 Procedure No.: PS/00074/2020

RESOLUTION OF PUNISHMENT PROCEDURE

From the procedure instructed by the Spanish Agency for Data Protection and based on the following

BACKGROUND

FIRST: On 09/05/2019 a claim is received from A.A.A.. It states that the 08/02/2019 an MRI of the right knee was performed at the HOSPITAL CAM-POGRANDE DE ***LOCALIDAD.1 requested through your private insurance ADESLAS. The on the 27th of the same month, due to an accident at the workplace, "he was requested by the MUTUA of the company" another MRI of the same knee in the SAGRADO HOSPITAL HEART OF ***LOCALIDAD.1 (DIAGNOSTIC CENTER ***LOCALIDAD.1 S.A., re-cried)

In the report of this second resonance, it turns out that it alludes to the first one, carried out on the day 2/08 for her private insurance, and when this second report reaches the MUTUA, "Dr. who treats you tells you to contact your private doctor or Social Security, since they they cannot consider the accident in the workplace as occupational, since there is a resolution Previous MRI performed on the same part of the same limb."

Indicates:

- "Since different entities have requested the magnetic resonance imaging, although carried out in different centers of the same company, information has been given to a entity of what I have done through another private entity. "

-"I understand that in the event of an imminent risk of something fatal happening, the information of health must be taken into account, but this is not the case. There is no imminent risk of fa-growth."

"I understand that, although each company has the same clinical history in all its centers,

it is for the patient, not to be distributed to the different clients of that company."

In the name of the claimed person, indicate CENTRO DE DIAGNÓSTICO ***LOCALIDAD.1 S.A.

Provides:

In a file called "***FILE.1", in pdf, it contains a sheet of "information

a)

clinic" "rule out injury to the posterior horn of the external meniscus" Right knee MRI,

signed on 08/02/2019, "right knee study" In the left margin it appears "CENTRO DE

DIAGNÓSTICO CAMPO GRANDE S.L", and on the left margin of the sheet the logo and the

literal "AFFIDEA". Below the personal data of the claimant is the number of

clinic history.

In a file called "***FILE.2", in pdf, a sheet of "clinical information" is attached.

b)

nica": "suspected internal meniscus injury", right knee MRI, "magnetic resonance study

right knee" date 08/27/2019. In the findings section, it refers to a study carried out

previously because at the beginning it indicates "I compare with a previous study carried out on

08/02/2019" and in the medical analysis uses the word "no changes compared to the previous study",

with comments such as: "a linear hyper-intensity of the signal is observed in the posterior horn

of the medial meniscus in relation to a cleft unchanged from the previous study" or "

significant improvement of the internal collateral sprain at the present time", or the reference

to the anterior cruciate "without acute inflammatory changes". In the left part it appears "CEN-

TRO DE DIAGNOSTICO ***LOCALIDAD.1 S.A.", and at the bottom, the address and website,

affidea.es Below the claimant's personal data is the medical record number.

AC.

SECOND: In view of the facts denounced in the claim and the documents

provided by the claimant, the claim was transferred to the DIAGNOSTIC CENTER

***LOCATION.1 S.A. on 10/24/2019, by the telematic system notific@ and there is notification

completed by carried out on 10/25/2019, without the request having been attended.

THIRD: On 02/21/2020, the claim is admitted for processing.

FOURTH: On 06/04/2020, an agreement was issued to start the sanctioning procedure with

the verbatim:

" FIRST: START SANCTION PROCEDURE as indicated in the

article 58.2.i) of the RGPD to CENTRO DE DIAGNÓSTICO ***LOCALIDAD.1, S.A., with CIF

*** CIF.1, for the alleged infringement of article 5.1.f) of the RGPD, in relation to article 5

of the LOPDGDD, as indicated in article 83.5 a) of the RGPD.

SECOND: For the purposes provided in 58.2.i) of the RGPD, the sanction that could

corresponding for the presumed infraction of the aforementioned provision would be a fine administered

payment of €10,000, in accordance with 83.2 g) of the RGPD, without prejudice to what results

of instruction."

FIFTH: On 06/22/2020, (folio 121/133 as of that date) the respondent performs the following:

following allegations:

1) Your entity "has the consent of the patient for the transfer of their data to the

entity responsible for your health coverage, in this case the MUTUA FREMAP"-

-Provides a copy of the contract between FREMAP MUTUA collaborating with Social Security

no. 61 and DIAGNOSTIC CENTER *** LOCATION.1 SAU (folio 38/133) referring to the

contracting of the diagnostic imaging service by CT and ultrasound, in ***LO-

QUALITY.1, of 12/21/2018. The processing and formalization of the contract is carried out by virtue of

of the stipulations of the order TIN 2789/2009 of 10/14 by which the model is implemented

the normalized for the processing of requests for authorization and communications of the

concerts with private media to make health benefits effective and recover-

Mutual companies and according to the provisions of Royal Decree 1630/2011 of 11/14 by which

the provision of health and recovery services of Mutual Societies is regulated. He claims-

provided a copy of the contract FREMAP Mutual collaborator with the Social Security and CEN-

DIAGNOSTIC TRO ***LOCALIDAD.1 SAU, referring to contracting the service of

diagnosis by magnetic resonance imaging in ***LOCALIDAD.1, of

12/21/2018, “service that will be carried out in accordance with the offer that was presented and what is established

in the specifications of administrative clauses and technical prescriptions”. “The object service

of contracting will be executed by the staff of the claimed or, where appropriate, sub-companies

contractors depending for all purposes on the successful bidder. The successful bidder is obliged to

dedicate all the personal and material means necessary to carry out the project successfully.

object of the contracted service in the terms established in the specifications"

-Attach document 1, (folio 114) copy of the "Data Protection clause" signed by

the claimant on 08/27/2019. Your data is contained, the medical record number with glue-

tina FREMAPSS FREMAPSSCC, AFFIDEA SAGRADO CORAZON, 8 h 55 and in the literal fi-

figure:

“your data protection consent”

“Main purpose for the provision of medical services”, “I, the undersigned, through

By signing this document I acknowledge that I have received the privacy policy and I am

has informed how AFFIDEA will process personal data in order to carry out

the medical diagnosis and/or the provision of the requested medical services".

"Additional purposes" (depending on the possibilities of providing these services of each

diagnostic center).

It is marked in relation to the matter:

- "I consent to the transfer of data to my prescribing doctor and/or my health coverage and I have been

informed that, in case of opposition, the provision of the service will be at my expense as pa-

particular client."

Before the section that contains: "your consent to data protection" it is indicated:

"Our privacy policy for patients contains the essential information about

our treatment of data in the provision of our medical services. We beg you

Please read this document which informs you why and how your information is processed

staff. In our privacy policy you can find information regarding the following:

following aspects:

To identity and contact details of the data controller,

B contact details of the Director of Data Protection,

C object and legal basis for its treatment,

D sources of your personal data,

And recipients of your personal data,

F period in which the personal data will be stored,

G rights under Data Protection laws,

H international data transfers

2) In the AFFIDEA ESPAÑA group they have not limited themselves to integrating the clinical history at the level of

each Center, but in application of what is stated in article 14.1 of Law 41/2002 of

14/11, basic regulation of patient autonomy and rights and obligations in ma-

matter of information and clinical documentation, (LAP hereinafter) have implanted the history

unique clinic in the entire Group. No distinction is made as to whether the story is from public health.
ca or private and is derived from the legal precept that determines the aforementioned integration.
“In the privacy policy for patients of the AFFIDEA Spain group website
patients are expressly informed of the existence of a single clinical history, used
using the following terms: we inform you that for a better medical diagnosis manage-
we process your clinical history in a unique way so that the different entities of the Group
po AFFIDEA Spain can access your clinical history, always in order to provide a
more accurate medical service.
3) “There is a global consensus on the importance of sharing clinical information
unique and interoperable ca that integrates the data of the public and private health that is reflected
in numerous recommendations and action plans at the national and international levels. “Dispos-
Having correct information at the right time brings benefits to the actors and a
positive impact at all levels of the health system.”
4) It mentions that it acts in accordance with the general interest, which must prevail over the par-
in relation to guaranteeing quality health care. Consider that various
sources support the need for access to previous studies and reports and clinical information
additional information, as well as the need for the coordination of the stories, to ensure the
quality of patient care. Between them:
-The Spanish Society of Medical Radiology developed a "decalogue of good practices in
tele radiology” (it is obtained by accessing the internet, and is incorporated into the procedure in file
PDF with 51 pages). It includes aspects related to professionals and patients with the
radiological process and technology. Among other aspects, they include point 7 under the title:

“Access to previous studies and reports and additional clinical information are essential elements

essential to ensure the quality of the radiological report”. In it, it is indicated that the lack

review of previous radiological examinations is an important cause of malpractice and

of errors in the generation of radiological reports, which requires an interpretation

completely, there should be no limitations or barriers to access the studies,

previous reports, and additional clinical information by the radiologist. It is also indicated

that “The authorization to examine, analyze, verify any record and report that is

important, for the realization of the radiological report, it must be granted in writing by the

patient and all possible precautions should be taken within the restrictions that

establishes the current legislation, in order to maintain the confidentiality and protection of

patient data.”

-Cites the third additional provision of the LAP that establishes the "Coordination of histo-

clinical trials" when determining that: "The Ministry of Health and Consumption, in coordination and with

the collaboration of the competent Autonomous Communities in the matter, will promote, with

the participation of all stakeholders, the implementation of a compatibility system

that, considering the evolution and availability of technical resources, and the diversity of systems

more and types of medical records, enable its use by healthcare centers in Spain

that attend to the same patient, in order to avoid that those attended in different centers

subject to examinations and procedures of unnecessary repetition.”

As can be deduced from the resolution of procedure PS 287/2018 of the AEPD,

(HOSPITAL POVISA) “if the law does not distinguish or limit, then the AEPD must not differentiate between

laughing at the public and private health systems”

-From article 56 of Law 16/2003 of 05/28, on cohesion and quality of the National System of
health, it follows that it is neither logical nor reasonable to understand that improving care
citizens comes from and must be guaranteed only with the data obtained from the
public health using as an example a person who only has history
private clinic and could go to a public center to receive emergency care,
giving rise to responsibilities due to lack of knowledge of private history.

- “The AFFIDEA ESPAÑA group has implemented the system with the interest of the users in mind.
patients, ensuring their healthcare safety and lacking their own interests”.

“The aim pursued is that of greater healthcare safety for patients allowed
maintaining the unification of care processes regardless of who is the pa-
provider of health care, since a greater guarantee of quality is pursued
health and protection for patients. It is incongruous and risky to limit
access only to care processes in public health if what is sought is to gain
guarantee quality assistance and greater safety.”

