PERSONAL DATA PROTECTION AUTHORITY Athens, 31-07-2020 Prot. No.: G/EX/5387/31-07-2020 A P O F A S I 21 /2020 (Department) The Personal Data Protection Authority met in composition Department at its headquarters on 15.04.2020 upon the invitation of its President, in order to examine the case referred to in the present history. The Deputy President G. Batzalexis, obstructing the President of the Authority K. Menoudakos, and the alternate members of the Authority G. Tsolias, as rapporteur, E. Papakonstantinou, and E. Dimogerontakis, in place of regular members X. Anthopoulos, K. Lambrinoudakis and E. Martsoukou, respectively, who, although legally summoned in writing, did not attend due to disability. Present without the right to vote were K. Karvelis and H. Latsiu, expert scientists-lawyers, as assistant rapporteurs, who left after the discussion of the case and before the conference and decision-making, and E. Papageorgopoulou, an employee of the administrative department affairs of the Authority, as secretary. The Authority took into account the following: With the no. prot. C/EIS/8152/15.10.2018 his complaint to the Authority, A complains the HYGEIA group and specifically the MITERA Hospital for not complying with the GDPR, and specifically that instead of protecting the sensitive personal data of citizens-patients, the MITERA Hospital obliges patients to consent to the access of their medical file by the private insurance companies they work with. As he specifically mentions in his complaint, on ... the complainant visited MITERA Hospital for an emergency of his child and at the Hospital cash desk he was asked to sign a document - Information Sheet, in the last paragraph of which he was obliged to give his consent in order to does his insurance company have access to the copies of his medical file kept by the MITERA hospital for the specific incident, while as he claims, the possibility of choice should also be provided in the case of the patient's non-consent. Following this, the complainant objected to consenting to the access of his child's medical file by his private insurance company, but provided his consent in order for communication to take place regarding any approval of the tests that should be carried out, but not the results of these exams. He expressed this opposition explicitly and in writing in the Information Sheet, which he had to sign in any case, otherwise the examination of his child would not proceed. In the context of investigating the complaint, the Authority sent from 7.12.2018 and with no. prot. C/EX/8152-1 document to provide clarifications to MITERA Hospital, which in no. prot. C/EIS/10323/24.12.2018 his reply document stated the following: a) each patient who voluntarily comes to the hospital declares himself the insurance company that is insured, in order for the hospital to inform him about the financial coverage of each medical incident, depending on the agreement in force between them. With this statement, the patient consents, if he so wishes and only, to the access of the insurance company in question to the file kept for the specific and only incident. If he does not wish to do so, he does not sign the relevant field of the Information Form

and must cover the incident privately, without any further transmission of personal data to third parties, b) a condition for coverage of the incident by the insurance company is to be granted the right to full and unrestricted access to the patient's file as a whole, i.e. both the type of examinations and their results, provided the data subject consents. Otherwise there is a denial of coverage and the patient is treated as a private individual, and c) the complainant has written in the relevant consent field that he consents to the information of the insurance company that his child will undergo medical examinations, but does not consent to the sending of the results of the examinations to his insurance provider or any other provider. However, his above refusal was irrelevant, since it referred to an ideal part of his child's file (test results) which cannot be separated from the entirety of the medical file. Nevertheless, the hospital, respecting the objections submitted by the complainant, complied with his wish and did not send the results of the tests to the insurance company. Following this, the Authority with no. prot. C/EX/1224/13.02.20 and C/EX/1225/13.02.20 summons respectively invited the MITERA nursing institution and the complainant to attend the meeting of the Authority on 26.02.2020, in order to discuss the above complaint. During the hearing on 26.02.20, the complainant A and on behalf of the MITERA Hospital the attorneys A. Papageorgakis Head of the Legal Service of the Hygeia Group and A. Papadopoulou appeared. A during the above hearing of 26.02.20 but also in no. prot. C/ESI/1580/28.2.20 his supplementary memorandum supported the following: a) the representatives of MITERA admitted that after his complaint they reworded the information sheet that he was forced to sign, since as it was worded, with the consent that the patient was obliged to sign, he essentially gave his consent to his insurance company having the right to access and receive copies of the file kept by MITERA for this incident, b) in the emergency incident of his child..., MITERA refused to examine him said incident, if he did not consent to his insurance provider's access to the results of the tests to be carried out and informed him that he would have to cover the total cost of the incident himself, after communicating through the shift supervisor with the Data Protection Officer of MITERA, an order was given to proceed with the examination of the extraordinary incident, without the complainant having completed the due to the Information Bulletin and then added by hand that he does not consent to the sending and processing of the results of the medical examinations to the insurance company, c) a private insurance company does not need and should not have access to the medical health data of an insured in order to proceed with the management and compensation of an incident, except when absolutely necessary, in accordance with the principle of proportionality, especially in the case of an out-of-hospital incident, and even more so when the insurance risk has already been calculated and there is already a contract with the insured, and d) the MOTHER the policy has not changed to

