 45 Code of Federal Regulations §164.512 of the Health Insurance Portability and Accountability Act (HIPPA) as part of their health oversight duties.

3. PRECLUSION OF NOTIFICATION

Pursuant to Title 18, United States Code, Sections 2705(a), the applicant further requests that the Court order the applicable providers, their agents and employees, not to notify any other persons of the existence of the requested court order because there is reason to believe that notification of the existence of the requested court order will result in assisting Loran Karlosky,

Document Seq: 1588515, Document Title: Sub9Att1.pdf

MD, and Mary Ann Bond, FNP, operating Downtown Medical Clinic, 113 Hopkins Street, Bells, TN, with the destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation or unduly delaying a trial based on the nature and scope of the investigation described in subsection B above for at least ninety (90) days.

WHEREFORE, it is respectfully requested that the Court grant the proposed order submitted with this application.

Sworn to at Humboldt, Tennessee, this 9th day of January, 2017.



Document Seq: 1588515, Document Title: Sub9Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT
OF CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

NOTICE

The State of Tennessee and through its criminal investigators, hereby gives notice that it has made application for an order pursuant to Title 18, United States Code, §§ 2703(c)(1)(B) and (d) directing Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, CA 94103, a provider of electronic communication service or remote computing service, to disclose records and other information pertaining to a subscriber to wit: Downtown Medical Clinic, located at 113 Hopkins Street, Bells, TN owned and operated by Dr. Loran Karlosky, M.D.

On this this 22nd day of March, 2017.

Dan B. Pate

CERTIFICATE OF SERVICE

I, _____, hereby do certify that I have served a copy of the foregoing on Downtown Medical Clinic, Loran Karlosky, M.D., _____ Jackson, TN _____ by

_____ placing a copy in the U.S. Mail, First Class, postage prepaid,
_____ via facsimile at _____, or
_____ via hand delivery
on this the _____ day of _____, 20____.

FILED
CIRCUIT COURT OF CROCKETT CO.
Date: 3-22-17
Time: 9 AM
Kim Kail, Circuit Court Clerk
S. Phillips O.C.

Document Seq: 1588515, Document Title: Sub9Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT OF
CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

§ 2703(d) ORDER

This matter comes before the Court pursuant to an application for the production of data and electronic medical records, for an order pursuant to Title 18, United States Code, §§ 2703(c)(1)(B) and (d), for the production of certain records and other information; the Court finds that the applicant has offered specific and articulable facts showing that there are reasonable grounds to believe that the records and information sought by the applicant are relevant and material to an ongoing criminal investigation, and that disclosure to any person of this investigation or of this application and order will result in assisting Loran Karlosky, MD, and Mary Ann Bond, FNP, operating Downtown Medical Clinic, 113 Hopkins Street, Bells, TN, with the destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation or unduly delaying a trial.

IT IS HEREBY ORDERED, pursuant to Title 18, United States Code, §§ 2703(c)(1)(B) and (d), that Practice Fusion, Inc., 731 Market Street, Suite 400, San Francisco, CA 94103 and any other providers of electronic communication service or remote computing service whose assistance is needed to comply with this order, shall disclose to the Tennessee Bureau of Investigation the records and other information described on Attachment A, which is attached to and incorporated into this order;


FILED
CIRCUIT COURT OF CROCKETT CO.
Date: 8-22-21
Time: 9:00 AM
Kim Kail, Circuit Court Clerk
S. Phillips D.C.

Document Seq: 1588515, Document Title: Sub9Att1.pdf

IT IS FURTHER ORDERED the Tennessee Bureau of Investigation shall compensate the providers for such costs as are reasonably necessary and which have been directly incurred in complying with this order, as required by Title 18, United States Code, Section 2706;

IT IS FURTHER ORDERED, pursuant to Title 18, United States Code, Section 2705(a), that the providers, their agents and employees, shall not notify any other person of the existence of this Court order for a period of 6 months from the date of this order or until otherwise ordered by the Court.

SO ORDERED this 9th day of January, 2017.



Clayburn Peoples
Judge of the Circuit Court of the
Twenty-Eighth Judicial District
State of Tennessee

Document Seq: 1588515, Document Title: Sub9Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT OF
CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

ATTACHMENT A

Complete and accurate records maintained and stored by Practice Fusion, Inc., for the Downtown Medical Clinic located at 113 Hopkins Street, Bells, TN, to include, but not limited to, administrative activity logs indicating date, time and username record entries, content of accounts, internal secure communications, activity feed, internet protocol (IP) log, customer service communications, medical records for the Downtown Medical Clinic in the custody and control of Practice Fusion.

Include a notarized true copy attestation signed by the Practice Fusion, Inc. custodian of records. The records described above shall be provided to agents of the Tennessee Bureau of Investigation in electronic format during regular business hours for the duration of the order at the following:

Douglas Pate, Special Agent
Tennessee Bureau of Investigation
121 Executive Drive
Jackson, TN 38305
731-984-6644 office
731-668-9769 fax
doug.pate@tn.gov

FILED
CIRCUIT COURT OF CROCKETT CO.
Date: 3-22-17
Time: 9:00 am
Kim Kail, Circuit Court Clerk
S. Phillips

Document Seq: 1588515, Document Title: Sub9Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT OF
CROCKETT COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

Application No.

MOTION TO SEAL

The State of Tennessee, by its attorneys pursuant to 18 U.S.C § 2705(a), hereby moves the Court to seal all documents filed or issued under the above-captioned application number for at least ninety (90) days. As a basis for said motion, the government relies upon the facts and circumstances described in the Application filed with this motion.