5) Refers to part of the content of the judgment of the National High Court, content room
administrative brief, section one, of 09/22/2004, which assesses a resolution of the AEPD, in
based on continued professional medical performance within the framework of private insurance and a
niestro, with imputation of transfer of medical data obtained from a first examination
doctor used for a legal proceeding. He transfers the meaning that he understands
arises from said sentence, in the case of this claim, as professional medical care
continued.

The sentence to which he refers, although he does not quote it, is specifically dated 09/22/2004, rec.
888/2002 and upholds the appeal of the data assignor, a Medical Cabinet, which is charged with
ba the infraction indicating and concluding that it is a case different from the communication
to the Mutual from the part of the report that deals with this procedure, as can be deduced, by noting

Lar: “Seguros La Estrella already knew the result of the medical examination that Cabinet Cer-

vanantes had initially made to the complainants (second proven fact), with their

consent, and before they sued said insurer in the proceeding

judicial proceedings, thus it derives not only from folios 135 to 144 of the administrative file that

are cited in the lawsuit, but, above all, of the mechanics of payment of the indemnities.

tions that correspond to satisfy by the Insurance Companies to their insured in the

accident cases, mechanics of risk coverage and payment of the amount of damages

derived from such accidents that are regulated in detail both in Law 50/1980, of 8

October, of Insurance Contracts, as in Law 30/1995, of November 8, of Ordinance

tion and Supervision of Private Insurance.

In short, and since there was no second or new assignment in the case,

but a new use by the assignee (the Insurance Company) of the health data

of the complainants who, with their consent, had been collected by the Medical Cabinet

and that were already known by the insurer, we must conclude in this way that we do not understand

contract before an act of transfer to a third party other than the one affected or interested in the meaning

do referred to in the Data Protection Law.”. The difference is that part of the

communicated to the Mutual, the reference and contrast with the previous analysis was not known by

is.

6) “Possibility of being involved in Social Security fraud” if a Mutua patient,

due to an accident “is referred to one of the AFFIDEA Spain Centers, for the

carrying out a study and issuing a diagnosis, it is essential to include in the report the

previous studies since they are decisive as to whether the patient's injury has originated
by accident or already suffered from it previously. For example, if a patient has a le-
degenerative disc pressure and suffers a traffic accident, the only objective way to know if
said accident has worsened their situation is through comparison with previous studies
saw to see new disc displacements or aggravation of previous injuries”
Article 7 of Organic Law 7/2012 of 12/27, which modifies the Organic Law
10/95 of 11/23, of the Criminal Code, on transparency and fight against tax fraud
and Social Security, introduces a new article 307 ter with the following wording:
“Whoever obtains, for himself or for another, the benefit of the Security System
Social, the undue extension of the same, or facilitate others to obtain it, through the
error caused by the simulation or misrepresentation of facts, or the concealment
aware of facts of which he had the duty to report, thereby causing damage to the
Public Administration, will be punished with a sentence of six months to three years in prison.”
In the case analyzed, if the AFFIDEA group, "in the report derived from the resonance requested
by the company Mutual on 08/27/2019 due to an accident in the workplace, hidden
the antecedents already existing in the same knee and detected by the practical magnetic resonance
each on 08/02/2019 in the same Center of the same Group and the Mutual doctor considers
the accident in the workplace as a labor accident, because it has not been able to have knowledge
of the existence of the previous MRI, performed in the same part of the same
member, AFFIDEA group would be committing fraud against Social Security.” Possible
breach of contract with the MUTUA FREMAP. In the contracts signed between
claimed and FREMAP, the center acquires the commitment to comply with all the regulations
that could be applied in matters such as prevention of criminal activities.
7) “The report sent to the Mutual by the respondent, is limited to conveying the conclusion regarding
about the ailment to inform the Mutual Society of the most objective assessment of the condition.
health status of the worker insofar as it contains additional health data than those that motivate

their query: “No changes compared to the previous study”, “significant improvement of the sprain

ce of the internal collateral at the present time” or “without acute inflammatory changes”.

8) Possible civil liability derived from non-compliance with the "lex artis", according to various

sentences. The "lex artis" obliges the health professional, understood as that criterion

assessment of the correctness of the specific medical act performed by the medical professional

that takes into account the special characteristics of that author, of the profession, of the

complexity and vital importance of the patient, being in this case not an obligation

of results but of means, that of providing all the necessary care in consonance with

ence with the state of science and the “lex artis ad hoc”. In this sense, “the medical professional

doctor has to apply all the means that are within his reach, that is to say, it is not possible to avoid the knowledge

foundations derived from previous existences since it would not be using all the means

that are within your reach.”

9) They consider that the inclusion of existing antecedents in the same right knee

of the patient detected by the MRI performed on 2/08 in a center of the same group

As in the report of the resonance of 08/27/2019, it does not bring cause of an unauthentic treatment.

unauthorized or illegal, loss, destruction or accidental damage caused by the lack of application

appropriate technical or organizational measures by the claimed party, but is the result

of good medical practice. Among other aspects of compliance with the regulations that

fer, states that its Group has been subjecting itself to external audits of compliance

regulations on Data Protection every two years, being the last fe-

February 2020 and its scope area is the current security measures, achieving

a score of 4.7 points out of 5 providing some data extracted from said report in

document no. 5.

SIXTH: On 01/18/2021, the test practice period begins, giving

reproduced for such purposes the claim and its documentation, the documents obtained

and generated by the Inspection Services, the allegations and the documentation against the

start agreement.

In addition, it was requested:

a) Copy of the data processing information that was delivered to the claimant in the

first medical assistance produced through the insurer ADESLAS, in the proof of

08/02/2019, treated at CAMPO GRANDE MEDICAL DIAGNOSTIC CENTER S.L.,

belonging to the AFFIDEA GROUP.

It is received in writing after the issuance of the proposal, on 02/19/2021,

allegations to it, indicating that the full content of the petition for

evidence, only the part of the literal "considering reproduced for such purposes the claim and its

documentation, the documents obtained and generated by the Inspection Services, the

allegations and documentation against the initiation agreement", which is why he could not

answer them. Indeed, it is verified that the default template comes out as

writing was not completed with the addition of evidence to the addressee, nor was its verification

content, which is why the document received by the respondent contained only the part that

date.

It provides a pdf file called DOCUMENT 4, which is the same standard model of

"Data Protection clause" AFFIDEA, "completed and signed by the claimant

in the assistance of 08/27/2019 that was already provided in allegations.

Provides in a pdf file called DOCUMENT 5, the same standard model of "clause

Data Protection" AFFIDEA, although the reference sticker ADESLAS appears,

AFFIDEA BIG FIELD, 04/27/2019. The informative literal marked with the "I consent to the

transfer of data to my prescribing doctor and/or my health coverage and I have been informed of

that in case of opposition, the provision of the service will be at my expense as a private patient.

lar".

b) Copy that collects the conditions of the contract signed by MEDICAL CENTER OF

DIAGNÓSTICO CAMPO GRANDE S.L., belonging to the AFFIDEA GROUP and related

with the processing of data of patients treated through the insurer

ADESLAS, for which the claimant was treated in the test of 08/2/219.

He points out that there is no such contract or obligation to sign it. It adheres to the interpretation of the

AEPD that the transmission of data to the Centers of a health insurance company

is considered a transfer of data, making the Health Center responsible for the

treatment, so it does not consider it necessary to sign a contract that regulates access to

the data.

c) Copy of the contract signed with FREMAP that contains the conditions of the treatment of

personal data of patients treated through the DIAGNOSTIC CENTER

***LOCALIDAD.1 S.A, (provided only the contract for the award of the service of

diagnosis in favor of the DIAGNOSTIC CENTER ***LOCALIDAD.1 S.A.)

He points out that he concurs with the same argument of the previous point, the condition by the Center

healthcare provider responsible for the treatment

d) Contributed on the assistance process in the DIAGNOSTIC CENTER

***LOCATION.1 S.A. on 08/27/2019, the "data protection clause", on the same

You are requested to report:

The stickers on the upper right refer to the date of the resonance carried out on

08/27/209 in the process in which he is assisted in collaboration with Mutua FREMAP. In

relation to it:

- Reason why yes in the contract for the award of the service that they refer in allegations

subscribed with FREMAP, the DIAGNOSTIC CENTER appears as a service provider

***LOCALIDAD.1 S.A., in the data protection clause information does not include this

entity as data controller, indicating "AFFIDEA undertakes to respect

Your rights…"

It indicates that the defendant is the successful bidder for the provision of the service, and at the same time has the

obligation to keep the patient's clinical history, being responsible for the

treatment, and the one that has the obligation to inform about the treatment of the data of the

patient, as responsible for them.

-You must provide the rest of the data protection information indicated in the content.

do “Data Protection clause” “our commitment to Data Protection” “In

our privacy policy you can find information regarding the following aspects:

data”: A identity and contact details of the data controller, C the object and legal basis

gal for its treatment D sources of your personal data and E recipients of your data

personal, indicating the way in which the patient is informed of these extremes, and if

signed by the patient, send a copy of the documents.

This aspect, which he did not specify, was on his website.

SEVENTH: On 02/02/2021 the AFFIDEA .es website is accessed

-The "WHO WE ARE" tab appears.

In "WHO WE ARE" appears the health group AFFIDEA is a leading company in diag-

diagnostic imaging that incorporates the most advanced technology in resonance techniques

magnetic, European coverage 16 countries in Europe, 274 centres, 9,400 professionals.

Our centers in Spain: We currently have 40 diagnostic centers

co being present in seven autonomous communities Asturias, Castilla La Mancha, Castilla

León, Catalonia, Madrid, Murcia and the Valencian Community".

In the "CENTRES" tab they appear in Castilla y León, ***LOCATION.1: CAMPO GRAN-

OF, FELIPE II, PARACELSO, SACRED HEART HOSPITAL. Clicking on each

Of these, the diagnostic tests that are carried out are listed, as well as the address. The claim-

The first resonance of the right knee is performed on 08/2/2019 in CENTRO DE

DIAGNOSTICO CAMPO GRANDE S L. through its private insurance ADESLAS, and the

08/27/2019, the second in another clinic of the group, the claimed: CENTRO DE DIAGNÓSTI-

CO ***LOCATION.1 S.A. at the SAGRADO CORAZÓN HOSPITAL at the request of the Mutual

FREMAP to assess whether the injury is due to an accident at work.

Companies are listed in the "WHO WE WORK WITH" section. such as ADESLAS, ASISA,

Mutual: FREMAP, MUTUA UNIVERSAL, MUTUA INTERCOMARCAL etc., for mentioning-

nar some

There are also public health entities SACYL, Castilla y León, SALUD MADRID

Autonomous Community of Madrid, MURCIANO SERVICE etc.

