

File No.: PS/00004/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 07/31/2020

before the Spanish Agency for Data Protection. The claim is directed against

CLÍNICAS DEL SUR, S. L. - GRUPO HOSPITEN with NIF B38031241 (hereinafter, the

claimed). The reasons on which the claim is based are that B.B.B., (data in ANNEX, in

hereinafter, the doctor) who treated him on \*\*\*DATE.1 in the emergency department of the

HOSPITEN clinic, in \*\*\* LOCATION.1,

, a

\*\*\*INSTITUCION.1, for which you work, your data, in the course of an investigation

reserved that the doctor herself fostered through her performance the day he was treated.

He adds that he informed them of data on the "day and time he goes to the emergency service, his

place of work, the reason for the visit, the appearance you presented during the visit, the

medication prescribed-anxiolytics, antidepressants, hypertensives), and other data that

this doctor collects on the occasion of her position and profession and in the course of a consultation

doctor-patient."

later provided the

\*\*\*DATE.5

Along with the claim, provide:

-Emergency medical report signed by the doctor, on \*\*\*DATE.1, anamnesis summary,

patient who goes to the emergency room because he needs his usual medication treatment. consist

your identification data, entity "ADESLAS Officials", history number, n

episode. "Patient who goes to the emergency room for needing his usual medication". Entry

1:40 p.m., departure, 2:20 p.m.

Describe the names of the four medications listed. They do not appear qualified

expressly as anxiolytics, antidepressants, hypertensives, but the name of the

medicine.

-Copy of "witness statement" to the \*\*\*INSTITUTION.1 on \*\*\*DATE.5, of the doctor,

"emergency doctor of the Hospital "HOSPITEN, of \*\*\*LOCALIDAD.1" in order to substantiate

"administrative assistance that has been interested", before the instructor.

"Before the beginning of the statement, you are informed of its purpose as well as that the

It is as a witness and voluntarily." It is noted that the document bears the

seal of "Human Resources Files".

"You are informed of the confidential nature of this investigation and of the obligation you have to

be discreet about the content of your statement."

"States that around 2:00 p.m. on \*\*\*DATE.1 he was at his place of work in

the emergency facilities of the HOSPITEN hospital, who at that moment arrived at the room

waiting room that was empty a man wearing a white t-shirt with a vest

open (...) in a reflective way, as well as a plate hanging from the neck that did not look like a

royal plaque with a shield whose symbology he could not recognize.

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That at that time her reception partner informs the caller of the arrival of

said person who required regular medication that was normally prescribed by the doctor

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That, verified by the declarant, the history of said person and his appearance instilled suspicions.

That at that moment his partner, the nurse, called the \*\*\*INSTITUTION.1 to verify that said person was \*\*\*PROFESSION.1 providing the name of the same.... and you confirmed that it was \*\*\*PROFESSION.1 and was on leave.

That said person wanted to be prescribed his usual medication, for which he said that it was \*\*\*PROFESSION.1 who lived in Madrid who had now been transferred to \*\*\*PROVINCE.1 and that he was in an anti-drug operation that had not had time to pick up your prescriptions.

That at that time the aforementioned person showed the deponent the medication he was taking, in the case of a hypertensive, an anxiolytic and an antidepressant and wanted the respondent to prescribe the same medications through ISFAS prescription.

That said person was nervous and evasive, in a cocky and somewhat intimidating attitude.

That the respondent was under the impression that if she had not agreed to prescribe the medication that person would have reacted incorrectly.

That the denouncer prescribed said medications to the aforementioned person and he/she left.”

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, dated 09/30/2020, the claim is transferred to the claimed.

On 10/29/2020, a response was received from the respondent, specifically from the DPD indicating:

-The claimant had already submitted a claim to them on 08/03/2020 that was began to manage, having a meeting with him, on 08/31/2020, stating in said meeting the possibility of a complaint, when it is appreciated by dates that it had already been interposed.