A proposed order accompanies this motion.

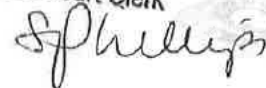
Dated at Humboldt, Tennessee, this 9th day of January, 2017.

Respectfully submitted,

By:



CIRCUIT COURT OF CROCKETT CO.
Date: 3.22.17
Time: 9:00am
Kim Kail, Circuit Court Clerk



Document Seq: 1588515, Document Title: Sub9Att1.pdf

IN THE CIRCUIT COURT OF THE TWENTY-EIGHTH JUDICIAL DISTRICT OF
TENNESSEE IN CROCKET COUNTY, ALAMO, TENNESSEE

IN THE MATTER OF THE APPLICATION
OF THE STATE OF TENNESSEE
FOR AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

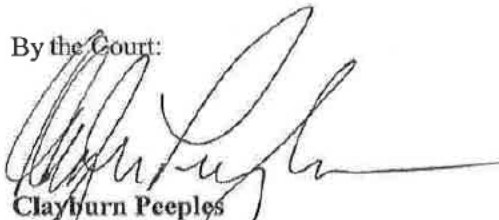
Application No(s)

SEALING ORDER

Upon consideration of the State's Motion to Seal, under 18 U.S.C. § 275(a), and its 2703(d) Application in the above-captioned matter, the Court finds that this matter is appropriately kept under seal and, therefore, **ORDERS** that the Clerk of Court accept for filing under seal the submissions made by the government under the above-captioned application number, and all orders issued by the Court, for a period of ninety (90) days or until further orders of this court.

Dated at Humboldt, Tennessee this 9th day of January, 2017.

By the Court:



Clayburn Peebles
Judge of the Circuit Court of the
Twenty-Eighth Judicial District
State of Tennessee

FILED
CIRCUIT COURT OF CROCKETT CO.
Date: 3-22-17
Time: 9:00 am
Kim Kall, Circuit Court Clerk
S. Phillips

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 04/03/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 04/07/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Document – Certified Mail Receipt Return – US Postal Service

(S) MARY A BOND,FNP, W/F, [REDACTED]
(S) GLENN R BONIFIELD,PHARM D, W/M, [REDACTED]
(S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On March 22, 2017, a Notice was served to LORAN KARLOSKY by the United States Postal Service, Certified Mail Receipt Return. The Certified Mail Receipt Return was delivered on March 24, 2017, with documentation provided to this agent on April 3, 2017. A copy of the documentation from the United States Postal Service is attached.

DBP/II

Attachment #53

This confidential document is the property of TBI.
Its contents are not to be distributed outside of your agency.

Page 1



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Loran Karlosky

2. Article Number

(Transfer from service label)

PS Form 3811, August 2001

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

Loran Karlosky

C. Date of Delivery

03/24/17

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7005 1160 0003 9213 4491

Domestic Return Receipt

102595-01-M-2509

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage

\$ 0.49

Certified Fee

3.35

Return Receipt Fee
(Endorsement Required)

2.75

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

\$ 6.59

Sent To

Loran Karlosky

Street, Apt. No.,
or PO Box No.

City, State, ZIP+4

Jackson, TN

PS Form 3800, June 2002

See Reverse for Instructions

NORTH JACKSON
 161 W UNIVERSITY PKWY
 JACKSON
 TN

38305-9998
 4744060496

03/22/2017 (800)275-8777 10:32 AM

Product Description	Sale Qty	Final Price
Prepaid Mail	1	

(Weight: 0 lbs. 0.40 oz.)
 (Destination: JACKSON, TN 38305)
 (Acceptance Date: 03/22/2017 10:32:49)
 (Label #: 70051160000392134491)

Total \$0.00

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All sales final on stamps and postage
 Refunds for guaranteed services only
 Thank you for your business

HELP US SERVE YOU BETTER

TELL US ABOUT YOUR RECENT POSTAL EXPERIENCE

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<https://postalexperience.com/Pos>

840-5370-0821-002-00012-15423-02

or scan this code with
 your mobile device:



or call 1-800-410-7420.

YOUR OPINION COUNTS

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**
Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 04/06/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 04/07/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Document - Notice returned – Crockett County Circuit Court Clerk

(S) MARY A BOND,FNP, W/F, [REDACTED]
 (S) GLENN R BONIFIELD,PHARMD, W/M, [REDACTED]
 (S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On April 6, 2017, this agent returned the Notice, served to LORAN KARLOSKY on March 22, 2017, to the Crockett County Circuit Court Clerk. The Notice was served by the United States Postal Service, Certified Mail Receipt Return. The Certified Mail Receipt Return was delivered on March 24, 2017, with documentation provided to this agent on April 3, 2017. Sandra Phillips, Deputy Clerk, Crockett County Circuit Court Clerk, was provided the original Notice and a copy of the documentation from the United States Postal Service.

DBP/II

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**
Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 04/17/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 04/27/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Document - Electronic Health Records – Practice Fusion, Inc.

(S) MARY A BOND,FNP, W/F, [REDACTED]
 (S) GLENN R BONIFIELD,PHARMD, W/M, [REDACTED]
 (S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On April 17, 2017, this agent received a document from Jim Harwood, Attorney, Practice Fusion, Inc. The document provided by Harwood was the notice of the proceeds to the court order previously served to Practice Fusion, Inc. for electronic health records. The document specifies the location of the documents on a cloud server with instructions to download. Also, there were links to software to open the files provided. A portion of the password required to access the files was provided with the document with instruction to contact Harwood by telephone for the remaining portion of the password. A copy of the document provided is attached.