-On the same date, in AFFIDEA.es, section "PRIVACY POLICY FOR PAY-

CIENTES", its content is obtained by joining the procedure.

It indicates that AFFIDEA is a provider of medical services, identifies the head office AFFI-

DEA ESPAÑA and the contact details of the Data Protection Officer in the clause

sulla 9.

It is reported that:

 For a better medical diagnosis we manage your clinical history in a unique way

so that the different entities of the AFFIDEA SPAIN GROUP - see reverse - can act

give in to your clinical history always in order to provide a more accurate medical service.

Information is contained on the bases of legitimacy for the treatment of data

personal data, “data we process.” It is indicated that in providing medical services to you

create health data as a provider of such services and that is required by law to do-

comment on the aforementioned services. “To obtain more information about the data we treat-

Please refer to the annex to this privacy policy.”

In the section "with whom we share your data" there is a specific section called-

do "with independent third parties" in which it is reported that these are those derived from the

that are established of the obligations by law, or when “so required by a contract from which

you are part of, for example, your health insurance contract”.

 In the “privacy policy annex” it is indicated “more information about with whom

We share your data. It appears in tables differentiated by recipients, folio 12, that of

“third parties acting independently of AFFIDEA”, which contains

related to each other:

-

"recipient identity" distinguish by way of example:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

"doctor who prescribed the test".

"clinical laboratories"

“public hospitals that have referred you to our center”, “CIA insurance company to which you

belongs”, or

“Spanish Social Security System”.

- “sector of activity” “private medical insurance”, or “national health insurance”.

- “type of activity”, “confirmation of insurance coverage”, or “storage of

SNS financed medical records”.

-In the "PRIVACY POLICY" section that "governs the website", under the ownership

of AFFIDEA, on security of personal data and transparency, appears the denomination

registered office of GRUPO AFFIDEA ESPAÑA, its registered office, its NIF and telephone number and the address of

Contact of the Data Protection Delegate

EIGHTH: On 02/08/2021, a resolution proposal was issued with the literal:

“That by the Director of the Spanish Agency for Data Protection, a sanction is made for

CENTRO DE DIAGNOSTICO ***LOCALIDAD.1, S.A., with CIF ***CIF.1, for an infraction

of article 5.1.f) of the RGPD, as indicated in article 83.5 a) of the RGPD, a fine of

10,000 euros.”

NINTH: Against the proposal, on 02/19/2021 allegations were received. stating:

1) If they replied to the transfer of the claim with a copy of the registration entered in the headquarters

tronic ***REGISTER.1 of 11/22/2019, file ***FILE.1 (doc. 1). Attach the copy

of the response that they manifest they made in the transfer phase.

It is indicated that the claim is not considered appropriate, there is no incident and they have not taken

any measure. They state about the object of the claim, the inclusion of studies

previous within the findings of the report issued by the claimed whose addressee was the

Mutua, the same considerations that they made in the initial agreement. Namely, they provide

document 1 containing the data protection clause signed by the claimant on

08/27/2019, consideration and consequences that the clinical history is unique at the level of everything

the AFFIDEA SPAIN GROUP, refer to the decalogue of good practices and ultimately, the

rest of the arguments that are already reported as allegations to the initial agreement.

two)

Indicates that he has been deprived of providing the evidence when issuing the proposal, specifying that

the test document they received was incomplete because it only contained part of

"Considering reproduced for such purposes the claim and its documentation, the documents

obtained and generated by the Inspection Services, the allegations and the documentation

against the initial agreement." missing the rest of the literal. It is verified that indeed

sent what was indicated for not attaching in the template the specific addition that was

requested. Answers in allegations to proposal to such extremes that are contained in the

pretest section. Provides pdf file DOCUMENT 4 and DOCUMENT 5 referred to

in evidence, both documents being the same type of informative writing used to

"data protection clause".

3) Depending on the purpose and content of the clinical history, the physician who attended the

patient incorporated the information that emerges both from the first care and in the

second, reflecting it in the second attendance report. Otherwise, I would not respond.

to the veracity of the state of health, since "the injury did not originate as a result of the

accident, suffering from it previously, having been detected by the doctor in the

assistance from 08/02/2019. It is up to the doctor to decide on the content of the history

clinic, the reports of complementary explorations being part of it." "The

The object of the clinical history is to obtain the maximum possible integration of the documentation

clinic of each patient, without making any distinction between public and private healthcare". In
In this case, if the doctor did not use the information that was already in the clinical history,
would be managing the best and most timely knowledge of the patient, which would mean a
breach of regulations.
4) Social Security fraud has been avoided thanks to the assessment of both
imaging tests. "This fraud would have occurred in the event that the professional
would only have had access to the evidence requested from Fremap, since based on the
itself could not know that the injury was already there, so it would have been
Paid sick leave due to work-related accident granted by the Social Security system
Social." By understanding that history cannot be accessed, one would be favoring and
allowing a criminal act consisting of fraud against the Administration, that is,
would have produced the conscious concealment of facts related to obtaining
Social Security benefits. "In this case, the particular interest could not prevail
of the patient that the imaging tests that would prevent him from accessing
fraudulent way to a public benefit", but considers that there is an interest
general in avoiding fraud against the public system that pays the benefits, being
In addition, the necessary treatment for the fulfillment of a legal obligation applicable to the
responsible for the treatment (6.1.c and 6.1.e of the RGPD).
5) The end entrusted in the second medical visit by order of the Mutual was not the
recognition of whether or not the contingency was professional. It is the Fremap professional who
requests the realization of the imaging test in order to see the origin of the injury by the
that the complainant is on sick leave and attributes it to an occupational accident. It is
this professional who, in view of the clinical reports provided, issues the
consideration of whether or not we are facing an occupational accident. On the other hand, there is the
professional radiologist, who has to interpret an image test and based on
the same, issue a diagnosis on a painting. To do this, the professional has to use the

clinical history in your possession and, especially those imaging tests that

can help interpret the result of the test under study. “In this case, the

professional has an imaging test of the same lesion previously performed and on the

The basis of both tests proves that its origin is degenerative”. “In no

case the professional” of the respondent “makes a clinical judgment on whether or not there is a

work accident".

6) The patient wants selective use to be made of the clinical history for cases

that he decides with the statement that “in the event of an imminent risk of something happening

fatal, health information must be taken into account, but this is not the case. there isn't a

imminent risk of death.” Selective interest consists in seeking to benefit

in camouflaging a previous injury in one of labor origin.

7) The inclusion of the already existing antecedents in the same right knee of the patient

and detected by the a practiced on 08/02/2019 in a Center of the same Group, in the report

of resonance of 08/27/2019 does not bring cause of an unauthorized treatment caused by

the lack of application of appropriate technical or organizational measures by the

claimed, but resulting from good medical practice, adjusted to the regulations. "Face to

evaluate a pathology and more when it is performed through imaging tests, it is

necessary to analyze them both individually and as a whole, under penalty of incurring

a misdiagnosis”, and that it is not excusable when they are within reach and may have

repercussions.

8) Even considering that it is an assignment, it would be legitimate in accordance with

Articles 9 and 6 of the GDPR. Considers that in both assistance to the claimant there is the exception for data processing, the first based on the provision of assistance health and medical diagnosis, the second, "the result of the contract for the award of the service of diagnosis to the claimed, also in article 9.2 h) as "management of systems and healthcare services". "In both cases the basis of legitimacy for the treatment is that it is necessary for the execution of a contract in which the interested party is part article 6.1 b) of the RGPD".

9) Error in the typification of the proposed sanction. On the basis of Law V of the proposal, it is established: "it is not proven that the claimant had granted the consent for the transfer of data from the first medical visit and there is no authorization lawful for it. " So it is imputed that the transfer of the data was not adapted to the applicable regulations based on the absence of informed consent for the assignment. Subsequently, in the foundation of Law VI, it is stated:

"It is accredited in this case, that the claimed, on 08/27/2019 accesses personal data of a prior consultation of the claimant in a private regime, when he exercised functions of collaboration with the Mutual in the management of health care systems and services and to determine the contingency on behalf of the Mutual.

Data treatment that materializes when introducing the terms of medical comparison of the data in the report that it sends to the Mutual, and that it does not have a legitimate basis or the consent of the affected party.

Again, it is said again that there has been access to personal data from a prior consultation without consent.

In the following foundation of Law, the seventh, the infraction is expressly typified, contained in article 83.5 a of the RGPD, "because the claimant did not grant the consent for the transfer of the data of the first medical visit nor is there authorization legal for it.", for breach of the basic principles established in the RGPD, in

specifically, because the claimant did not grant consent for the transfer of the data of the

first medical visit nor is there legal authorization for it.

Consequently, according to the instructor's interpretation, there has been a

breach of article 6, which regulates the legality of the treatment, specifically, of

its section 1 letter a), which establishes as the legal basis for the treatment, the

consent of the interested party for one or several specific purposes. That said, it doesn't fit

classify the sanction as a breach of 5.1.f) of the RGPD, for having processed the data

as a consequence of the lack of measures that guarantee an adequate security of the

personal data, including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures or

appropriate organizational measures ("integrity and confidentiality").

PROVEN FACTS

AFFIDEA reports on its website:

1)

a. It is a health group specialized in diagnostic imaging established in 16 countries

in Europe. In Spain it has 40 centers spread over 7 autonomous communities. In

***LOCATION.1 has three centers: CAMPO GRANDE, FELIPE II PARACELSO, and

SACRED HEART HOSPITAL.

b. It provides services to different entities, both private health companies,

Health of the Autonomous Communities (Public Health) and Mutual.

two)

On 08/02/2019, the claimant, on his own initiative, underwent a first resonance of

the right knee at CENTRO DE DIAGNÓSTICO CAMPO GRANDE S.L. (belonging to

group AFFIDEA ESPAÑA, located in the Hospital of the same name) through your insurance

private doctor ADESLAS. The informative literal of the standard data protection clause

These figures are marked that “I consent to the transfer of the data to my prescribing doctor and/or my co-

health coverage and I have been informed that in case of opposition, the provision of the service

It will be at my expense as a private patient.” On the AFFIDEA.es website it is reported in the

PRIVACY POLICY FOR PATIENTS section, which “For a better diagnosis

medical practice we manage your clinical history in a unique way so that the different en-

Entities of the AFFIDEA Spain group - see reverse - can access their clinical history whenever

pre in order to provide a more accurate medical service. “In the section “data processed”

mos” is indicated:

“In providing you with medical services, we create health data about you. What

provider of medical services, Affidea is required by law to document

thoroughly these services.” In the “with whom we share your data” section,

states: “We share your personal data with third parties (independent recipients) in the

following cases:

If we are required by law.