Provide a copy of said document in which the claimant indicates that he attended the \*\*\*DATE.1 to emergency department of the HOSPITEN hospital in \*\*\*LOCATION.1. “He has been aware

that on \*\*\* DATE.2, confidential information was initiated within the institution's labor

to which it belongs, \*\*\*INSTITUTION.1, as a result of a phone call that

performed that day \*\*\*DATE.1 by a hospital nurse in

". "In the frame

of the aforementioned reserved information, the doctor said she was the doctor who prescribed the day

\*\*\*DATE.1 the medication that is part of the pharmacological treatment that normally

comes taking the dicente. This doctor was previously warned of the non-obligation

to manifest, as it is an internal labor act that is part of an act

within the exclusive internal bosom of the \*\*\*INSTITUTION.1 and after being

informed of the foregoing, freely and voluntarily stated:

"That the undersigned appeared at that hospital center for the purpose of

prescribed a medication that was normally prescribed by the doctor.... doctor of that

hospital, information that must be safeguarded in the strictest professional secrecy

..."

\*\*\*LOCATION.1

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"That verified his medical history and his appearance aroused suspicion. what in that

moment his nurse called the \*\*\*INSTITUTION.1 to verify that said person was

(...), providing his name and confirming that it was a \*\*\*PROFESSION.1 and that

I was on medical leave."

"That said person wanted to be prescribed his usual medication, for which he said that

it was \*\*\*PROFESSION.1, in this last point this doctor asserts that the man used his

public charge so that they prescribed the pills that make up his treatment and that

they are normally prescribed in a hospital in \*\*\*LOCALITY.1”

- Provides a copy of document 2, written by the \*\*\*INSTITUTION.1 of \*\*\*DATE.5, to the

claimed informing him of the telephone call from the Hospital received on

\*\*\*DATE.1 informing of the person and that "he was requiring anxiolytic drugs",

requesting to know the identity of the medical, medical or administrative personnel who

“they had some type of contact or half attended said person”

-On the causes that have motivated the infraction, it indicates that "perhaps the professionals who

attend to him feared identity theft or a risky situation, "caused by the

erratic behavior of the patient himself", which leads them to overzealous doing

the call. The safety of the Center and of the patient who was “requesting the

issuance of prescriptions for medications of certain characteristics, to which

it is very difficult to access" and that "health centers are used to seeing

impersonations of people in order to gain access to services obtain medication

and so on."

-“The context of what was stated by the doctor at the request of the \*\*\*INSTITUTION.1

is outside the scope of this explanation, since it is carried out in a scenario of absolute

confidentiality between the \*\*\*INSTITUTION.1, and the person who is called to testify the

center, having recommended to its personnel the collaboration with the Forces and Bodies of

State Security without being able to intervene in more decisions”.

-As actions taken, the following stand out:

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Disciplinary files are pending.

The claim was recorded in the incident system.

A letter has been sent to the claimant after receiving the transfer of the claim. of the

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copy that it provides of the same, delivered on 10/23/2020, nothing is indicated that it is done by the claim of the AEPD, but references to the course that your complaint follows within the claimed. It is interesting to highlight the following from the aforementioned letter:

“We have become aware through your claim of the content of the interview held on May 11, 2020 between (...) of the

\*\*\*INSTITUTION.1 and the doctor who treated him and prescribed the medication he you required and it was recorded in your Clinical History. Hospital's performance

\*\*\*LOCATION.1 was limited to receiving an official letter from the \*\*\*INSTITUTION.1 of

\*\*\*PROVINCE.1, Detachment (...), requesting the names of the personnel of guard on \*\*\*DATE.1, which was provided to them in the context of a

formal request for collaboration in an investigation. Nevertheless,

We are unaware of the warnings that the Security Forces and Bodies of the

State made to the doctor in her statement, although we trust that the

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herself acted in the conviction of collaborating with the agents in the investigation of a crime under summary secrecy...”