DBP/II

Attachment #54

Document Seq: 1604397, Document Title: Sub8Att1.pdf



April 17, 2017

ELECTRONIC MAIL DELIVERY

Special Agent Douglas Pate
Tennessee Bureau of Investigation
121 Executive Drive
Jackson, TN 38305
Email: doug.pate@tn.gov

Dear Special Agent Pate:

Pursuant to the Court Order "IN THE MATTER OF THE APPLICATION OF THE STATE OF TENNESSEE FOR AN ORDER PURSUANT TO 18 U.S.C. 2703(d) [Downtown Medical Clinic]," issued by the Twenty-Eighth Judicial District, State of Tennessee, on January 9, 2017 (the "Order"), Practice Fusion, Inc. hereby provides the requested materials.

You may access the materials using the following information:

1. Go to
<https://drive.google.com/drive/folders/0BybA7swRG3nmbU04SUJZUU5wQkU?usp=sharing>
2. Enter Password: [REDACTED] [xxxxx] (the final 5 digits will be provided over the phone)

Please be advised that to access some of the content, a download and installation of "WinRAR" may be necessary. A free trial copy of the WinRAR software may be downloaded at <http://www.rarlab.com/download.htm>.

Please also be advised that with respect to the PDFs, a download and installation of Irfanview may be required. A free copy of Irfanview may be downloaded here: <http://irfanview.com/>

Please feel free to let us know if we can be of further assistance.

Sincerely,

Practice Fusion, Inc.



**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**
Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 04/19/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 04/27/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Telephone Conversation - JIM HARWOOD, Practice Fusion, Inc.

(S) MARY A BOND,FNP, W/F, [REDACTED]

(S) GLENN R BONIFIELD,PHARMD, W/M, [REDACTED]

(S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On April 19, 2017, this agent contacted Jim Harwood, Attorney, Practice Fusion, Inc., by telephone at the number: 415-[REDACTED]. The purpose of the communication with Harwood was to obtain the remaining portion of the password required to access electronic health records provided by Practice Fusion, Inc. on a cloud server. Harwood provided the necessary password which will be maintained by the case agent.

DBP/II

**TENNESSEE BUREAU OF INVESTIGATION
INVESTIGATIVE REPORT**
Case # : JA-16G-000020
[REDACTED]**Author:** Pate, Douglas Byron**Activity Date:** 04/19/2017**Case Agent:** Pate, Douglas Byron**Report Date:** 04/27/2017**SAC/ASAC:** Reed, Terry**Approved By:** Reed, Terry**Description:** Document - Electronic Health Records – Practice Fusion, Inc.

(S) MARY A BOND,FNP, W/F, [REDACTED]
 (S) GLENN R BONIFIELD,PHARMD, W/M, [REDACTED]
 (S) LORAN EDWARD KARLOSKY, W/M, [REDACTED]

On April 20, 2017, Frank Bryant, Programmer, Tennessee Bureau of Investigation, Medicaid Fraud Control Unit, was contacted regarding assistance with downloading electronic health records provided by Practice Fusion, Inc. Bryant was able to successfully download the electronic files provided by Practice Fusion, Inc.; however, the files were not in a functional format to the investigation. Bryant is adapting the voluminous files provided to further this investigation.

DBP/II



UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2020 JAN 27 PM 12:02

CLERK

BY EH
DEPUTY CLERK

UNITED STATES OF AMERICA)

v.)

PRACTICE FUSION, INC.,)

Defendant.)

Docket No. 2:20-cr-11

DEFERRED PROSECUTION AGREEMENT

Pursuant to the understandings specified below, the United States of America (the “Government”) through its attorney Christina E. Nolan, United States Attorney for the District of Vermont (the “USAO” or the “Office”), and the defendant Practice Fusion, Inc. (“Practice Fusion” or the “Company”), under authority granted by its Board of Directors in the form of a Board Resolution (a copy of which is attached as **Exhibit A**), hereby enter into this Deferred Prosecution Agreement (the “Agreement”).

The Criminal Information

1. Practice Fusion acknowledges and consents to the filing of a two count Information (the “Information”) in the United States District Court for the District of Vermont (the “Court”), charging Practice Fusion with conspiring with a leading extended release opioid (“ERO”) company (“Pharma Co. X”) to receive remuneration in return for arranging for or recommending purchasing or ordering of a good or item for which payment may be made in whole or in part under a Federal health care program in violation of 18 U.S.C. § 371; and knowingly and willfully soliciting and receiving remuneration from Pharma Co. X in return for arranging for or recommending purchasing or ordering of a good or item for which payment may

2. The Office enters into this Agreement based on the individual circumstances presented by this case and the Company, including:

a. Practice Fusion stipulates that the facts set forth in the Statement of Facts, attached hereto as **Exhibit C** and incorporated herein, are true and accurate, and admits, accepts and acknowledges that it is responsible under United States laws for the acts of its officers and employees as set forth in the Statement of Facts. Should the Office pursue the prosecution that is deferred by this Agreement, Practice Fusion stipulates to the admissibility of the Statement of Facts in any proceeding, including any trial and sentencing proceeding;

b. Practice Fusion did not receive voluntary disclosure credit because it did not voluntarily disclose to the Office, or any other Governmental agency, the conduct described in the Statement of Facts. Even after the Office had issued formal legal process and requested documents relating to Pharma Co. X, Practice Fusion did not identify and disclose to the Office the conduct described in the Statement of Facts;

c. Practice Fusion did not self-disclose any wrongdoing or identify any potential legal or regulatory areas of concern to the Government; identify individual wrongdoers; disclose facts relevant to the Government's investigation that the Government was not previously aware of; or acknowledge and accept responsibility for any wrongdoing by Practice Fusion or any of its employees. Practice Fusion informed the Government on multiple occasions that it had found nothing troubling at the Company from a legal or regulatory perspective. Practice

Fusion additionally sought on multiple occasions to limit the documents produced in response to Government subpoenas, which resulted in the parties conducting multiple meet and confer conferences. In November 2018, the Office provided written notice to Practice Fusion that it did not view Practice Fusion as cooperating with the Government's investigation and any professed cooperation was deficient. Shortly thereafter, and as a consequence of the Office's view of Practice Fusion's approach to the investigation, the Office pursued a portion of its investigation covertly and in Spring 2019 advised Practice Fusion that it was prepared to charge Practice Fusion.

d. Only after the Government advised Practice Fusion that it was prepared to bring charges did Practice Fusion's conduct change. The terms of this Agreement reflect and take into consideration Practice Fusion's belated cooperation. Upon learning of the government's intent to bring charges, Practice Fusion promptly completed an additional internal investigation. Practice Fusion and Allscripts communicated immediately with the Government regarding Practice Fusion's intention and desire to cooperate fully with the Government. Practice Fusion's cooperation at this stage included conducting additional investigation into the conduct described in the Statement of Facts, making regular presentations to the Office, producing additional documents as requested by the Government, agreeing to accept responsibility, and collecting, analyzing, and preparing additional evidence and information to be shared with the Office;

e. Practice Fusion also engaged in remedial measures, including the following: promptly removing from its electronic health record ("EHR") all clinical decision support ("CDS") alerts for which it had received remuneration from its pharmaceutical company clients; conducting an immediate review of the medical appropriateness of its existing

pharmaceutical-sponsored CDS alerts; engaging outside counsel to conduct a review of all sponsored CDS alerts; and pausing sale of all new sponsored CDS alerts pending completion of expert and legal review;

f. Practice Fusion has enhanced and has committed to continuing to enhance its compliance program and internal controls, including ensuring its compliance program satisfies the requirements set forth in **Exhibit D** to this Agreement (“Compliance Addendum”), developing and implementing additional role-based training on the Anti-Kickback Statute, restructuring certain aspects of Practice Fusion’s organization to provide for enhanced separation between clinical and commercial activities and to provide increased supervision by qualified individuals of the clinical initiatives undertaken by the business, and revising existing policies and procedures to enhance controls around CDS alerts;

g. Based on the above, Practice Fusion’s remediation, agreement to the appointment of an Oversight Organization, implementation of the Compliance Addendum, agreement to undertake the terms of the Additional Compliance Terms (which is hereby incorporated by reference), and agreement to report to the Office as set forth in Paragraphs 7 and 8, the Office determined that an independent compliance monitor was unnecessary.

Criminal Fine, Forfeiture, and Civil False Claims Act Payment

3. Practice Fusion agrees to pay a total of \$145,000,000.00 to the United States and participating States, which includes a criminal fine in the amount of \$25,398,300.00 (“Criminal Fine”) and forfeiture of \$959,700.00 (“Forfeiture”) (together with the Criminal Fine, the “Criminal Penalty”). The Criminal Penalty is based on the conduct described in the Information and the Statement of Facts and shall be paid to the United States pursuant to this Agreement. Practice Fusion additionally agrees to the payment of \$118,642,000 to resolve allegations of

violations of the False Claims Act, 31 U.S.C. § 3729, *et seq.* Practice Fusion's conduct giving rise to violations of the False Claims Act are described in the Covered Conduct section of a Civil Settlement Agreement entered between the United States and Practice Fusion.

4. Practice Fusion shall transfer the Criminal Penalty to the United States by no more than 10 days following the Effective Date of this Agreement. Such payment shall be made by wire instructions provided by the Office. If Practice Fusion fails to timely make the payment required under this paragraph, interest (at the rate specified in 28 U.S.C. § 1961) shall accrue on the unpaid balance through the date of payment, unless the Office, in its sole discretion, chooses to reinstate prosecution pursuant to Paragraphs 14, and 15 below. Practice Fusion certifies that the funds used to pay the Criminal Penalty are not the subject of any lien, security agreement, or other encumbrance. Transferring encumbered funds or failing to pass clean title to these funds in any way will be considered a breach of this Agreement and the United States shall be released from any of its obligations hereto.

5. Practice Fusion agrees that the Criminal Penalty shall be treated as a penalty paid to the Government for all purposes, including all tax purposes. Practice Fusion agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, local, or foreign tax for any portion of the Criminal Penalty that Practice Fusion has agreed to pay the United States pursuant to this Agreement.

Practice Fusion's Non-Monetary Obligations

6. Practice Fusion agrees to cooperate fully with the Office, and any other governmental agency designated by the Office regarding (1) any matter relating to the conduct described in the Information or Statement of Facts, (2) the Covered Conduct described in the Civil Settlement Agreement, (3) its privacy practices and use of personal health information, (4)

any investigation or prosecution of Practice Fusion's current or former officers, agents, affiliates, directors, and employees related to the issues described in (1) - (3); or (5) any matter relating to unlawful conduct by Practice Fusion's current or former customers and/or counterparty or client related to the issues described in (1) - (3). Practice Fusion's obligation to cooperate shall continue until the later of the date upon which all investigations and prosecutions arising out of:

- a. the conduct described in the Statement of Facts;
- b. the Covered Conduct described in the Civil Settlement Agreement; and

the end of the term specified in Paragraph 10. Practice Fusion's subsidiaries and majority-owned and controlled affiliates are required to cooperate fully to the same extent as Practice Fusion. As described further in Paragraph 28 below, should Practice Fusion cease to exist as a going concern, or should substantially all of its employees and/or its assets be transferred to another entity, such successor in interest shall be required to cooperate fully to the same extent as Practice Fusion.

7. It is understood that Practice Fusion shall:

- a. truthfully and completely disclose all information with respect to the activities of Practice Fusion and its officers, agents, directors, affiliates and employees concerning all matters about which the Office inquires of it, which information can be used for any purpose;
- b. cooperate fully with the Office, the Department of Justice Commercial Litigation Branch, Fraud Section ("Civil Frauds"), and any other law enforcement agency designated by the Office;
- c. attend all meetings at which the Office requests its presence and use its best efforts to secure the attendance and truthful statements or testimony of any past or current

officers, directors, agents, or employees of Practice Fusion at any meeting, interview, deposition, sworn civil investigative demand (“CID”) testimony, before the grand jury, or at trial or at any other court proceeding;

d. provide to the Office, upon request, any document, record, or other tangible evidence relating to matters about which the Office or any designated law enforcement agency inquires of it;

e. assemble, organize, and provide in a responsive and prompt fashion, and upon request, on an expedited schedule, all documents, records, information and other evidence in Practice Fusion’s possession, custody or control, as may be requested by the Office, or other designated law enforcement agency;

f. volunteer and provide to the Office any information and documents that come to Practice Fusion’s attention that may be relevant to the Office’s investigation of this matter, any issue related to the Statement of Facts, and any issue that would fall within the scope of the duties of the Oversight Organization referred to in Paragraph 24;

g. provide testimony or information necessary to identify or establish the original location, authenticity, or other basis for admission into evidence of documents or physical evidence in any criminal or other proceeding as requested by the Office, or designated governmental agency, including, but not limited to information and testimony concerning the conduct set forth in the Information and Statements of Facts, and the Covered Conduct as described in the Civil Settlement Agreement;

h. bring to the Office’s attention all criminal conduct by Practice Fusion or any of its agents or employees acting within the scope of their employment related to violations

i. bring to the Office’s attention any administrative, regulatory, civil or criminal proceeding or investigation by a federal or state government agency of Practice Fusion or any of its agents or employees acting within the scope of their employment;

k. commit (i) no criminal offenses, or (ii) regulatory violations pertaining to the CDS issues involved in this Agreement under the federal laws of the United States subsequent to the execution of this Agreement.

8. In addition to the obligations set forth in Paragraph 7, during the term of this Agreement, should the Company, or any of its subsidiaries or affiliates, learn of any evidence of a kickback violation by any other EHR vendor, Practice Fusion shall promptly report such evidence or allegation to the Office and Civil Frauds. This provision shall not apply (1) to the extent Practice Fusion is legally prohibited from reporting any evidence or allegation of

misconduct by any other EHR vendor or (2) to information obtained by Practice Fusion in the course of due diligence or other information exchanged as part of a potential strategic transaction or other corporate transaction.

9. For the duration of this Deferred Prosecution Agreement, Practice Fusion shall publicly host, at its own expense, the documents underlying the conduct described in the Statement of Facts. Such documents shall include, but not be limited to, the communications, presentations, contracts, negotiations, analyses, and reports agreed to by the Office as reflecting the relevant communications. Such documents shall be hosted on a public internet site and Practice Fusion shall bear all costs and responsibility for redacting any personal information, personal health information, trade secrets, and information sufficient to identify Pharma Co. X and its employees and drug brands unless and until directed by the Office that such information relating to Pharma Co. X need no longer be redacted.

10. Practice Fusion agrees that its obligation to cooperate pursuant to this agreement and the Additional Compliance Terms, which shall commence on the Effective Date, will continue for three (3) years from the date on which the Information is filed, unless otherwise extended pursuant to Paragraph 15 below. Practice Fusion's obligation to cooperate is not intended to apply in the event that a prosecution against Practice Fusion by this Office is pursued and not deferred.

Deferral of Prosecution

11. In consideration of Practice Fusion's entry into this Agreement, the Additional Compliance Terms, and its commitment to: (a) accept and acknowledge responsibility for its conduct, as described in the Statement of Facts, acknowledge the filing of the Information, and admit the facts in the Statement of Facts; (b) cooperate with the Office and any other law

enforcement agency designated by this Office; (c) make the payments specified in this Agreement; (d) comply with Federal criminal laws (as provided herein in Paragraph 7); and (e) otherwise comply with all of the terms of this Agreement and the Additional Compliance Terms, the Office shall recommend to the Court that prosecution of Practice Fusion on the Information be deferred for three (3) years from the Effective Date of this Agreement, except that the term of this Agreement may be extended as described in Paragraph 15 below, in the sole discretion of the Office.

12. Practice Fusion shall expressly waive indictment and all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, 18 U.S.C. § 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the District of Vermont for the period during which this Agreement is in effect. Practice Fusion further agrees to consent to venue in the United States District Court for the District of Vermont, and waive any statute of limitations defense should the Office pursue the prosecution of the crimes charged in the Information.