If required by a contract to which you are a party (for example, your health insurance contract),

I say). In case of opposition, the provision of the service will be at your expense as a participating patient.

ass.

With other health professionals in a life-saving emergency (eg, an emergency).

We will only share your data to the extent absolutely necessary."

3) Dated 08/27/2019, according to the claimant "due to an accident at the workplace"

FREMAP, Mutual collaborator of accidents and professional illness collaborating with the

Social Security for the company in which the claimant provides services, in order to

To make the initial determination of the professional nature of the contingency, commissioned a test

medical examination: “right knee MRI” “at the Sagrado Corazón hospital in ***LOCALI-

DAD.1”, to the center called CENTRO DE DIAGNOSTICO ***LOCALIDAD.1 S.A.-claim-

mado- (which happens to belong to the group AFFIDEA ESPAÑA.

In this medical assessment carried out by order of the Mutual, on 08/27/2019, appears: ar-

file named ***FILE.2, in pdf, “clinical information” sheet: “suspected injury

internal meniscus, “Right knee magnetic resonance study. In the “findings” section,

refers to “I compare with a previous study carried out on 08/02/2019” and:

“A linear hyperintensity of signal is observed in the posterior horn of the meniscus

-

ternal in relation to a fissure without changes with respect to the previous study”

“Significant improvement of the internal collateral sprain at the present time was not seen.

-

sualiza the ligament is intact”

“A slight proximal avulsion of the anterior cruciate is also observed, although

-

that without acute inflammatory changes, the partial rupture is mild”

“Posterior cruciate ligament, external collateral, patellar tendon and the visible portion

-

of the quadriceps tendon without significant alterations.”

In the report of 08/02/2019, the following are mentioned, among others:

- State of the internal meniscus, anterior and posterior horn.

- crossed posterior and anterior.

The claimant states that as a consequence: "the doctor who treats him tells him to

contact your private doctor or Social Security, since they cannot consider the action

accident in the workplace as work, because there is a previous MRI

performed on the same part of the same limb.

1)

The claimant considers that, in the test ordered by FREMAP, the health center

who attended him collected and gave the Mutual information with his medical data "to an entity

of what I have done through another private entity.", stating that he is aware

that "each company has the same clinical history in all its centers".

two)

In the test conducted on 08/27/2019, the respondent gave the claimant a form

standard lary of DATA PROTECTION CLAUSE consisting of a document

signed by the claimant. In the literal it appears:

"I, the undersigned, by signing this document acknowledge that I have received the

privacy policy and I have been informed of how AFFIDEA will process personal data.

in order to carry out the medical diagnosis and/or the provision of medical services.

cos requested".

It is marked in relation to the matter:

- "I consent to the transfer of data to my prescribing doctor and/or my health coverage and I have been

informed that, in case of opposition, the provision of the service will be at my expense as pa-

particular client.”

Before "your data protection consent" you are referred to the "privacy policy" section.

privacy” that although it does not indicate it, it appears on its website:” to find information regarding

to the following aspects:

To identity and contact details of the data controller,

B contact details of the Director of Data Protection,

C object and legal basis for its treatment,

D sources of your personal data,

And recipients of your personal data,

F period in which the personal data will be stored,

G rights under Data Protection laws,

H international data transfers

On the AFFIDEA.es website, it is reported in the PRIVACY POLICY section.

3)

DAD FOR PATIENTS, contains information on the bases of legitimacy for

the processing of personal data. “

In the "privacy policy annex" of the website it is indicated "more information about

4)

who we share your data with. It appears in tables differentiated by recipients, that of

“third parties acting independently of AFFIDEA”, which contains related

two each other:

- “recipient identity” distinguish by way of example:

"doctor who prescribed the test".

"clinical laboratories"

“public hospitals that have referred you to our center”, “CIA insurance company to which you

belongs”, or

“Spanish Social Security System”.

- “sector of activity” “private medical insurance”, or “national health insurance”.

- “type of activity”, “confirmation of insurance coverage”, or “storage of

SNS financed medical records”.

In the "PRIVACY POLICY" section of the website, it appears that "governs the page

5)

web”, under the ownership of AFFIDEA, on security of personal data and transparency,

under the corporate name of GRUPO AFFIDEA ESPAÑA, its registered office, its NIF and telephone number.

Phone number and contact address of the Data Protection Delegate

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

16/37

6)

The respondent provided a copy of the FREMAP Mutual contract collaborating with the Security

Social Community and DIAGNOSTIC CENTER ***LOCALIDAD.1 SAU, as successful bidder of the

contract referring to the contracting of the diagnostic imaging service through resolution

magnetic finance in ***LOCALIDAD.1 of 12/21/2018, “Service that will be carried out in accordance

with the offer that it presented and what is established in the specifications of administrative clauses and

technical prescriptions”. The contracted service will be performed by the personnel

of the claimed or, where appropriate, subcontractor companies depending for all purposes on the

awardee. The successful bidder undertakes to dedicate all personal and material means

necessary to successfully carry out the object of the contracted service in the terms established.

two in the sheets”. Nothing is indicated about personal medical data that is collected

gen by GRUPO AFFIDEA ESPAÑA and that the respondent, belonging to the GROUP, communicated to the Mutual.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, trol, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Agency Spanish Data Protection is competent to resolve this procedure.

II

The LAP contains, in accordance with its statement of reasons, the rights of users of health services in development of the basic regulation of the State, through the General Health Law 14/1986 of 04/25, which "states that the health organization must allow guaranteeing health as an inalienable right of the population through the structure of the National Health System, which must be ensured under conditions of scrupulous respect personal privacy and the individual freedom of the user, guaranteeing the confidentiality quality of the information related to the health services that are provided and without any kind of discrimination." "Based on these premises, this Law completes the forecasts tions that the General Health Law enunciated as general principles."

"Thus manifests a community conception of the right to health, in which, together to the singular interest of each individual, as recipient par excellence of the information related to health, there are also other agents and legal rights related to public health. which must be considered, with the necessary relevance, in a democratic society. advanced ac. In this line, the Council of Europe, in its Recommendation of 02/13/1997, regarding the protection of medical data, after stating that they must be collected and be processed with the consent of the affected party, indicates that the information may be restricted if so provided by law and constitutes a necessary measure for reasons of general interest." (explanatory statement of the LAP).

In the scope of application of the LAP, it is indicated, its purpose is (art 1): "the regulation of rights and obligations of patients, users and professionals, as well as centers and health services, public and private, in terms of patient autonomy and information mation and clinical documentation." To this end, the explanatory memorandum of the LAP indicates "national health system" understood as a health organization, to guarantee health as an inalienable right of the population through its structuring, and again: "that must be ensured under conditions of scrupulous respect for personal privacy and freedom individuality of the user, guaranteeing the confidentiality of the information related to the health services that are provided and without any type of discrimination."

The LAP defines that the clinical history is: "the set of documents that contain the data cough, assessments and information of any kind on the situation and clinical evolution of a patient throughout the care process" –art. 3.

Article 14 of the LAP indicates:

"1. The clinical history includes all the documents related to the processes care of each patient, with the identification of the doctors and other professionals that have intervened in them, in order to obtain the maximum possible integration of the clinical documentation of each patient, at least, in the scope of each center.

2. Each center will file the medical records of its patients, whatever the paper, audiovisual, computer or other support in which they are recorded, so that- guarantee its security, its correct conservation and the recovery of the information tion."

The art. 15.2 of the LAP sets the minimum content of the clinical history, although many laws authorize

tonomics have increased this minimum content. In Castilla y León, the De-

Decree 101/2005 of 12/22, which regulates the clinical history (CYL Decree in what follows)

vo).

The CYL Decree in its Chapter I: "General Provisions" also establishes, firstly,

gar, the object and scope of application that will extend to both the public and private spheres.

do defines the clinical history and determines its main purpose: care, without forgetting other

applications. It is established that it will be unique per patient within the scope of the Castilian Health System.

lla y León, whatever the level of care at which health care is provided, and the only

in those centers that are not within the Health System of Castilla y León. In his article

ass 3 add the definition:

“b) Single clinical history: All the data of the healthcare contacts related to

two for a single patient identification number.

c) Contact: Each one of the health care demands of a patient that

generates clinical actions.”

The additional provision of the CYL DECREE: "computerization of clinical history" establishes

states that “With the aim of advancing in the configuration of a single clinical history per patient,

cient in the field of the Health System of Castilla y León, the Regional Health Management

will carry out the necessary actions to computerize the clinical history and its access to all

available clinical information, without prejudice to the provisions of Additional Provision Ter-

wax of the Basic Regulatory Law of Patient Autonomy and Rights and Obligations

Information and Clinical Documentation Matters.”

The aforementioned Third Additional Provision of the LAP indicates: Coordination of the stories clinics have:

“The Ministry of Health and Consumption, in coordination and with the collaboration of the Autonomous Communities competent in the matter, will promote, with the participation of all both stakeholders, the implementation of a compatibility system that, in response to the evolution tion and availability of technical resources, and the diversity of systems and types of stories clinics, enable its use by healthcare centers in Spain that attend to the same patient, in order to prevent those treated in various centers from undergoing examinations and procedures of unnecessary repetition.”

The CYL Decree adds in its article 5:

“1.– In the area of the Health System of Castilla y León, the clinical history will be unique. ca per patient.

In health centers, services and establishments outside the Health System of Castilla y León, the clinical history will be unique per patient in each center.

2.– The clinical history must be unified within the same center, services cio or health establishment. A clinical history will be unified when all the documents active elements supported by the same medium are archived in the same container."

The art. 15.1) 2) and .4) of the LAP states:

"1. The clinical history will incorporate the information that is considered transcendental for truthful and up-to-date knowledge of the patient's health status. Every patient or user Rio has the right to record, in writing or in the most appropriate technical support, of the information obtained in all its assistance processes, carried out by the health both in the field of primary care and specialized care.

2. The main purpose of the clinical history will be to facilitate healthcare, leaving

proof of all those data that, under medical criteria, allow the ve-

root and updated health status. The minimum content of the clinical history will be the following:

next…”

"4. The clinical history will be kept with unit and integration criteria, in each institution.

care tuition as a minimum, to facilitate the best and most timely knowledge by the

doctors of the data of a certain patient in each healthcare process.”

The protagonism of the patient affects when it indicates the art. 17.4 of the LAP that it must

be integrated unitarily by all the data that the doctors understand to be

transcendental to guarantee an adequate care work for the patient.

In this way, all professionals who intervene in the care activity are obliged to

compliance with the duties of information and clinical documentation, being an obligation and

responsibility of the professional who intervenes in the assistance activity “not only to the correctness

provision of its techniques, but to comply with the duties of information and documentation

clinical mentation, and to respect the decisions made freely and voluntarily by the

patient." art 2.6 LAP. This obligation to complete the healthcare activity is also

applicable to private health services.