date, in particular, a MITERA employee told his wife that if she did not consent to access to the file, including the results (even though she was an outpatient) she would not be able to perform the scheduled free examinations. The attorneys of MITERA during the above hearing of 26.02.20, but also with the no. prot. C/EIS/1957/13.3.20 their memorandum supported the following: a) based on the GDPR, the Outpatient Information Sheet was created per incident, in field II of which the "PATIENT PERSONAL DATA NOTICE" has been included, where among other things, the subjects are informed about the keeping of the file, the source of the personal data and health data, the purpose of processing, the right of access, the processing and transmission of the kept data, the time of keeping, the existing GDPR rights of the subject of data and the manner of exercising them, for the Data Protection Officer, as well as for the right to submit a complaint to the Authority in case the matter is not resolved, and in the last field the "PATIENT CONSENT DECLARATION FOR ACCESS TO PERSONAL DATA BY THE INSURANCE COMPANY" is provided for, in order for the insurance body that the patient voluntarily declares to cover him, to have access to and receive information in relation to with the type of tests he carries out, b) according to standard practice for all external incidents, the patient comes to the respective cashier of the clinic, declares or updates his demographic data, by simply showing his police ID or other identification document, explicitly declares his consent or not and at the end he declares the insurance he has, whether or not he has private insurance coverage, if he wants to use it for the specific incident and in a positive case, he provides his express will to this end, signing at the end "DECLARATION OF CONSENT FOR INSURANCE COMPANY ACCESS TO PERSONAL DATA", c) if a patient comes for tests on an external basis and has a referral EOPYY and at the same time a private insurance company then MITERA according to and the ones defined in article 9 par. 2 item h of the GDPR has the obligation to report the incident to EOPYY, otherwise the patient pays the entire invoiced amount himself, receives the relevant invoices and then, if he wishes, submits the issued invoices himself to his insurance company, for to be compensated based on his insurance policy, d) MITERA never sends and is never asked by the respective private insurance company to send the results of the examinations carried out, and if the patient does not wish to use his private insurance company, he does not sign the relevant field, e) on the specific incident, the complainant had the right of choice in the document granted to him by MITERA to write down what he wishes regarding the processing of his child's health data, he was not subjected to any coercion, in order to sign a document who does not wish or does not agree, the possibility of refusing to provide y was never raised of health services by MITERA and no illegal processing of personal health data of the complainant was carried out, as no results of a medical examination carried out were sent to the private insurance company of the

complainant, f) the legal basis for the processing of personal data is in principle the provision of medical services according to article 9 par. 2 item h of the GDPR, while the subject's consent is a necessary legal basis for the lawful processing of personal data in the health sector, only this is expressly required by law, and g) the patient may provide a specific, explicit and free authorization to the provider health services, as controller, for the transmission to the insurance company of sensitive personal data related to his health, in accordance with the provisions of article 9 par. 2 item. a' of the GDPR, which is why MITERA has taken care to obtain the consent of the data subject for the disclosure of the type and only of the examinations that take place per external incident. The Authority, after the hearing and consideration of the elements of the file and after hearing the rapporteur and the assistant rapporteurs, who withdrew after the discussion of the case and before the conference and decision-making, after a thorough discussion, OUGHT AGAINST THE LAW 1. Because, from the provisions of Articles 51 and 55 of the General Data Protection Regulation (Regulation 2016/679) and Article 9 of Law 4624/2019 (Official Gazette A´ 137) it follows that the Authority has the authority to supervise the implementation of the provisions of the GDPR, this law and other regulations concerning the protection of the individual from the processing of personal data. In particular, from the provisions of articles 57 par.1 item. f of the GDPR and 13 par. 1 item g´ of Law 4624/2019 it follows that the Authority has the authority to deal with A's complaint against the MITERA nursing institution and to exercise, respectively, the powers granted to it by the provisions of Articles 58 of the GDPR and 15 of Law 4624/2019 . 2. Because Article 5 of the GDPR defines the processing principles that govern the processing of personal data. Specifically, it is defined in paragraph 1 that personal data, among others: "a) are processed lawfully and legitimately in a transparent manner in relation to the subject of the data ("legality, objectivity, transparency"), b) are collected for specified, explicit and legitimate purposes and are not further processed in a manner incompatible with these purposes, c) are appropriate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization"), (…)". 3. Because, according to the provisions of article 5 paragraph 2 of the GDPR, the data controller bears the responsibility and must be able to prove his compliance with the principles of processing established in paragraph 1 of article 5. As the Authority1 has judged, with the GDPR a new model of compliance was adopted, the central dimension of which is the principle of accountability in the context of which the data controller is obliged to plan, implement and generally take the necessary measures and policies, in order for the processing of data to be in accordance with the relevant legislative provisions. In addition, the data controller is burdened with the 1 See Authority decision 26/2019, paragraph 8, available on its website. further duty to prove by himself and at all times his compliance with the principles of