13. The Office agrees that, if Practice Fusion is in compliance with all of its obligations under this Agreement, the Office will, within thirty (30) days after the expiration of the deferral-of-prosecution period (including any extensions thereof), seek dismissal, with prejudice of the Information filed against Practice Fusion pursuant to this Agreement, except in the event of a violation by Practice Fusion of any additional charges against Practice Fusion relating to its conduct as described in the admitted Statement of Facts. This Agreement does not provide any protection against prosecution for any crimes except as set forth above and does not apply to any individual or entity other than Practice Fusion. Practice Fusion and the Office understand that the Agreement to defer prosecution of Practice Fusion can only operate as

intended if the Court grants a waiver of the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(2). Should the Court decline to do so—or should the Court decline to defer prosecution for any other reason—both the Office and Practice Fusion shall be released from any obligation imposed upon them by this Agreement, and this Agreement shall be null and void, except for the tolling provision set forth in Paragraph 12.

Breach of the Agreement

14. It is understood that should the Office, in its sole discretion, but subject to the notice and cure provisions set forth in Paragraph 17 below, determine that Practice Fusion has: (a) knowingly given false, incomplete or misleading information, either during the term of this Agreement or in connection with the Office's investigation of the conduct described in the Information and Statement of Facts, or described in the Covered Conduct section of the Civil Settlement Agreement, (b) committed any crime under the Federal laws of the United States subsequent to the execution of this Agreement, or (c) otherwise violated any provision of this Agreement, including the terms of the Additional Compliance Terms, Practice Fusion shall, in the Office's sole discretion, thereafter be subject to prosecution for any federal criminal violation or suit for any civil cause of action—not released by the Civil Settlement Agreement—of which the Office has knowledge, including, but not limited to, a prosecution or civil action based on the Information, the Statement of Facts, the conduct described therein, or perjury and obstruction of justice. Any such prosecution or civil action may be premised on any information provided by or on behalf of Practice Fusion to the Office or any government agency at any time. In any such prosecution or civil action, it is understood that: (a) no charge or claim would be time-barred provided that such prosecution or civil action is brought within the applicable statute of limitations period, excluding the period from the Effective Date of this Agreement until its

termination; (b) Practice Fusion agrees to toll, and exclude from any calculation of time, the running of the applicable statute of limitations for the length of this Agreement starting from the Effective Date of this Agreement and including any extension of the deferral-of-prosecution period pursuant to Paragraph 15 below; and (c) Practice Fusion waives any objection to venue with respect to any charges in the District of Vermont. By this Agreement, Practice Fusion expressly intends to and hereby does waive its rights in the foregoing respects, including any right to make a claim premised on the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay. Such waivers are knowing and voluntary, and in express reliance on the advice of Practice Fusion's counsel.

15. It is further agreed that in the event that the Office, in its sole discretion, determines that Practice Fusion has violated any provision of this Agreement, including failure to meet its obligations under this Agreement: (a) all statements made or acknowledged by or on behalf of Practice Fusion to the Office or any government agency, including, but not limited to the Statement of Facts, or any testimony given by Practice Fusion or by any agent of Practice Fusion before a grand jury, or elsewhere, whether before or after the Effective Date of this Agreement, or any leads from such statements or testimony, shall be admissible in evidence in any and all criminal or civil proceedings hereinafter brought by the Office against Practice Fusion; and (b) Practice Fusion shall not assert any claim under the United States Constitution, Rule 11 (f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other Federal rule, that statements made or acknowledged by or on behalf of Practice Fusion before or after the Effective Date of this Agreement, or any leads derived therefrom, should be suppressed or otherwise excluded from evidence. It is the intent of this Agreement to waive any and all rights in the foregoing respects. In addition, if the Office

determines that Practice Fusion has violated this Agreement and has failed to cure any such violation Practice Fusion agrees to admit, in any criminal or civil proceeding initiated by the Office or Department of Justice against Practice Fusion for the conduct covered in the Statement of Facts the following assertions: “The Pain CDS described in the Statement of Facts successfully resulted in increased ERO sales by Pharma Co. X. Based on the higher rate of opioid prescriptions among providers who received the Pain CDS, the alerts caused tens of thousands of additional prescriptions for extended release opioids, a substantial portion of which were paid for by federal health care programs such as Medicare and Medicaid.” Provided that Practice Fusion is in compliance with the Agreement, the assertions in the preceding sentences are not part of the factual admissions made by Practice Fusion in this matter. Practice Fusion agrees that, in the event that the Office determines (subject to the notice and cure provisions set forth in Paragraph 17 below) during the deferral-of-prosecution period described above in Paragraph 11 (or any extensions thereof) that Practice Fusion has violated any provision of this Agreement, an extension of the deferral-of-prosecution period may be imposed, in the sole discretion of the Office, up to an additional two (2) years, but in no event shall the total term of the deferral-of-prosecution period of this Agreement exceed five (5) years. Any extension of the deferral-of-prosecution period extends all terms of this Agreement for an equivalent period.

16. Additionally, as a contractual remedy, Practice Fusion and the Office agree that in the event that the Government determines that Practice Fusion has breached this Agreement, the Office may require—at its sole discretion but subject to the notice and cure provisions set forth in Paragraph 17 below, and in lieu of prosecuting the crimes deferred by this Agreement—Practice Fusion to provide stipulated penalties of up to \$25,000.00 per day for each day that Practice Fusion is in breach of this Agreement.

17. Should the Office determine that Practice Fusion has violated this Agreement and prior to pursuing the remedies as described in Paragraphs 14 through 16 or extending the deferral-of-prosecution period pursuant to Paragraph 15, the Office shall provide written notice to Practice Fusion of that determination (the "Written Notice"). Such Written Notice shall set forth: (a) the provision(s) breached; (b) the approximate date of the breach; (c) a description of the breach sufficient to permit Practice Fusion to cure or respond (as described below); and (d) an indication of which remedy the Office intends to pursue (prosecution under Paragraph 14, extension of the deferral-of-prosecution period under Paragraph 15, or Stipulated Penalties under Paragraph 16). If the Office seeks Stipulated Penalties pursuant to Paragraph 16, the Written Notice must also include the amount of Stipulated Penalties claimed by the Office as of the date of the Written Notice. After receiving such Written Notice, Practice Fusion shall have an opportunity to make a presentation to the Office to demonstrate that no violation occurred, or, to the extent applicable, that the violation should not result in the exercise of those remedies or in an extension of the deferral-of-prosecution period, including because the violation has been cured by Practice Fusion.

18. If the Office demands Stipulated Penalties, Stipulated Penalties calculated from the date of breach to the date of payment shall be payable to the United States within fourteen (14) days, payable according to the same instructions as the Criminal Penalty, or as otherwise directed by the Office. Practice Fusion agrees that the United States District Court for the District of Vermont shall have jurisdiction over any action to collect such a penalty. If Practice Fusion fails to timely make a payment required in this Paragraph, interest (at the rate specified in 28 U.S.C. § 1961) shall accrue on the unpaid balance through the date of payment.

20. It is further agreed that in the event that the Office, in its sole discretion, determines that Practice Fusion has violated any provision of this Agreement, including failure to meet its obligations under this Agreement: (a) all statements made or acknowledged by or on behalf of Practice Fusion to the Office or any government agency, including, but not limited to the Statement of Facts, or any testimony given by Practice Fusion or by any agent of Practice Fusion before a grand jury, or elsewhere, whether before or after the Effective Date of this Agreement, or any leads from such statements or testimony, shall be admissible in evidence in any and all criminal or civil proceedings hereinafter brought by the Office against Practice Fusion; and (b) Practice Fusion shall not assert any claim under the United States Constitution, Rule 11 (f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other Federal rule, that statements made or acknowledged by or on behalf of Practice Fusion before or after the Effective Date of this Agreement, or any leads derived therefrom, should be suppressed or otherwise excluded from evidence.

21. Practice Fusion, having truthfully admitted to the facts in the Statement of Facts, agrees that it shall not, through its attorneys, agents, or employees, make any statement, in

litigation or otherwise, contradicting the Statement of Facts or its representations in this Agreement. Consistent with this provision, Practice Fusion may raise defenses and/or assert affirmative claims and defenses in any proceedings brought by private and/or public parties as long as doing so does not contradict the Statement of Facts or such representations. Nothing in this agreement shall restrict Practice Fusion's ability to defend itself in ancillary investigations or proceedings brought by parties other than the Office and/or the United States Department of Justice ("DOJ") provided that Practice Fusion may not contradict or deny the facts admitted to in the Statement of Facts. Any such contradictory statement by Practice Fusion, its present or future attorneys, agents, or employees, shall constitute a violation of this Agreement and Practice Fusion thereafter shall be subject to prosecution and/or penalties as specified in Paragraphs 14 and 16 above, or the deferral-of-prosecution period shall be extended pursuant to Paragraph 15 above. The decision as to whether any such contradictory statement will be imputed to Practice Fusion for the purpose of determining whether Practice Fusion has violated this Agreement shall be within sole discretion of the Office. Upon the Office's notifying Practice Fusion of any such contradictory statement, Practice Fusion may avoid a finding of violation of this Agreement by repudiating such statement both to the recipient of such statements and to the Office within four (4) business days after having been provided notice by the Office. Practice Fusion consents to the public release by the Office, in its sole discretion, of any such repudiation. Nothing in this Agreement is meant to affect the obligation of Practice Fusion or its officers, directors, agents or employees to testify truthfully to the best of their personal knowledge and belief in any proceeding. Nothing herein applies to statements made, in litigation or otherwise, by any present or former officers, directors, agents or employees of Practice Fusion that are made solely in an individual capacity, and not on behalf of Practice Fusion.

Compliance Program

22. Practice Fusion represents that it has implemented and will continue to implement and maintain an effective compliance program designed to prevent and detect violations of the Anti-Kickback Statute. In order to address deficiencies in its compliance controls, policies, and procedures, Practice Fusion shall maintain and implement a CDS compliance program that meets the requirements set forth in the compliance addendum (the “Compliance Addendum”) (a copy of which is attached as **Exhibit D**).

23. It is understood that Practice Fusion shall promptly notify the Office of (a) any deficiencies, failings, or matters requiring attention with respect to Practice Fusion’s adoption, implementation, or maintenance of the compliance programs described in the Compliance Addendum; and (b) any steps taken or planned to be taken by Practice Fusion to address the identified deficiency, failing, or matter requiring attention. Practice Fusion’s failure to adopt, implement, or maintain a compliance program as described in the Compliance Addendum shall constitute a violation of this Agreement.

Oversight Organization

24. Practice Fusion will implement the provisions regarding the Oversight Organization, as required in the addendum attached as **Exhibit E**.

Additional Compliance Terms

25. Practice Fusion will implement the provisions and comply with the terms of the Additional Compliance Terms, as required in the addendum attached as **Exhibit G**.