Thus, it can be deduced that both public health services and health services under

private, healthcare services must generate and safeguard the respective clinical histories

unique fees per patient and service, and the specific mention in the laws on

systems of coordination and collaboration in health management as a constitutional right

titional.

III

The LAP applicable to public and private health centers, and provides that health professionals Users have a duty to cooperate in the creation and maintenance of documentation clinic, establishes a single clinical history per patient and at least in each center, as well as its content, purposes, confidentiality and access, always relating it to the nature instrument of assistance. Only the matter of data protection is mentioned, in article 17.6, dedicated to the preservation of clinical documentation as a form of reference laugh at the different parts, indicating:

“Specified technical security measures apply to clinical documentation. established by the legislation regulating the conservation of files containing data. data of a personal nature and, in general, by Organic Law 15/1999, on Data Protection Personal Character.”, and article 19 as a right related to the custody of the history tory that “The patient has the right for health centers to establish a mechanism active and diligent custody of medical records. This custody will allow the collection, integration, retrieval and communication of information subject to the principle of confidentiality in accordance with the provisions of article 16 of this Law.”

The uses and purposes are included in article 16 of the same LAP, as follows:

"1. The clinical history is an instrument fundamentally destined to guarantee adequate patient care. The care professionals of the center who carry out diagnosis or treatment of the patient have access to the clinical history of the patient as fundamental instrument for its adequate assistance.

2. Each center will establish the methods that allow access to information at all times. the clinical history of each patient by the professionals who assist them.”

Article 13 of the CYL Decree indicates:

“Health personnel who are directly involved in the diagnosis and treatment of patient will have full access to the clinical history.

“2.– The center will establish the internal mechanisms for requesting medical records

to facilitate your availability for patient care and, whenever possible,

establish levels of access for the different categories of health personnel and for the

non-health personnel, by virtue of the functions that each one is entrusted with.

3.– When a patient is receiving health care in another center other than

the one in which the clinical history was generated, a copy of this must be provided when so-

tendered by the physician responsible for this assistance, provided that he has the authorization

express request of the patient, except in an emergency situation in which the patient cannot provide

in which case he must justify the healthcare need for the use of that documentation.

tion.

These same requirements will be required of the health services of the entities

collaborators in the management of the Social Security System who intend to access the

medical history of the worker for assistance purposes.”

Regarding the regime and benefits of the Mutuals, it should be considered that "the benefits

tions and services attributed to the management of the Mutuals collaborating with Social Security.

are part of the protective action of the system and will be dispensed in favor of the workers

tors at the service of associated entrepreneurs and with the same scope as those provided by the

managing entities in the cases attributed to them” (art 82.1 of the Royal Decree

Legislative 8/2015 of 10/30, approving the consolidated text of the General Law of the

Social Security, LGSS).

The last paragraph of article 82.2 of the LGSS determines that said services or provision of

professional contingencies can be waived through "concerts with means

private” as stated in the contract signed between the respondent and FREMAP.

Article 80.4 of the LGSS indicates:

“Mutuals collaborating with Social Security are part of the public sector

of an administrative nature, in accordance with the public nature of its functions.

tions and the economic resources they manage, without prejudice to the private nature of the

entity." The beginning and end of social security is applied to this management, which is configured

by the principles of universality, unity, solidarity and equality (art 2).

In this case, the defendant acted as a collaborator in the management of Social Security,

and although he had access to the entire medical record because he belonged to the same AFFIDEA Group,

the patient being informed of said single management, the computerized detail was not specified.

I did not specify or consent was required for the medical information contained in the

first attendance were incorporated into the report that had to be made on 08/27/2019, when

acted as a health service for the Mutua FREMAP entity, collaborating in the management. Yes

claimed did not belong to the Group and did not have access to previous history, there should have been

requested “express authorization of the patient”, indicates the norm. Also, as it turns out,

when the management is carried out by a collaborating account of the Social Security, that is, such

how he acted

On the other hand, the principle of care linkage, health professionals cannot

access any history, only because of their status as health center workers

and that have a care relationship with the patient who owns the record, as a tool for

provide its service properly. It is known that access to medical history in su-

contrary positions, especially for private uses or to reveal its content may

give rise to criminal liability. This basic principle is accompanied by the principle of

proportionality, which determines that the professional must access only the medical data

funds necessary to provide specific health care.

It should not be forgotten that the end entrusted in the second medical visit by order

of the Mutual, was the recognition of whether the contingency was professional or not, the public character public of arranged means of the claimed one by which said valuation is carried out and that the article Article 23 of Law 16/2003, of 28/05, on Cohesion and Quality of the National Health System states that: “All users of the National Health System will have access to the benefits health services recognized in this Law in conditions of effective equality.” It's the same-treatment, it seems that it would not be fulfilled if the diagnostic center that performs the test 08/27/2019 outside of another company outside the Group, or a single clinic, and had no news of previous antecedents, producing a distinction of treatment depending on the implant geographical location of the Company, its size or importance, unless it is due, as stated in the norm, require the patient to inform if he had a history of the injury and to authorize will ensure the incorporation of the same with the effects of a declaration of veracity and cer-integrity of the data, considering your responsibility in case it is not provided. the query and verification of the finding of the first assistance in the second report for the Mutual no was specifically informed to the affected and constitutes an excess in the treatment carried out as will be explained in the following paragraphs, giving rise to the loss of confidentiality of the claimant's data,

It is clear that it would be an excess of the content communicated to the Mutual through the information that is incorporated in the second report, through issues judgments that compare and resolve specific aspects, counting on the pertinent data. personnel and doctors of the first assistance, for which, in this part, you must comply with the

authorization requirement for the processing of medical data provided for in the RGPD and in the LO-
PDGDD, together with the sector regulations that, as the CYL Decree indicates, must be obtained
expressly the authorization of the affected party if he is treated in another center that does not share the
history, an example would be between two private centers, or when attending a public center
public with respect to the history that is guarded by a private center.
Through it, the Mutual is made aware of the patient's medical data, re-
claimant, by the claimed, obtained from his medical diagnosis provided and obtained before
that the aforementioned Mutual be ordered to analyze the patient to check his right knee.
cha. The defendant compares the diagnostic imaging obtained from the test performed on the aforementioned
day 08/27/2019 and submits a report to the Mutual comparative with the data of the previous assistance
holding.
This work is entrusted through a contract with the defendant, as a diagnosis of
image, and whether by chance the patient should be asked for authorization or not, it does not seem that
should depend on a powerful implantation in a geographical area of the center
or belong to a large group with a shared clinical history, such as this
case, and contrary to what the regulations of clinical history preaches as determined by ex-
specifically the aforementioned Decree CYL. In this case, the Group company turned out to be a center
diagnosis related to the one that performed the first test. Both centers of
diagnosis belong to the same business group, which has a unique clinical history
at the level of the Group of companies, in the forty diagnostic centers that exist in Spain.
ña, according to its advertising. Any Mutual that contracts health management with a center
diagnostic imaging will have, in addition to the value of the medical act, the possibility of
verify important antecedents to contrast whether or not the ailments are accidents, with
a mere reference to the fact that the clinical history is unique and is provided for the benefit of the patient,
for a correct diagnosis, ignoring the authorization provided by the regulations and expressly
when referring to the fact that the care regimen is carried out through the collaboration of the system

public topic.

Also mention, in case you can add a distinctive note, that, in the contract with the Mutua, nothing was indicated of the person responsible for the data of the clinical history, which, in this case, According to the documents and information on the website, they are the responsibility of AFFIDEA ESPAÑA, and they are the ones that are poured into the diagnostic contrasts, despite the fact that medical assistance tive provided and completion are carried out by who feeds the processes, that is, by the physicians of the defendant, who are the ones who decide without the authorization of the patient Analyze the findings and communicate their conclusions to the Mutual.

IV

"Data relating to health" is defined in the GDPR as: "personal data relating to to the physical or mental health of a natural person, including the provision of health services health care, that reveal information about their health status"

Article 4 of the GDPR defines:

2) «processing»: any operation or set of operations carried out on personal data. personal data or sets of personal data, whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification cation, extraction, consultation, use, communication by transmission, diffusion or any another form of authorization of access, collation or interconnection, limitation, suppression or destruction tion;"

7) "responsible for the treatment" or "responsible": the natural or legal person, public authority public, service or other body which, alone or jointly with others, determines the ends and means of the

treatment; if the Law of the Union or of the Member States determines the ends and

god of the treatment, the person in charge of the treatment or the specific criteria for their name.

The opening may be established by the Law of the Union or of the Member States;

Unlike the established regime of those responsible for personal data that is contained

ne in the RGPD, in the medical records, the LAP and the CYL Decree mentions responsibility

health, medical or care centres, health services or physicians

you, in questions and for the purposes of responsibilities for compliance with the rights there

established, on the information and clinical history, regarding who corresponds to their

completion, access, custody, although in terms of vague legal subjects to the

indicate: “The clinical history will be kept with unit and integration criteria, in each institution.

care tuition as a minimum”. What can be understood by healthcare institution or center,

must be specified for the purposes of data protection management, which defines the person responsible

treatment, a description that has little to do with the center or institution.

9) "addressee": the natural or legal person, public authority, service or other body to which

that personal data is communicated, whether or not it is a third party. However, it is not considered

Recipients will be the public authorities that may receive personal data in the

framework of a specific investigation in accordance with the law of the Union or of the

Member states; the processing of such data by said public authorities will be

in accordance with the rules on data protection applicable to the purposes of the treatment.

to;

10) "third party": natural or legal person, public authority, service or body other than the

interested party, the person in charge of the treatment, the person in charge of the treatment and the people

authorized to process personal data under the direct authority of the controller or the

duty manager;

Article 4, point 9, defines "recipient" and specifies that a recipient who is communicated

can personal data does not have to be a third party. Therefore, a recipient can

of being a data controller, a co-controller or a processor.

Article 6.1 of the RGPD on the legality of the treatment provides at least that it must be given

one of the conditions that it lists in its letters a) to f), which it qualifies as ba-

treatment, referring in other sections to the legal basis or basis, or legal basis

of the treatment, being usual that it is indicated that the treatment is based on any of the

the bases contained in 6.1.

In article 9 of the RGPD, it is indicated: “Treatment of special categories of personal data.

nals”

"1. The processing of personal data that reveals ethnic or racial origin is prohibited.

social status, political opinions, religious or philosophical convictions, or trade union membership, and

processing of genetic data, biometric data aimed at uniquely identifying

ca to a natural person, data relating to health or data relating to sexual life or

sexual orientation of a natural person.

2. Section 1 shall not apply when one of the following circumstances occurs:

a) the interested party gave his explicit consent for the treatment of said personal data-

them with one or more of the specified purposes, except when the Law of the Union or of

Member States provide that the prohibition referred to in paragraph 1 cannot

be raised by the interested party;

g) the processing is necessary for reasons of essential public interest, based on the

Law of the Union or of the Member States, which must be proportional to the objective per-

followed, essentially respect the right to data protection and establish measures

adequate and specific to protect the interests and fundamental rights of the interested party.

do;

h) the treatment is necessary for the purposes of preventive or occupational medicine, evaluation of the

worker's ability to work, medical diagnosis, provision of assistance or treatment

of a health or social nature, or management of health and social assistance systems and services.

on the basis of the law of the Union or of the Member States or by virtue of a

contract with a healthcare professional and without prejudice to the conditions and guarantees contained

pladas in section 3;

3. The personal data referred to in section 1 may be processed for the purposes mentioned in

section 2, letter h), when your treatment is carried out by a professional subject to the

obligation of professional secrecy, or under your responsibility, in accordance with the Law of

the Union or of the Member States or with the standards established by national bodies.

competent authorities, or by any other person also subject to the obligation of secrecy

in accordance with the Law of the Union or of the Member States or the regulations established

determined by the competent national bodies.

4. Member States may maintain or introduce additional conditions, including license

limitations, with respect to the processing of genetic data, biometric data or data related to

you to health

The LOPDGDD points out:

-article 9.2 “2. The data processing contemplated in letters g), h) and i) of article

9.2 of Regulation (EU) 2016/679 founded on Spanish Law must be protected

two in a regulation with the force of law, which may establish additional requirements related to

your security and confidentiality.

In particular, said rule may protect the processing of data in the field of health

when so required by the management of public health and social care systems and services.

public and private, or the execution of an insurance contract to which the affected party is a party."

-Seventeenth additional provision. Health data processing

"1. They are covered by letters g), h), i) and j) of article 9.2 of the Regulations.

to (EU) 2016/679 the processing of data related to health and genetic data

that are regulated in the following laws and their development provisions:

a) Law 14/1986, of April 25, General Health.

c) Law 41/2002, of November 14, basic regulation of the autonomy of the

patient and rights and obligations in terms of information and clinical documentation.

d) Law 16/2003, of May 28, on the cohesion and quality of the National System of

Health.

e) Law 44/2003, of November 21, on the organization of health professions.

g) Law 33/2011, of October 4, General Public Health."

v

On the legal position for the purposes of the RGPD of the claimed party, when carrying out the tests ordered

ned by the Mutual, and specifically on the possibility of access to medical histories of pa-

patients, there is a report that this Agency issued through its Legal Office, on

a query, 409/2009 of 08/05/2019, of the Health Service of the Balearic Islands, which was

can be consulted on the AEPD website. The query was about "communication to centers

private health services subject to agreement with the consulting Administration of the data contained

nested in the medical records of the patients who attended them, in order to achieve a

better health care, assuming that these private centers are not part of the System

National Health issue, but they are linked to it through the contract sub-

I believe with those." This would entail, for example, the possibility that these entities act

yielded to the guarded medical records and responsibility of the public health system,

since they are going to provide assistance to people protected by the aforementioned system.

Firstly, it analyzes the legal position in terms of data protection of said centers.

health centers in relation to the patients who attend them, considering them

responsible for the treatment, when preparing the clinical histories of the patients themselves

that they attend, according to the obligation ordered by the LAP, and that they are not limited to processing data by

charge on behalf of the contractor.

Regarding data processing, these are necessary for medical diagnosis, the provision of

provision of health care or medical treatment or the management of health services,

provided that said data processing is carried out by a healthcare professional subject to se-

professional credence or by another person also subject to an equivalent obligation of secrecy

and this "would enable access or communication to health centers, regardless

of its public or private nature of the data necessary to carry out the appropriate

health care of the patients who attended them". That is, it is admitted that

these centers that arrange the provision of public health services, not yet forming

integral part of the National Health System can access the information of the pa-

patients to whom it is going to provide assistance, since they can develop assistance actions

directly linked to the public system, and it may even be understood that the same

but they constitute, insofar as they are the object of agreement, services of the aforementioned system.

ma.

It was added that "the first paragraph of article 58 of Law 16/2003, of 28/05 on cohesion and quality of the National Health System, provides that "in order for citizens to receive the best health care possible in any center or service of the System National Health, the Ministry of Health and Consumption will coordinate the mechanisms of electronic exchange of clinical and individual health information, previously agreed upon with the Autonomous Communities, to allow both the interested party and the professionals who participate in health care access to medical records in the terms strictly necessary to guarantee the quality of said assistance and the confidentiality and integrity of the information, regardless of the Administration that provides it". Yes It is well stated in the response that the consultant raises the problem that the centers arranged are not an integral part of the National Health System, even when they are linked to it, it is indicated:

"Indeed, article 44 of Law 14/1986, of 04/25, General Health points out that "all public structures and services at the service of health will integrate the National Health System", adding that "the National Health System is the set of the Health Services of the State Administration and the Health Services of the Autonomous Communities in the terms established in this Law".

Likewise, article 45 establishes that: "the National Health System integrates all health functions and benefits that, in accordance with the provisions of this Law, are responsibility of the public powers for the due fulfillment of the right to protection of health" and article 90 enables the celebration of concerts with entities for the provision of services, adding article 93 that "they may not be linked hospitals and establishments of the private sector in the National System of Health, nor may concerts be established with private health centers, when in some

of its owners or in any of its workers the circumstances that above

incompatibilities of the public and private sectors establish the legislation on

incompatibilities of the personnel at the service of the Public Administrations".

Consequently, although not forming an integral part of the National Health System,

concerted centers develop assistance actions directly linked to the

system, and it may even be understood that they constitute, insofar as they are the object of

concert, services of the aforementioned System.

This consideration, together with the healthcare purpose that justifies access to the data

of the clinical history of the patient who is going to be the object of health care to guarantee

the best quality of it and, ultimately, their right to health, enshrined in the

Article 43 of the Constitution, together with the provisions that have been analyzed with

beforehand, allows us to consider that the transfer of the data to the doctors who have to

attend to the patient in the concerted centers, through access to the clinical history that

works in the Autonomous Health Service, is in accordance with Organic Law 15/1999, without

The adoption of no additional provision is necessary to allow said assignment."

SAW

In principle, the prohibition of processing personal data relating to the

health, so the exceptions should be interpreted restrictively, so that they do not

may be included in said exception, other different cases, since this would distort the purpose

of the law and the guarantees established

The clinical history is decentralized at the level of the company group, which means in

the practice that, if the patient goes to any of the forty centers of the AFFI-

DEA, in Spain, the doctor who provides assistance can access, consult and carry out a

better and more complete care in the treatment given, although it must be limited to the

purpose that gives rise to the request for the report, and the legal position it occupies as a contractor.

with the Mutual, considering compliance with the sector regulations referred to in the

provision of medical records when they do not come from the same sector to which services are provided,

in this case on behalf of the Mutual collaborator in the management of Social Security

In this case, the Mutual was a recipient of data that ordered an acknowledgment of the claim.

ment in order to a diagnostic purpose so that they have to be communicated by the re-

called for an assessment report on the test performed on the right knee, so that

Mutual determines the contingency causing the accident suffered by the claimant, with the

test that is done on 08/27/2019. As a general rule and strictu sensu, without further details

to comment initially, it conforms to the assumption of article 9.2.h) of the RGPD "services of

healthcare and social assistance, on the basis of the law of the Union or of the Member States

bros or under a contract with a healthcare professional and without prejudice to the conditions

and guarantees contemplated in section 3”

But in this case, in addition, without ignoring that there is a legitimizing basis, it is analyzed that

giving the claimant in a contracted assistance regimen at the level of collaborating with the regimen

Public Social Security, are incorporated without the authorization of the affected party, as determined

undermines the CYL Decree as necessary, part of some findings of a care episode

prior, to communicate it to the Mutual, which is what is considered to violate the duty of confidentiality.

confidentiality, exceeding the data that without the authorization of the affected party are communicated

two, to produce in the public regime a denial of benefit as an accident,

considering data not only belonging to the private regime, and that is the least important

but due to the fact that this excess, when incorporating prior information without authorizing

and without knowing each other, because it seems that communication between regimes is not expected.

tions, it can exceed the scheme for which the legitimacy is found, as it does not adapt in

this excess of what is strictly considered the excess of assistance services

health and social care when attending tests preceding the date of the occurrence of the pre-

so-called accident whose treatment authorization was the reason for treatment and diagnosis

of the knee, and documentary authorization is not obtained from the affected person for the transfer of the

formation of the clinical history of the previous episode, data processing situation not

expected in a test in the field of the public system, and considering that the data to

that are accessed is not part of the aforementioned public system, considering that excess as

breach of duty of confidentiality

As such, its content should have been limited, not having compared the data with the first

history without having requested the informed authorization of the affected party, referring to the duties

of veracity in the information to be provided, the purpose of the test to be carried out, which has

its peculiarities with respect to those that can be practiced motu proprio, noting that the

informative data protection clauses used by the claimed party are in all cases

You are the same, without differentiating, and you must have obtained authorization for the contrast

of the original story.

This taking into account that the claimant does not claim for the transfer of their data to the MU-

TUA derived from the recognition that it orders, in fact, consented to the yield box

the results of that consultation of 08/27/2019, in the informative clause delivered, but by

a specific aspect that is limited to the communication of your confidential data by

of the content that relates or discloses data from your previous visit to another clinic of the Group

and that the doctor mentions in the report.

For private healthcare or health insurance companies, such as the

query attended by the claimant on 08/02/2019, with the entity CENTRO

DE DIAGNOSTICO CAMPO GRANDE SL, of the AFFIDEA group, assistance provided through

of the insurer ADESLAS, would have the effect of lifting the prohibition of treatment to the

voluntarily enter to receive the health care provided for in article 9.2 h) “diagnosis

medical ethics, provision of assistance” of the RGPD. This benefit was obtained motu proprio and

having previously signed a contract with the private insurer.

In the present case, it was not a benefit already recognized by the Mutual as

accident at work, nor was health care being provided at his expense, but rather it was based

in the recognition of the health status of the employee to determine whether or not it was an accident.

of work, an important issue to determine, given that it is normal for a base to

regulator for benefits for this cause is usually higher than that of common contingencies

in any service.

Without questioning the necessity and adequacy of the above test to complete the

ordered by the Mutual, improving in a successful diagnosis, the truth is that the first

executed on the claimant's own account under a private regime, which indicates that although

is part of a single clinical history instrumented or intended for adequate care

gives, of quality and correctness, the treatment of health data not only when they are practiced

the tests, but when the content of those tests is transferred, the ex-

exceptions of article 9.2 of the RGPD. Comprehensive data is being collected and processed here

of a previous session of treatment and diagnosis for a report intended to assess whether the

injuries come from or are related to an accident at work (management of systems and

health and social care services). That, only this part of the first report, which

contemplated and transferred to the Mutual is the one that is considered outside the principle of confidentiality.

ciality, by not meeting the requirement that the use of their data with-

had in the first episode of care on 08/02/2019, which could be a means of saving the

exception, by not concurring on the part that exceeds the cause that could serve as

exception for its treatment communicated to the Mutual, reaching a result

as is the one charged with breach of confidentiality.

In the present case, in addition, the condition in which the service is provided to the Mutual through

of the claimed, as a collaborator in the management of the Social Security of the

accident at work, it is not about the provision of health care, but within

of the same article, that of “management of health care systems and services and

on the basis of the Law of the Union or of the Member States”, although the claim

is always obliged to appear for the medical test, it is in order to determine if

the injuries or symptoms produced on 08/27/2019 in the workplace are appropriate or not

of a professional contingency, not to provide better medical care. the Mutual,

constituted by the set of associated entrepreneurs, knowing that portion of pre-

the benefits that the claimant had, decides not to treat the accident as a work accident, without

that the claimant was expected to have given consent or authorization to the

claimed for the communication of your data, which would exceed the content of the

which was attended on behalf of the Mutual, disclosing some data that should have been

kept secret by the claimed.

7th

As a consequence, the defendant is charged with an infringement of article 5.1.f) of the RGPD that

indicates:

1. The personal data will be:

f) processed in such a way as to guarantee adequate security of the personal data.

personal data, including protection against unauthorized or unlawful processing and against their loss.
damage, destruction or accidental damage, through the application of technical or organizational measures.
appropriate procedures ("integrity and confidentiality").

Obligation dealt with in article 5 of Organic Law 3/2018, of 5/12, on the Protection of
Personal Data and guarantee of digital rights (hereinafter LOPDGDD), which pre-
cisa:

"1. Those responsible and in charge of data processing, as well as all the per-
Persons involved in any phase of this will be subject to the duty of confidentiality.
referred to in article 5.1.f) of Regulation (EU) 2016/679.
2. The general obligation indicated in the previous section will be complementary to the
duties of professional secrecy in accordance with its applicable regulations.
3. The obligations established in the previous sections will be maintained even

when the relationship of the obligor with the controller or processor has ended.
I lie."

It follows that the person responsible for processing the data that is part of the history
clinic is the doctor or health center, public or private; they have the obligation to ela-
erase it, guard it and implement the necessary security measures so that it is not removed.
not be communicated to non-interested parties or may be accessed by unauthorized third parties.
two. In this case, the health center is the one claimed, which signed a contract with the Mu-
tua FREMAP, furthermore, without mentioning that it is part of a business GROUP, nor
any relation to the management of the patient's clinical history. The parent company in Spain, GROUP

AFFIDEA ESPAÑA is the one that centralizes the clinical history so that all diagnostic centers nostic access to the unique history, and the claimant did so.

Regarding access and confidentiality of the clinical history, article 2.7 LAP (principle basic principle)

“7. The person who prepares or has access to the information and clinical documentation nica is obliged to keep the due reserve”

This last paragraph is mentioned in the same rule, article 7: "The right to privacy."

"1. Every person has the right to respect for the confidentiality of the data data related to your health, and that no one can access them without prior authorization. scratched by law.

2. The health centers will adopt the appropriate measures to guarantee the rights acts referred to in the previous section, and will elaborate, when appropriate, the norms and protocolized procedures that guarantee legal access to patient data.”

From this it follows that the general rule is the confidentiality of all the information obtained. taken by doctors in application of the LAP. Therefore, the non-possibility of communicate data on previous healthcare services, both for being provided under the private menu as because it was not on the second occasion of medical treatment or assistance to the patient, but of collaboration to determine if the contingency was due to a accident. In order to achieve that, he should have informed and obtained the authorization of consultation of the clinical history of 08/02/2029, since it is health data. Given the prohibition as a general rule, and the subsidiary exception in the treatment of personal data. health, the communication or contrast with the first medical assistance for the collection of the data motivated by the investigation of the relationship of episodes, in order to determine by the Mutual of the contingency had a part that was adjusted to these ends, to the compa- medical examination, but when contrasting the data with the original antecedents infringes the duty of confidentiality of the treatment of said data.

To this must be added the peculiarity of the relationship established between the professional of medicine and the patient, firmly based on confidentiality and discretion and of the diverses data related to intimate aspects of his person that on the occasion of it usually facilitate litter

It is true that arts. 14 and following of the LAP favor "the maximum possible integration of clinical documentation of each patient" in order to achieve adequate health care ria, and hence the principle of unity of clinical history. This integration of the clinical history,

tending to avoid the dispersion of health information about each patient, has as beneficiary to the patient. Its unitary character is not predicated to facilitate diagnoses. cos being able to collect all the previous data, from other processes, to adjust to a better provision of the service, at least without the authorization of the affected party, since its purpose is not in this case that.

When the LAP provides for the confidentiality of the data obtained in relation to the data of health, communicating some data prior to the test to the Mutual, association of companies grouped employers for the management of work accident benefits and with the finality that the cause of the injury is concluded, the data from the aforementioned area to a differentiated subject, with its own legal personality and who is considered

It is clear that neither the RGPD nor the LOPDGDD nor the LAP sectoral regulation authorizes such communication. tion, assuming a violation of security measures by clearly allowing with said action the infringement of the confidentiality of part of the data that is transferred to the Mutual, the of the first assessment, when on 08/27/2019 the referral was made by the Mutual to determine

determine whether or not the contingency of work accident was present in said act.

Although arts. 14 and following of the LAP favor "the maximum possible integration of the do-

clinical documentation of each patient" in order to achieve adequate health care,

talking about the principle of unity of the clinical history, however, it is necessary to point out

that this integration of the clinical history, tending to avoid the dispersion of the information

over each patient, has the patient as beneficiary. The opening paragraph of

art. 16 of the LAP ratifies it, stating: "The clinical history is an instrument intended to func-

fundamentally to ensure adequate care for the patient."

The initial paragraph of art. 16 of the Patient Autonomy Law is clear in this regard: "The

clinical history is an instrument fundamentally destined to guarantee an assistance

suitable for the patient.

Thus, the claimant is informed in the second test that their data resulting from that assistance

are going to be transferred to the Mutual, which does not mean that they are about assistance and data and do-

clinical documentation that is generated in the first assistance, which is what was done, without

It is recorded that the claimant authorized or was asked for authorization to consult the

previous data. This point is of crucial importance, because information about the health of

people is part of the object protected by the fundamental right to privacy, such

as has been clarified, among others, by the judgment of the Constitutional Court 196/2004, of 11/15.

It is not considered that there has been a treatment that lacks a legitimate basis, since

that is not the imputed infraction, but in the treatment carried out, the way in which

that has been produced, incorporating part of the information and data of a medical process

previous, it has been caused, when transferring it to the Mutual, by the absence of security measures

contemplated, a result of making known the data of the claimant of a

part of his clinical history from a previous episode, being used for the determination of the

causal contingency, which could produce the non-estimation of it as an accident

of work.

Regarding security measures, due to the results produced, they must be implemented

differentiated levels for when the patient goes to a doctor or health center, primarily

private or public, distinguishing in the treatment of personal and health data, the possible

legitimizing bases, and the purposes to which the treatment responds, as well as the legal position

law in which the person responsible acts.

It is accredited in this case, that the claimed, on 08/27/2019 accesses personal data of

a prior consultation of the claimant in the private regime, when he exercised collaborating functions

collaboration with the Mutual in the management of health care systems and services and

cial to determine the contingency on behalf of the Mutual. Breach of confidentiality

ity that materializes when introducing the terms of medical contrasts of the data in the in-

Form that refers to the Mutual, and that exceeds the data that could be transferred to it.

viii

The jurisprudence has ruled in some cases on the disclosure or ce-

collection of health data that can undoubtedly serve the purpose of diagnosing cer-

entirely an injury or a fitness for a job, but other rights in

game sometimes prevail. In this case it was the review in cassation

of a sanction imposed by the AEPD, annulling the Supreme Court Contentious Chamber

so-Administrative, Section 6) Judgment of 10/20/2009, Appeal 4946/2007 the

judgment appealed, and confirming the sanction.

This is a sanction from the AEPD to Mutua FREMAP, since the same Mutua had

attended a previous medical leave process in another company and the worker changed

business. During the trial period they did a medical examination, being the
Mutual itself is in charge of making these recognitions. The last day of the period
evidence received “a letter that was delivered to him bearing the FREMAP logo and it indicated
that "in view of the results, as well as the complementary explorations carried out
pathological data are objectified in relation to their job at the present time,
being considered SUITABLE WITH LIMITATIONS". "D. Samuel denounces the entity Fremap
for having included data that had been collected during the review of his disability
temporary, dated August 25, 2003, when he worked for the entity Tecnyconta, in
a report made on January 12, 2004, as a medical examination prior to his
definitive incorporation as a worker to the Vitrometal entity.” The sentence analyzes the
Non-consensual transfer of data to the company that declares the worker unfit, regarding
the medical data obtained during the stay of the worker in the previous company,
derived from an IT sick leave process in which the worker was treated by the mutual insurance company.
“As a consequence, Mr. Samuel's repeated medical data became
part of the medical record or medical record in the possession of such insurer.” Sentence
states as a general principle that "monitoring and control measures for the health of
workers will be carried out always respecting the right to privacy and dignity
of the worker and the confidentiality of all information related to his or her employment status.
health" and that "data relating to surveillance of the health of workers may not be
used for discriminatory purposes or to the detriment of the worker.” “From here it follows that
The general rule is the confidentiality of all the information obtained by the mutuals in
application of the Law on Prevention of Occupational Risks and, therefore, that the
possibility of communicating to the employer
the conclusions derived from the
acknowledgments made in relation to the aptitude of the worker for the performance of the
job" constitutes an exception. "In summary, in this matter the

unquestionably the maximum possible confidentiality, without there being any element in

the Law of Prevention of Occupational Risks or in the Law of Autonomy of the Patient that

allow us to affirm that the non-consensual communication of data carried out by Fremap

It was authorized by law."

IX

Regarding the integration or interoperability of communication of the information contained

in the clinical history, Law 16/2003, of 28/05, on Cohesion and Quality of the National System

Health has thus developed a set of coordination and cooperation mechanisms in

some areas where this collaboration is especially necessary, among which the

establishment of information systems that allow this information to flow within

of the National Health System, creating specific bodies such as the Observatory of

National Health System –art. 1– or the Health Information Institute. The performance

cohesion of the National Health System that allows the existence of a public service

quality healthcare and equal conditions is based on an information system

that guarantees the availability of information and reciprocal communication between

the General Health Administration of the State and that of the Communities.