In document 13, it is stated that an informative note was sent to all employees with

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in order to remind them of their obligations in terms of Data Protection. It means the communication of patient information through different means, telephone between others, also with reference to mere conversations. The writing is undated.

The information to the staff about the existence and functions and the

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communication channel with the DPD.

It is recommended to take new Data Protection courses periodically

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with special attention to the medical, nursing, administrative, auxiliary and all

those who have contacts with patients or relatives.

Provides:

-Copies of two signed "confidentiality commitment" documents

by the nurse (10/29/2019) and the doctor (11/20/2019). They deal with the information and data of

personal character to which you can access or know by reason of your work, is contained

that no information will be "provided to any person nor will information be made available in the course

of their work and the duty to maintain secrecy, so as not to reveal information that contains

personal data as a duty of secrecy inherent to their work, especially regarding

the treatment that it can make of health data, accepting that its infraction could give

lead to disciplinary sanctions". "Before signing this form, please read

carefully the information on Data Protection that is presented attached". attached

an informative brochure "user manual of Data Protection and security of the

information", updated October 2020 of 19 pages.

-Copies of writings, from \*\*\*DATE.3 to the doctor with the receipt and to the nurse of

\*\*\*DATE.4. In that of the doctor, it shows that due to a claim from the

claimant, "you and a nurse dated \*\*\*DATE.1 notified the barracks by telephone

of the \*\*\*INSTITUTION.1 in order to find out if Mr. "claimant" was \*\*\*PROFESSION.1 or

no, as he himself had let them know when attending the emergency room in the

hospital" . " In addition, according to the claim received on \*\*\*DATE.5,

you provided Mr.... (...) confidential information as part of the open internal investigation

of said patient, such as prescribed medication, confidentiality that you cannot infringe under any circumstance”.

In the same letter delivered to the nurse, he indicates that "it seems that you with a date \*\*\*DATE.1 requested information by telephone from the Headquarters of \*\*\*INSTITUTION.1, in order to find out if mr. ,,, was it \*\*\*PROFESSION.1 or not, as he himself had let them know in your emergency assistance. Said call that you should not have made given that the sir... you appeared at our center as a user of your private health card, you led to an internal investigation of the claimant, which has led to the claim by the user to our hospital”.

It indicates to both of them that their conduct constitutes a serious breach of contract by part of its obligations presided over by good faith, in accordance with article 40.3 k of the collective agreement of the sector, considering as a very serious offense the violation or

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violation of secrets of obligatory reserve. This type includes any conduct that reveals the pathological process of patients or that affects the privacy of these.

-It is therefore observed that in the facts imputed to both employees, it is limited to what happened on \*\*\*DATE.1 in consultation, and there is no mention of the doctor's statement before the \*\*\*INSTITUTION.1, in accordance with the statement made about the context in which he declares.

THIRD: On 12/16/2020 the claim was admitted for processing.

FOURTH: On 04/16/2021, the Director of the AEPD agreed:



“INITIATE PUNISHMENT PROCEDURE against CLÍNICAS DEL SUR, S. L. - GROUP

HOSPITEN, with NIF B38031241, for the alleged infringement of articles 5.1.b) and 5.1.f)

of the RGPD, in accordance with article 83.5 a) of the RGPD.”

"For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, of the Procedure

Common Administrative of Public Administrations, (hereinafter, LPACAP) the

sanction that could correspond would be a warning.”

FIFTH: On 04/28/2021, a letter is received from the DPD, entitled "authorization" in which

the DPD, on behalf of the respondent, indicates that it "authorizes" three people to

identifies, from HELAS CONSULTORES, to examine or receive the file and to obtain a copy

of the documents that make up said procedure, including the stamp of the Clinic and

an unnamed signature. Only the authorization is specified, and there is no effective

request by the DPD or any of the persons referred to.

On 05/01/2021, a new letter is received from the DPD, on behalf of the respondent,

entitled "authorization" in which it indicates that it "authorizes" two persons that it identifies,

HELAS CONSULTANTS, to submit a written statement, bearing the seal of the Clinic

and an unnamed signature.

Likewise, allegations are received, signed by the DPD, stating:

- “In your letter of 04/28, you have requested access to the file and you have not had access to it.

Same ending the term on 4/05

.”

-On the violation of article 5.1 b) of the RGPD, the personal data of the claimant will be

used for the provision of medical care. Indicates that it was the claimant himself

asserting his status as a \*\*\*PROFESSION.1 and his attitude to obtain the medication

aided by his irregular intimidating attitude, “allowing and consenting to the use of his

condition” and that suspecting identity theft, the nurse proceeded to

call the \*\*\*INSTITUTION.1 and “they will take the appropriate measures as a member of the

State Security Forces and Bodies”, although he adds that the call was made “without provide any information about the , I don't even know is in the ER.”

It considers that "a different illegitimate use of the data cannot be attributed to the center or to the nurse or the doctor" because there is no other purpose than that of the provision of the attendance.

-Regarding the violation of article 5.1 f of the RGPD, "the alleged lack of confidentiality of data of the patient that is imputed is carried out in an exceptional situation and caused whistleblower

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by an erratic behavior of the patient himself that leads professionals to think who attend a possible identity theft or risk situation, which leads them to have an excess of zeal in communicating to the Security Forces and Bodies what happened. The safety of the center, your personal safety, and that of your patient, who was demanding the issuance of medicines of certain characteristics to the which is very difficult to access and also using their status as a \*\*\*PROFESSION.1”.

-Considers that the context declared by the doctor before the request of the \*\*\*INSTITUTION.1 is outside the scope of this procedure since it is carried out in a scenario of absolute confidentiality between the \*\*\*INSTITUTION.1 and the person who is called to testify.

“The center and its professionals have always collaborated with the Police Forces and Corps.

security of the State before any requirement of this, under the formalities of petition

motivated in actions such as proceedings, citations, etc. in which it is considered that

The data of the people involved are absolutely confidential and are part of

an investigative process

“It has not been proven in any way that the claimant's employment file was

will start as a consequence of the facts that are the object of this complaint, but because of what

at some point the patient himself points out, apparently coming from behind, and the file

discipline was already in progress.

In the context of the statements of the \*\*\*INSTITUTION.1 there is no evidence that this file

intern has been opened as a consequence of the call but of his antecedents

jobs of which they are unaware.”

-The defendant has adopted a series of measures, the legal services and the

labor department in case any responsibility was deduced from the center of their

professionals and a procedure was started for the inmate that ended with a reprimand for

written.

The DPD took the initiative to send the center to start a new reminder

on staff obligations and reinforcement of confidentiality.

The incident notification channels and the completion of new courses were recalled

of Data Protection periodically.

Provide a copy of:

-Writ of reprimand to nurse, signed on 11/10/2020. It states that "in

in relation to his allegations and the claim of the..." claimant "After the same, it is

It is clear that you did not provide any information about the patient's medications, but

It is true that due to the fact that the claimant wears the uniform of \*\*\*PROFESSION.1, you do not

had to verify his identity before (...) the \*\*\*INSTITUTION.1 since the patients of the

hospital are patients regardless of their condition, the only check that

he should have done it was regarding his state of health and his health card". Declare committed the infraction as a serious breach of contract, in accordance with the Collective Agreement of the sector, and imposes the sanction.

-Same type of letter, addressed to the doctor, dated 11/6/2020, with the literal "having carried out the company also a communication to doña... for the call made to the

\*\*\*INSTITUTION.1, although although it is true, and taking into account that Mr. ..., after said call they have opened an internal investigation, where you have appeared and informed seems to be of the medication that he requested, despite the fact that said information provided should be confidential, the truth is that it has not been so and therefore the

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Mr. A.A.A., you have filed a claim with the hospital..." Declare the infraction committed as a serious breach of contract, in accordance with the collective agreement of the sector, and impose the penalty.

