

□ Procedure No.: PS/00066/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: UNIDAD AVANZADA SALUD BUCODENTAL, S.L.P (hereinafter, the
claimant) dated September 11, 2019 filed a claim with the
Spanish Data Protection Agency.

The claim is directed against A.A.A. with NIF ***NIF.1, (hereinafter, the claimed one).

The reasons on which the claim is based are that the claimed party is processing data
without having the legitimacy required according to the law of protection of
data.

The personal data object of conflict was obtained by the claimant with the
purchase agreement that was formalized with the claimed party on June 26, 2016, despite
to be indicated in the seventh stipulation of the contract that “the number of tokens
registered patients is 15,000, of which at least 1,500 are
are active, which become the property of the buyer. the selling side

You will not be able, in any case, to make a copy of the record of patient files.”

The claimant entity states that the claimed entity is treating the personal data
of its former clients, breaching the contract and contravening what is established in the
data protection regulations.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), with reference number E/10009/2019, transfer of
said AAA claim, on November 19, 2019, to proceed with its

analysis and report to this Agency within a month, of the actions carried out

carried out to adapt to the requirements set forth in the data protection regulations.

In response to the aforementioned request on November 23, 2019, the respondent

states that it is not in charge of processing the data of the MEDICAL CENTER LA

MASO INTERMEDIATION AND SERVICES, S.L. not being part of the Management or of

the Administration of said center.

THIRD: On March 4, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, with

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of article 6 of the RGPD, typified in article

83.5 of the GDPR.

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QUAR

TO: Notification of the aforementioned agreement to initiate this procedure

sanctioning party is given a hearing period of TEN WORKING DAYS to formulate

the allegations and present the evidence it deems appropriate, in accordance with the

stipulated in articles 73 and 76 of Law 39/2015 on Administrative Procedure

Common of Public Administrations.

FIFTH: Not having made allegations or presented evidence within the given period,

by the claimed party, in accordance with articles 64.2.f) and 85 of the Law

39/2015, this resolution is issued taking into account the following:

FACTS

FIRST: It is reported that the respondent is processing personal data without counting with the legitimacy required according to the data protection law.

SECOND: On March 13, 2021, the claimant is notified of the settlement agreement beginning of this procedure, turning said agreement into a resolution proposal in accordance with articles 64.2.f) and 85 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (LPACAP), to the not make the claimed allegations within the indicated period.

THIRD: The claimed party is treating the personal data of its former clients, breaching the contract and contravening what is established in the protection regulations of data, since it was addressed to former patients of the claimant clinic indicating who provided services in the new clinic.

The contract of sale formalized by the claimant with the claimed in the seventh clause indicates that "the number of registered patient records is 15,000, of which at least 1,500 are active, who become buyer's property. The seller may not, in any case, make a copy of the patient file register."

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, in its article 4.11 defines the consent of the

interested party as "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either by means of a declaration or a clear affirmative action, the treatment of personal data that concerns you".

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In this sense, article 6.1 of the RGPD establishes that "in accordance with the provided in article 4.11 of Regulation (EU) 2016/679, it is understood as consent of the affected party, any manifestation of free will, specific, informed and unequivocal by which it accepts, either by means of a declaration or a clear affirmative action, the processing of personal data that concerns you".

III

The facts denounced, that is, making use by the respondent of the list of client files of the claimant entity and send WhatsApp to clients of the claimant entity without their prior consent, sending them advertising and commercial information, supposes an infringement of art. 6 of the GDPR. This is so, because when the defendant stopped exercising her professional activity in ADVANCED UNIT SALUD BUCODENTAL, S.L.P, and sold said dental clinic, lost all legitimacy for the treatment of the data of the patients of said clinic, since with its sale it ceases to be responsible for data processing personal data of the clients, which implies that it cannot maintain said data, nor use or treat them, not even to report your new workplace.

IV

Article 72.1 b) of the LOPDGDD states that "according to what is established in the

article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

c) The processing of personal data without the concurrence of any of the conditions of legality of the treatment in article 6 of Regulation (EU) 2016/679.”

v

Article 58.2 of the RGPD provides the following: "Each control authority will have of all the following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the
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global total annual turnover of the previous financial year, opting for the

of greater amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established by article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional, but significant, negligent action.

you identified (article 83.2 b)

☐ Basic personal identifiers -image- are affected, (art 83.2 g)

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A. with NIF ***NIF.1, for an infraction of article 6 of the RGPD, typified in article 83.5 of the RGPD, a fine of 3,000 euros (three thousand euros).

SECOND: NOTIFY this resolution to A.A.A.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution 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

LOPDGDD, 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 Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly

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contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in 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,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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