article 5 par. 1 GDPR. 4. Because, in accordance with article 8 paragraph 1 of the Charter of Fundamental Rights of the European Union, article 9A of the Constitution and recital 4 of the GDPR, the right to the protection of personal data is not absolute, but must assessed in relation to its function in society and weighed against other fundamental rights, in accordance with the principle of proportionality. The GDPR respects all fundamental rights and observes the freedoms and principles recognized in the Charter, in particular respect for private and family life, residence and communications, protection of personal data, freedom of thought, conscience and religion, freedom expression and information, business freedom, the right to an effective remedy and an impartial tribunal and cultural, religious and linguistic diversity. 5. Because Article 9 para. 1 GDPR introduces, in principle, a ban on the processing of information that falls under special categories of personal data, i.e. personal data concerning, among other things, health. Subsequently, paragraph 2 of the same article states that: "Paragraph 1 shall not apply in the following cases: a) the data subject has provided express consent to the processing of such personal data for one or more specific purposes, unless the law of the Union or a Member State provides that the prohibition referred to in paragraph 1 cannot be lifted by the data subject, b) the processing is necessary for the performance of a contract to which the data subject is a party or to take measures on demand of the data subject before the conclusion of the contract (…). 6. Because, in the case under consideration, from the data in the case file, it appears that the complainant, during his visit to the complained-of nursing institution for a medical emergency of his minor child, refused to provide a positive declaration of intent to it, as a data controller , in accordance with the provisions of article 4 par. 7 of the GDPR, in the relevant form in the Outpatient Minor Patient Information Sheet of the hospital in question, entitled "Declaration of consent of the patient's legal representative(s) for access by an insurance company to personal data" and content: "(...) With this statement I consent to , the social and/or private insurance body in which the Patient is insured (the "Insurance Body") and specifically the doctor/auditor of my Insurance Body notified to "MITERA" and/or the sub-processors on behalf of the latter , for which my insurance company has informed me and I have given them the relevant consent to have/have access to and receive/receive copies of the File kept by "MITERA" for this incident". In particular, it appears that the complainant refused to give his consent for the insurance company to access the entire medical file kept at the complained-of nursing institution, i.e. the results of the medical examinations carried out there, declaring in hand on the relevant section of the form "I declare that I do not consent to the sending of the results of the examinations to the NN insurance company or any other insurance company", as in his opinion only access to the medical examinations carried out for the performance of the insurance case by his counterparty NN

insurance company was sufficient. Following the refusal to provide a positive declaration of intention on behalf of the complainant, it appears that the results of the medical examinations were not transmitted from the complained nursing institution MITERA to the insurance company NN, the counterparty to the complainant, after the occurrence of the insured event. Furthermore, according to no. prot. APDPH C/EIS/1957/13.03.2020 memorandum of the MITERA nursing institution, the latter never sends nor is it asked to send the results of the of medical examinations carried out. Consequently, from his data
of the case file, it appears that the MITERA nursing institution did not proceed
in processing personal data respecting the refusal to provide
consent and,
therefore, no
a right has been violated
of
complainant, as a data subject.

7. Because, further, from the evidence of the case file, regarding
the alleged practice followed by the regulated nursing institution in
relation to the content of the declarations of intent forms becomes searchable
whether the provision of the patient's positive declaration of will, as a subject
of the data, meets the requirements of Article 7 of the GDPR, as interpreted
in fact, recently by the Court of Justice of the European Union (CJEU) with
decision of the Bundesverband der Verbraucherzentralen und Verbraucherverbände –
Verbraucherzentrale Bundesverband eV v Planet49 GmbH of the Court of Justice
European Union, according to which "the consent of the person in
to which the data are referred may make the above processing legal
as long as the consent of the person in question is "express". But only the active one
behavior on the part of that person for the purpose of declaring consent
he can fulfill said requirement"2. Given, however, that the issue

this is also intertwined with the practice followed by insurance companies

when collecting personal data from nursing institutions, and

whereas this matter is related to the Draft Code

Code of Conduct of the Association of Insurance Companies, which has been submitted to

Authority for approval and which can be used as evidence for the

proof of its compliance with the GDPR, if approved by the Authority,

in accordance with the provisions of article 24 par. 3 of the GDPR, the Authority

reserves the right to judge the legality of the processing described above

in relation to the consideration of the above Draft Code of Ethics.

FOR THOSE REASONS

The beginning

a) rejects A's complaint against the complained-of nurse

MITERA foundation, for the reasons mentioned in the reasoning of this present

and

b) reserves the right to examine his practice as a whole

nursing

MITERA institution and to judge its legality

processing the personal data of patients, as subjects

of the data as well as their transmission to the insurance companies at

in the context of the examination of the draft Code of Ethics of the Insurance Association

Companies that have been submitted for approval to the Authority, in accordance with the provisions

2 CJEU Decision C-673/17 from 01.10.2019 s. 54 ff.

in the provision of article 40 par. 5 of the GDPR.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou