

Athens, 02-28-2018

Prot. No.: G/EX/321-1/28-02-2018

## PRINCIPLE OF DATA PROTECTION

### OF A PERSONAL CHARACTER

A P O F A S H 22/2018

(Department)

The Personal Data Protection Authority met as a Department

at its headquarters on Wednesday 28.02.2018 at 10:00 a.m. upon invitation of the President

of, in order to examine the case referred to in the history of the present.

They were attended by the Deputy President, George Batzalexis, obstructing the President

of the Authority, Constantinos Menoudakou, and the substitute members Panagiotis

Rontogiannis and Grigorios Tsolias, as rapporteur, replacing the regular members

Antonios Symvonis and Charalambos Anthopoulos, respectively, who, although summoned

legally in writing, they did not attend due to obstruction. The regular member, Spyridon

Vlachopoulos, and the alternate member, Charalambos Tsiliotis, did not attend due to

obstruction, although they were legally summoned in writing. Present without the right to vote were

Evangelia Vassilopoulou, legal auditor, as assistant rapporteur and Irini

Papageorgopoulou, employee of the administrative affairs department, as secretary.

The Authority took into account the following:

With the no. first... (ADDPH G/EIS/321/15.01.2018) his application, the G.N.A. "C".

GENNIMATAS" forwards to the Authority the no. first ... application of A, doctor

ophthalmologist, and requests the Authority's permission for the processing of sensitive personal data

data. Specifically, A requests to receive from his State Ophthalmological Clinic as

Upper Hospital copy of the complete medical file of hospitalization and follow-up,

from ... (when after performing the "LEASER P.R.K." surgical procedure,

admitted to said hospital for treatment of fungal infection

eye infection) and until now, of B as well as a medical opinion on the  
based on the data in the file of assessments of his state of health, to refute it  
action for compensation and monetary satisfaction due to moral damage by the appellant

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medical error and as a consequence of the damage to his health caused as he claims, which  
has been brought by the latter against the applicant ophthalmologist before the Single Member  
Court of First Instance X (regular procedure – filing no. ... with closing date  
of prepositioning sentences ...). According to the above lawsuit and according to his claims  
plaintiff B, ophthalmologist A was grossly negligent in the performance of his duties,  
i.e. initially during the "routine" operation ("LEASER P.R.K.") ... and the  
most importantly, it did not predict and address the postoperative complications of the procedure  
and above all because he did not perceive and diagnose (because he did not have the knowledge) its appearance  
fungus and its timely treatment, with the result that precious time is lost with all the  
subsequent serious and harmful long-term consequences for the patient, which also led to  
in violation of his right to personality.

The Authority, after examining the elements of the file, after hearing the rapporteur and the  
clarifications from the assistant rapporteur, who was present without the right to vote and left  
after the discussion of the case and before the conference and decision-making,  
after thorough discussion,

THOUGHT ACCORDING TO THE LAW

1. Because the provisions of articles 2 par. b', 4 par. 1 and 7 par. 2 item. c' of Law 2472/1997  
determine the terms and conditions for the legal processing of sensitive  
of personal health-related data. The provisions of articles 5 par. 3 and 13 par.  
3 items b' of Law 3418/2005 (Code of Medical Ethics) provide for the exceptional  
granting of medical certificates and opinions to a third party, as long as it is legal  
interest and proves it, as well as the conditions for lifting medical confidentiality.

Because, further, article 11 par. 3 of Law 2472/1997 stipulates that if the data are announced to third parties, the subject is informed of the announcement before them.

2. Because, according to article 914 of the Civil Code, whoever damages another illegally and culpably has obligation to compensate him. Furthermore, in accordance with article 932 of the Civil Code, in case tort regardless of compensation for property damage, the court may to award monetary satisfaction reasonable at his discretion due to moral damage, which it is also due in case of violation of the right of personality (57, 59 AK).

3. Because, in the case under consideration, A is requesting in the capacity of a third party (article 2 item i of Law 2472/1997) the provision of sensitive personal data (health data)

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which concern B and are kept in the file of his State Ophthalmological Clinic G.N.A. "G' GENNIMATAS" as data controller, (article 2 item g' of Law 2472/1997).

From the data in the case file, it appears that the processing purpose consists in the rebuttal of the aforementioned action for compensation and monetary satisfaction to restore the moral damage as a result of the alleged medical error and also infringement of the right of personality that B has brought against A before him

Single Member Court of First Instance

4. The proposed purpose of processing the rebuttal of the above action is consistent with the aforementioned provision of article 7 par. 2 item c' of Law 2472/1997, while at the same time the principle of proportionality of the data is also met (Article 4 par. 1 letter b of Law 2472/1997), because with the use of said requested health data the competent A court will be able to judge the existence or not of medical error and infringement of personality of the patient and consequently decide on the conductive claim.

The G.N.A. "C' GENNIMATAS" must, as controller, inform, in accordance with the provisions of article 11 par. 3 of Law 2472/1997, B for the transmission of his sensitive personal data to ophthalmologist A for judicial use in

context of the described legal dispute.

#### FOR THOSE REASONS

The Authority grants the license to G.N.A. "III GENNIMATAS", as controller, to grant the ophthalmologist A the requested health data mentioned above and pertaining to B, in order to use them in the context of the relationship between them as above legal dispute, based on the no. ... lawsuit, after the Hospital informs previously B.

The Honorable President

The Secretary

George Batzalexis

Irini Papageorgopoulou