

Athens, 04-04-2018

Prot. No.: G/EX/2649/04-04-2018

## PRINCIPLE OF DATA PROTECTION

### OF A PERSONAL CHARACTER

A P O F A S H 32/2018

(Department)

The Personal Data Protection Authority met as a Department

at its headquarters on Wednesday 04.04.2018 at 10:00 a.m. upon invitation of the President

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

The President of the Authority, Konstantinos Menoudakos, and the alternate members were present

Panagiotis Rontogiannis, Evangelos Papakonstantinou and Grigorios Tsolias, as

rapporteur, replacing regular members Antonios Symvonis, Konstantinos

Lamprinoudakis and Charalampou Anthopoulos, respectively, who, although they were summoned

legally in writing, they did not attend due to obstruction. Present without the right to vote were

Evangelia Vassilopoulou, legal auditor, as assistant rapporteur and Irini

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

The Authority took into account the following:

With the no. first ... (ADPPH G/EIS/7607/23.10.2017) his application, the University

General Hospital [region] X (hereinafter Hospital) forwards to the Authority the under no.

first ... application of A, an obstetrician, and requests the Authority's permission for the processing

sensitive personal data. Specifically, A requests to receive from the above

Hospital "copies of B's medical file and in particular official copies from

tests a) vaginal and cervical fluid culture, b) blood culture, c)

peritoneal fluid culture, d) wound culture and e) cytological examination

of peritoneal fluid taken in the operating room during the operation" to refute her

an action for monetary satisfaction due to moral damage caused by a medical error and its consequences,

according to her claims, caused damage to her health and insult to him

right to the free development of her personality, which the latter has exercised

against the applicant doctor, the anonymous company with the name "EUROMEDICA

Anonyme Company for the Provision of Medical Services", as it is legally represented, and another

gynecologist before the Single Member Court of First Instance [region] X (regular procedure

- No. of filing ... with trial on ..., after postponement – as the Authority was informed by

under no. prot. ADDPX 8456/24.11.2017 supplementary document). Furthermore, with the no.

prot. ADDPX 8828/06.12.2017 his supplementary document to the Authority, A requests the

as above Hospital to be given copies and "a) of the ultrasound opinions

that were made before the surgery, b) of the ultrasound films in digital form or in photocopy,

c) the histological examination from the surgery, d) the cytological examination from the

operating room, e) temperature charts before and after the operating room and throughout

her hospitalization, f) the serums and drugs administered throughout her hospitalization, g) the

cultures of blood, vaginal and cervical fluid, peritoneal fluid and wound and

h) of the b – HCG test".

According to the above action, and according to the claims of the plaintiff B, the doctor

obstetrician A, as the second defendant's doctor on call, did not fulfill the duty

care and medical supervision, made an incorrect and/or no diagnosis of the condition

of her health and gave her the wrong medication when she was admitted as an emergency

incident at the Clinic-second defendant with severe algae following her submission to

assisted fertilization and embryo transfer procedure.

The Authority, after examining the elements of the file, after hearing the rapporteur and the

clarifications from the assistant rapporteur, who was present without the right to vote and left

after the discussion of the case and before the conference and decision-making,

after thorough discussion,

## THOUGHT ACCORDING TO THE LAW

1. Because the provisions of articles 2 par. b', 4 par. 1 and 7 par. 2 item. c' of Law 2472/1997

determine the terms and conditions for the legal processing of sensitive

of personal health-related data. The provisions of articles 5 par. 3 and 13 par.

3 items b' of Law 3418/2005 (Code of Medical Ethics) provide for the exceptional

granting of medical certificates and opinions to a third party, as long as it is legal

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interest and proves it, as well as the conditions for lifting medical confidentiality.

Because, further, article 11 par. 3 of Law 2472/1997 stipulates that if the data

are announced to third parties, the subject is informed of the announcement before them.

2. Because, according to article 914 of the Civil Code, whoever damages another illegally and culpably has

obligation to compensate him. Furthermore, in accordance with article 932 of the Civil Code, in case

tort regardless of compensation for property damage, the court may

to award monetary satisfaction reasonable at his discretion due to moral damage, which

it is also due in case of violation of the right of personality (57, 59 AK).

3. Because, in the case under consideration, A is requesting in the capacity of a third party (article 2 item i of

Law 2472/1997) the provision of sensitive personal data (health data)

which concern B and are kept in the file of the above Hospital as responsible

processing, (article 2 item g' of Law 2472/1997). From the evidence of the case file

it follows that the purpose of processing consists in refuting the aforementioned

monetary treatment

satisfaction to restore moral damage as a result

alleged medical error but also violation of the right to personality

brought by B against the applicant doctor, the anonymous company under the name

"EUROMEDICA Anonyme Supply Company

Medical Services, such as

legally

represented, and another gynecologist before the Single Member Court of First Instance [region] X.

4. The proposed purpose of processing the rebuttal of the above action is consistent with the aforementioned provision of article 7 par. 2 item c' of Law 2472/1997, while at the same time the principle of proportionality of the data is also met (Article 4 par. 1 letter b of Law 2472/1997), because with the use of said requested health data the competent

A court will be able to judge the existence or non-medical error and its consequences to rule on the conductive claim.

The Hospital must, as data controller, inform, in accordance with the in the provision of article 11 par. 3 of Law 2472/1997, the B for the transmission of sensitive of her personal data to doctor A for judicial use in her context described legal dispute.

FOR THOSE REASONS

The Authority grants the license to University General Hospital [region] X as responsible

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processing, to provide obstetrician A with the requested health data which mentioned above and concerning B, in order to use them in the context of the aforementioned legal dispute between them, based on the no. registered ... lawsuit, since the Hospital inform B in advance.

The president

The Secretary

Konstantinos Menudakos

Irini Papageorgopoulou