-Provide a copy of the offer of 09/03/2020, with acceptance by the requested budget, for personal data protection training.

SIXTH: Despite not having made a formal request to send a copy of the file or address to which it should be sent, in writing dated 05/06/2021, a copy of the file was sent to the claimed, extending the period for pleadings.

SEVENTH: On 12/7/2021, a resolution proposal is issued with the literal:

"That the Director of the Spanish Data Protection Agency declare the

ARCHIVING of the file filed with CLÍNICAS DEL SUR, S. L. - GRUPO HOSPITEN, with

NIF B38031241, for violation of articles 5.1.f) and 5.1.b) of the RGPD, in accordance

with article 83.5 a) of the RGPD, and for prescription purposes in article 72.1.a) of the LOPDGDD, with a sanction of warning.”

EIGHTH: On 12/22/2021, allegations are received expressing their agreement with the proposal because it could not act otherwise than as it did.

#### PROVEN FACTS

1) The claimant, (...), went on \*\*\*DATE.1 to the emergency room of the Hospital “HOSPITEN, from \*\*\*LOCALIDAD.1 where his medication was previously dispensed by the doctor who was not there that day, with Dr. B.B.B. appearing in her place, who was the first time I visited him. The claimant was identified through the health card and from the time he showed up, 1:40 p.m., according to the attendance record, according to the Doctor. stated before the \*\*\*INSTITUTION.1 (subsequently, on \*\*\*DATE.5 declares in within the disciplinary file against the claimant) instilled suspicion in him for his appearance: “he was wearing a white T-shirt with an open vest on the back of which the letters \*\*\*PROFESSION.1 appeared in reflective form, as well as a plaque hanging from the neck that did not look like a real plate with a shield whose symbology he could not recognize.” His colleague at the reception told him that he required regular medication that usually another doctor did. According to the doctor's statement, she checked the history the claimant's clinical report that contained four medications, and "his partner, the nurse, called the \*\*\*INSTITUTION.1 to verify that said person was such”, “Providing the name”, “and they confirmed that it was”, that “He was on sick leave”.

2) The complainant, affected by the disciplinary procedure, indicates (makes it clear in the claim against the claim of 08/03/2020) that the beginning of the information reserved occurs on \*\*\*DATE.2, as a result of the call from \*\*\*DATE.1 with which that he was probably not even aware of the consultation that was called to verify his identity.

3) The doctor in the statement before the \*\*\*INSTITUTION.1 also stated, “that said person wanted to be prescribed his usual medication for which he said it was

\*\*\*PROFESSION.1 who lived in Madrid who had now been transferred to \*\*\*PROVINCIA.1 and

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that he was in an anti-drug operation and that he had not had time to collect his prescriptions.

That at that time the aforementioned person shows the deponent the medication he was taking in the case of a hypertensive an anxiolytic and an antidepressant and he wanted the respondent to tell him will prescribe the same medications through ISFAS prescriptions.

The denouncer stated that "he prescribed the medication and left."

4) The respondent had a document that the \*\*\*INSTITUTION.1 sent her, dated \*\*\*DATE.5, informing you of the telephone call received on \*\*\*DATE.1 from the Hospital that they had a person there and that "he was requiring drugs from them anxiolytics", asking the respondent to know the identity of the medical, health or administrative staff who "had some type of contact or attended to said person".

5) The respondent was aware of the entry of a claim by the claimant on 08/03/2020, days after submitting to the AEPD, 07/31/2020, stating his version of what happened.

6) The respondent proves that before the events occurred, she had the document delivered, to the Doctor and the nurse, called "confidentiality commitment" including warnings about the use and handling of the data, its dangers, among others, confidentiality, with respect to access to information, non-disclosure of data or information, and specifically about health data, in which patients have

the right to privacy and confidentiality, as well as the security of information and that know and accept the internal document: "data protection user manual and security of the information". It is included that non-compliance could imply sanctions disciplinary actions or claims by the company for economic or reputational damage caused.

Also:

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The claim was recorded in the incident system.

An informative note was sent to all employees in order to remind them of their

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Data Protection obligations.

The information to the staff about the existence and functions and the

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communication channel with the DPD.

Disciplinary procedures were initiated against the doctor and the nurse in September

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2020, on the occasion of the claimant's claim, and before opening the AEPD agreement of beginning. Both were sanctioned for the facts revealed in the claim by your company prior to the start-up agreement and as a consequence of the start-up of the claimant's claim.

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FOUNDATIONS OF LAW

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

II

The RGPD defines in its article 4:

2) "processing": any operation or set of operations performed on 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, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, suppression or destruction;

7) "controller" or "controller": the natural or legal person, authority public, service or other body that, 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 purposes and means of treatment, the person responsible for treatment or the specific criteria for its appointment may be established by the Law of the Union or of the Member States;"

The LOPGD in its article 70 "Sanctioning regime", determines in its number 1.a) that "They are subject to the sanctioning regime established in the RGPD and in this law organic: a) Those responsible for the treatment".

The distinction between data controller and employee is derived from the GDPR, for example when referring to the Data Protection Officer, in its recital 97: "...

Such data protection officers, whether or not they are employees of the data controller treatment", and its functions in article 39 of the RGPD "a) inform and advise the responsible or in charge of the treatment and the employees who deal with the treatment of the obligations incumbent on them under this Regulation and



other data protection provisions of the Union or of the Member States;”.

By this, it is meant that the positions or employees of the data controller, at carry out personal data processing in the performance of their duties, are in the circle of the data controller, who is the one who must establish guidelines and dissemination of information so as to achieve uniform application in the way of acting in the development of tasks related to data processing. The habitual performance and the routines ordered by the person in charge in the exercise of their functions such as uniformity in the answers and the tasks to be carried out in matters related to data protection thus takes on special relevance.

The distinction between data controller and employee of the latter is derived from the GDPR, which has the effect of being empowered to process personal data under its authority and on its behalf.

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With this, it is meant that both the decision-making positions of responsibility and the employers employees acting on behalf of the data controller, when carrying out data processing of personal data in the performance of their duties, within their structure.

ra, they are in the circle of power of direction and action of said person in charge of the treatment, also in what affects the implementation of its data protection policy (data governance).

III

Regarding the call to verify the claimant's identity, although it seems that previously identifies the patient or could have been identified for the purpose for which he comes to the

consultation, it means that the doctor was able to access his history and verify that it was the same, unaware of the need for the call to the \*\*\*INSTITUTION.1.

Predictably, the antecedents would be exposed, so that they gave rise to motivation to carry out the confidential information that happens later. This identification gives rise to that the \*\*\*INSTITUTION.1 knows at least that he was in the emergency room, and added circumstances that motivate that, according to the claimed, the next day start reserved actions. This supposes on the part of the claimed a violation of the article 5.1.b) of the RGPD that indicates:

"1. The personal data will be:

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, section 1, further processing of personal data for archiving purposes in the interest public, scientific and historical research purposes or statistical purposes shall not be considered incompatible with the original purposes ("purpose limitation")"

Knowing the identity of the claimant, appearing in the doctor's account to the \*\*\*INSTITUTION.1 that had seen the clinical history before, the known data is connected to, in a telephone call, identify the claimant, a circumstance that is achieved in positive sense. Presumably, mere identification through name would not lead to that the next day informative proceedings be initiated, but presumably, thanks to the alleged behavior or idea that they seemed to observe, led to adding informative elements to the account of events, otherwise, it cannot be explained that letters are taken in the matter by the \*\*\*INSTITUTION.1. the caller.

The facts referring to the feeling that the claimant instilled in the doctor and the nurse does not imply that the infraction has not been committed, nor does it exonerate the commission of the same, being accredited that the personal data with which it is used to identify you, they are not the purposes for which they should be treated in a consultation assistance

medical.