The example would be the article 36 of the law 16/2003 of 28/05 of Cohesion and Quality of the System

National Health, according to which: "In order that citizens receive the best assistance-

healthcare possible in any center or service of the National Health System, the Ministry

The Ministry of Health and Consumption will coordinate the mechanisms for the electronic exchange of

clinical training and individual health, previously agreed by the Autonomous Communities

nomas, to allow both the interested party and the professionals who participate in the assistance
healthcare access to the clinical history in terms strictly necessary to ga-
guarantee the quality of said assistance and the confidentiality and integrity of the information,
whatever the Administration that provides it". Thus, it can be seen that the develop-
The projects for the exchange of digital medical records of the National Health System go
exclusively in the direction of the public system, a right to which any citizen has
ne at any point of the national territory. No potentiation of me-
mechanisms in which healthcare provided privately can consult and
access or interoperate with files of clinical records of the National Health System to
the provision of health care, because if it were the essential purpose of the clinical history
care, it does not seem that there should be restrictions or directly said system
would be planned. Usually, to obtain this history, the doctor requests it from the patient.
patient who will be the one to collect it from the health services. The CYL Decree is also
indicates the same meaning when indicating in its article 13 that "When a patient is receiving
health care in another center other than the one in which the clinical history was generated,
You must provide a copy of this when requested by the physician responsible for that
assistance, provided that it has the express authorization of the patient, except in a situation
emergency service in which he cannot provide it, in which case he must justify the need
assistance cessation of use of this documentation.
It follows that the transfer of data is linked to the regime in which the assistance is provided.
sanitary.
Article 53. 6 of said law indicates "The transfer of data, including those of a
personnel necessary for the health information system, will be subject to the legislation
regarding the protection of personal data and the conditions agreed in the
Interterritorial Council of the National Health System."

Defend the possibility of disclosing part of the medical history provided privately,

when it is being provided for the assessment of a benefit of the public regime, in this

case does not consider the purpose for which the information is added, did not take into account that

part of the story to be used in reference to the test ordered by the mutual, and not

extract the data in the public assistance regime, being a previous episode, it should have been

informed of your consultation and obtain authorization for the consultation.

This does not mean that the clinical history should be dissociated according to the private or public regime.

for the title that is provided, but that in the communication of this the guarantees are implemented.

aunts and information to the affected so that he decides and, where appropriate, allows such communication, de-

duly informed, with the consequences for the specific case by the regime by which

that is served

Regarding the allegation that in cases of emergency or medical treatment it is necessary to

So see all the medical history of the affected person's history, it should be noted that in

this case the purpose of the medical examination ordered by the Mutual and the data that

in the process are treated, they strictly obey the indicated determination, while

in cases in which if the conflict of rights raised actually occurred, it could be

value the vital interest of the affected person as an exception to the treatment, but it is appreciated that

is related to this case

On the allegation that not indicating the preliminary process of the first episode could contribute to

the consummation of a crime by favoring with his silence the perception of a benefit,

means that the type of article 307 ter of the Penal Code, includes:

1) Obtaining improper benefits from the Social Security system;

2) undue extension of the enjoyment of said benefits and

3) facilitation to others of obtaining undue benefits through the error caused-

by simulating or misrepresenting facts or concealing true facts,

causing harm to the Public Administration.

Correlating the first diagnosis as it happened undoubtedly favors decision making

of the determination of the contingency, but we are before a fundamental right, and

There is evidence of any artifice or deceit on the part of the claimant, being able to carry out the incorporation

of the first medical analysis with the appropriate information and authorization to enable its in-

corporation as a contrast in the test performed.

This possibility of data communication is not related to the prevention of fraud,

as the defendant alludes that would justify the interference in the intimate data of the patients

with undifferentiated access to health data. Personal privacy would be violated if the

obtaining data pertaining to the privacy of the worker rests on a use

extensive extension of these legal qualifications by reason of the entrusted purpose, substitution

altering the purpose of the rule to the point of making the affected fundamental right impracticable

or ineffective the guarantee that the Constitution grants. All of which leads to warning of the need

objective factors to achieve the incorporation of previous healthcare tests

for verification in the diagnosis to be made, as indicated by the duty of confidentiality.

and expressly article 13 of Decree CYL

X

Regarding the alleged typing error, apart from what has already been mentioned in previous points,

The infringement of the illegal treatment is not imputed, because for the data collected in the re-
knowledge related to health data on the part of the mutual insurance company, there may be a legal basis
gitimation, note that it has not been discussed about it, but rather in the result than in the
carry out the same occurs. The fact is not that consent is needed for the
mentioned treatment, but in the part of incorporation of contrast of the clinical history of
the first test, there was a result infraction consisting of making known
the same mutual health information for which there was no authorization.
duly informed of the affected person about transfer or consultation of the first episode of
medical attention, and the data is communicated, producing the infringement of the duty of confidentiality.
deniality This could have been saved, among other things, with proper information
on permission to access the history detailing the purpose, consequences and obligations
by the claimant.
The infraction occurs due to the lack of diligence established by mistakenly considering that
these data from that part of the clinical history can be communicated without further ado due to the fact
that the clinical history is unique in the Group, or contributes to the best and most accurate
provision of the contracted service, ignoring the informed authorization of the affected party.
Finally, it should be noted that the lack of response in the tests did not condition the pro-
nor does it affect the resolution, because nothing significant is provided in the response
that decant on one side or the other the estimated considerations. On the web there is an important part
of the second layer of information for patients, without clearly explaining some
any assumption related to what happened in this assumption.
eleventh
Article 83.5.a) of the RGPD refers to said infringement, which indicates:
“The infractions of the following dispositions will be sanctioned, in accordance with the
section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of
a company, of an amount equivalent to a maximum of 4% of the total turnover

annual global of the previous financial year, opting for the highest amount:

basic principles for treatment, including conditions for consent

a)

treatment under articles 5, 6, 7 and 9;”

The determination of the sanction that should be imposed in this case requires observing the

provisions of articles 83.1 and 2 of the RGPD, precepts that, respectively, provide the

Next:

"1. Each control authority will guarantee that the imposition of administrative fines

in accordance with this article for the infringements of this Regulation indicated in

sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

"two. Administrative fines will be imposed, depending on the circumstances of each case

individually, in addition to or as a substitute for the measures referred to in article 58,

section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount

aunt in each individual case will be duly taken into account:

a)

the nature, seriousness and duration of the offence, taking into account the nature,

scope or purpose of the treatment operation in question, as well as the number

number of interested parties affected and the level of damages they have suffered;

the intentionality or negligence in the infringement;

any measure taken by the person responsible or in charge of the treatment to alleviate

b)

c)

the damages suffered by the interested parties;

d)

the degree of responsibility of the person in charge or of the person in charge of the treatment, given

account of the technical or organizational measures they have applied under articles

25 and 32;

and)

any prior infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the infringement.

tion and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular

determine whether the person responsible or the person in charge notified the infringement and, if so, to what extent.

gives;

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or certification mechanisms

cation approved under article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or indirectly.

mind, through infraction."

Within this section, the LOPDGDD contemplates in its article 76, entitled "Sanctions and

corrective measures":

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU)

2016/679 will be applied taking into account the graduation criteria established in the

section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679, you can also

will take into account:

a) The continuing nature of the offence.

b) The link between the offender's activity and the performance of personal data processing.

sound.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the commission of the crime.

infringement.

e) The existence of a merger by absorption process subsequent to the commission of the infraction.

tion, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection officer.

h) Submission by the person in charge or person in charge, on a voluntary basis, to

alternative conflict resolution systems, in those cases in which there are

controversies between them and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of the

remaining corrective measures referred to in article 83.2 of the Regulation (EU)

2016/679."

For the assessment of the sanction that would be implemented in this initial agreement, it is contemplated

plan the following factors:

The respondent is an entity in the health sector in which health data is processed (83.2.g) and must have established protocols so that the information and data of the assisted service potential provided under the private insurance regime is not transferred to those originating in the public moan. There is a close relationship between the health data being processed and the data of a personal nature, being a daily facet and linked one element to another.

As a consequence with the elements that are available, the penalty is imposed in 10,000 euros

Therefore, in accordance with the applicable legislation and having assessed the graduation criteria of the sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE CENTRO DE DIAGNOSTICO ***LOCALIDAD.1, S.A., with CIF *** CIF.1, for a violation of Article 5.1.f) of the RGPD, in relation to article 5 of the LOPDGDD, in accordance with article 83.5 a) of the RGPD, a fine of 10,000 euros

SECOND: NOTIFY this resolution to the DIAGNOSTIC CENTER ***LOCALI-DAD.1, S.A.

THIRD : Warn the sanctioned person that he must make the imposed sanction effective once that this resolution is enforceable, in accordance with the provisions of art. 98.1.b) of Law 39/2015, of 1/10 of the Common Administrative Procedure of the Administrations Public (hereinafter LPACAP), within the voluntary payment period established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of 07/29, in relation to art. 62 of Law 58/2003, of 12/17, through its entry, indicating the NIF of the

sanctioned and the number of the procedure that appears in the heading of this document.

ment, in the restricted account number ES00 0000 0000 0000 0000 0000, opened in the name of the

Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A.. In

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is between the

days 1 and 15 of each month, both inclusive, the term to make the voluntary payment will be

until the 20th day of the following month or immediately after, and if it is between the days

16th and last of each month, both inclusive, the payment term will be until the 5th of the second

following or immediately following business month.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution

It will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LO-

PDGDD, and in accordance with the provisions of article 123 of the LPACAP, the interested parties

may optionally file an appeal for reconsideration before the Director of the Agency

Spanish Data Protection Authority within a month from the day following the

notification of this resolution or directly contentious-administrative appeal before the

Contentious-administrative Chamber of the National High Court, in accordance with the provisions

in article 25 and in section 5 of the fourth additional provision of Law 29/1998, of

July 13, regulatory of the Contentious-administrative Jurisdiction, within two months

months to be counted from the day following the notification of this act, as provided in article

Article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, it may be

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

its intention to file a contentious-administrative appeal. If this is the case, the interest

The party must formally communicate this fact in writing addressed to the Spanish Agency.

Data Protection Label, presenting it through the Electronic Registry of the Agency

[https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other registries

others provided for in art. 16.4 of the aforementioned Law 39/2015, of 1/10. You must also transfer to the

Agency the documentation that proves the effective filing of the contentious-administrative appeal

ministerial. If the Agency was not aware of the filing of the contentious appeal,

so-administrative within a period of two months from the day following the notification of the pre-

This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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