Limits of this Agreement

26. It is understood that this Agreement is binding on the Office, but does not bind any other Federal agencies, any state or local law enforcement agencies, any licensing

authorities, or any regulatory authorities. However, if requested by Practice Fusion, or its attorneys, the Office will bring to the attention of any such agencies, including, but not limited to, any regulators, as applicable, this Agreement, the cooperation of Practice Fusion, and Practice Fusion's compliance with its obligations under this Agreement.

27. It is further understood that the Department of Justice has provided Practice Fusion with a nationwide release in connection with its conduct described in the Statement of Facts, as set forth in **Exhibit F**, and that DOJ shall not, except as otherwise contemplated by this Agreement or global resolution with the Office, institute additional or other criminal proceedings against Practice Fusion for the conduct described in the Statement of Facts.

Sale, Merger, or Insolvency of Practice Fusion

28. Except as may otherwise be agreed by the parties hereto in connection with a particular transaction, Practice Fusion agrees that in the event it sells, merges, or transfers all or substantially all of its business operations as they exist as of the Effective Date of this Agreement, whether such sale is structured as a sale, asset sale, merger, or transfer, it shall include in any contract for sale, merger or transfer, a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. However, the terms of this Agreement shall not be construed to apply to that portion of any purchaser's or successor in interest's assets or operations that are unrelated to Practice Fusion's assets or operations. The Government shall consider any request by Practice Fusion that the Government, in its sole discretion, waive the requirement that all provisions in this Paragraph bind Practice Fusion and/or any of its purchasers or any successors in interest.

29. Practice Fusion also represents and warrants that it has reviewed its financial situation, that it currently is not insolvent as such term is defined in 11 U.S.C. § 101(32), and that

it reasonably believes that it shall remain solvent following payment to the Government of the Criminal Penalty. Further, Practice Fusion and the Government warrant that, in evaluating whether to execute this Agreement, they (1) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Practice Fusion, within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to, and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Practice Fusion was or became indebted to on or after the Effective Date, within the meaning of 11 U.S.C. §548(a)(1).

30. If within ninety-one (91) days of the Effective Date of this Agreement or any payment made by Practice Fusion under this Agreement, (i) Practice Fusion commences any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors or a third party commences any involuntary case, action, or other proceeding against Practice Fusion under any law related to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of Practice Fusion's debts, or seeking to adjudicate Practice Fusion as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Practice Fusion or for all or part of Practice Fusion's, assets, or (ii) a third party commences against Practice Fusion any case, proceeding or other action referred to in clauses (a) or (b) above, and the same is not rescinded or dismissed within 60 days of the date of commencement of such case, proceeding or action, Practice Fusion agrees as follows:

a. Practice Fusion’s obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Practice Fusion shall not argue or otherwise take the position in any such case, action, or proceeding that (i) Practice Fusion’s obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Practice Fusion was insolvent at the time this Agreement was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Practice Fusion.

b. If any of Practice Fusion’s obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee’s avoidance powers under the Bankruptcy Code, the Government, in its sole discretion, may rescind the Agreement and bring any criminal, civil and/or administrative claim, action, or proceeding against Practice Fusion for the claims that would otherwise be covered by the release in Paragraph 13 above. Practice Fusion agrees that to the fullest extent of applicable law (i) any such criminal charge, civil claim, or other action, or proceeding brought by the Government would not be subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the charge, case, action, or proceeding described in the first sentence of this Paragraph, and Practice Fusion shall not argue or otherwise contend that the Government’s criminal charge, claim, action, or proceeding is subject to an automatic stay; (ii) Practice Fusion shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any charge, claim, action, or proceeding that is brought by the Government within sixty (60) calendar days of written notification to Practice Fusion that the release has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the Government has a valid claim against Practice Fusion in the amount of

the Criminal Penalty and the Government may pursue its charge, claim in the case, action, or proceeding described in the first sentence of this Paragraph, as well as in any other case, action, or proceeding.

c. Practice Fusion acknowledges that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

Notice

31. Any notice or report to be provided to the Office under this agreement shall be made by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to:

United States Attorney's Office for the District of Vermont
Attn: Civil and Criminal Chiefs
United States Courthouse and Federal Building
Post Office Box 570
11 Elmwood Avenue, 3d Floor
Burlington, VT 05402-0570

32. Any notice or report to be provided to Practice Fusion under this agreement shall be made by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, and email addressed to:

ATTN: General Counsel
Allscripts Healthcare Solutions, Inc.
222 Merchandise Mart Plaza, 20th Floor
Chicago, IL 60654
Legal.notices@allscripts.com

Joshua S. Levy
Aaron Katz
ROPES & GRAY LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199-3600

Public Filing

33. Practice Fusion and the Office agree that, upon the submission of this Agreement (including the Statement of Facts and other attachments) to the Court, this Agreement and its attachments shall be filed publicly in the proceedings in the United States District Court for the District of Vermont.

34. The parties understand that this Agreement reflects the unique facts of this case and is not intended as precedent for other cases.

Execution in Counterparts

35. This Agreement may be executed in one or more counterparts, each of which shall be considered effective as an original signature. Further, all facsimile and digital images of signatures shall be treated as originals for all purposes.


Dated at Burlington, in the District of Vermont, this 31st day of January, 2020.

Respectfully submitted,

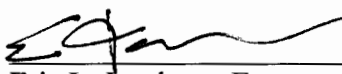
UNITED STATES OF AMERICA

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Accepted and agreed to:


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Secretary

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Patrick Welsh, Esq.

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Counsel to Practice Fusion, Inc.