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The statements that the doctor makes before the \*\*\*INSTITUTION.1, within a disciplinary administrative procedure, being warned of its purpose, although it does not appear in writing, supposedly verbally, contain the following elements:

-It is reiterated that the call was made to the \*\*\*INSTITUTION.1 to verify if it was \*\*\*PROFESSION.1, appearing before: "That the claimant verified the history of said person and his appearance aroused suspicion."

"That at that time, the aforementioned person showed the deponent the medication he was taking, in the case of a hypertensive, an anxiolytic and an antidepressant and wanted the respondent to prescribe the same medications through ISFAS prescriptions".

This implies a violation of article 5.1.f) of the RGPD by the claimed party, which states: "The personal data will be:

processed in such a way as to ensure adequate security of personal data, including protection against unauthorized or unlawful processing and against loss, accidental destruction or damage, through the application of technical or organizational measures appropriate ("integrity and confidentiality")."

In relation to article 5 of the LOPDGDD, which determines:

"1. Those responsible and in charge of data processing as well as all persons that intervene in any phase of this will be subject to the duty of confidentiality to the 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 person responsible or in charge of the treatment had ended.

This infraction may be related to the complement of measures that must be contained to guarantee confidentiality, established in article 32 of the RGPD, which states:

"1. Taking into account the state of the art, the application costs, and the nature, the scope, context and purposes of the treatment, as well as risks of probability and variable seriousness for the rights and freedoms of natural persons, the person in charge and

The person in charge of the treatment will apply appropriate technical and organizational measures to guarantee a level of security appropriate to the risk, which, where appropriate, includes, among others:

- a) pseudonymization and encryption of personal data;
- b) the ability to ensure confidentiality, integrity, availability and resilience permanent treatment systems and services;
- c) the ability to restore the availability and access to personal data in a fast in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the treatment.

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2. When evaluating the adequacy of the security level, particular account shall be taken the risks presented by the data processing, in particular as a consequence of the accidental or unlawful destruction, loss or alteration of transmitted personal data,

stored or otherwise processed, or unauthorized communication or access to such data.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the person in charge or the person in charge and access to personal data can only process said data following instructions from the responsible, unless it is obliged to do so by virtue of Union Law or the Member states."

Recital 74 of the RGPD says that it indicates: "The responsibility must be established of the person in charge of the treatment for any treatment of personal data carried out by himself or on his own. In particular, the person responsible must be obliged to apply timely and effective measures and must be able to demonstrate the conformity of the activities of treatment with this Regulation, including the effectiveness of the measures. These measures must take into account the nature, scope, context and purposes of the treatment as well as the risk to the rights and freedoms of natural persons." .

Likewise, it must be emphasized that the cause of the disclosure of the data by the Doctora has no relation to the commission of crime or investigation. Nor the request that he makes of collaboration to the claimed one contains no element that indicates in that sense. It is an administrative collaboration within a procedure tending to purge possible responsibilities that concern the behavior of the claimant, as a result of what was reported in the call on the day of the consultation, for which it was summoned to testify the doctor. The vague "administrative assistance" reported to the doctor verbally, indirectly alludes to a disciplinary procedure. Except test in Contrary to that provided by the claimed, there is no evidence that any type of action was initiated investigation for the behavior of the claimant related to criminal acts. A) Yes, the information of the claimed to the claimant given in the letter of 10/23/2020, confuses the purpose for which the doctor was called and the rights of patients, among which are

the data of the clinical history such as disseminating the medications that are taken that refer to the affected person's health problem and that he or she enjoys a reinforced protection system being a data "relative to health", and therefore, of a special nature in accordance with the article 9.1 of the RGD. Therefore, the commission of the infraction is proven.

v

Article 5 of the RGD refers to the principles related to the processing of personal data, and in its number 2, to proactive responsibility, in the sense that the person responsible for the treatment will be responsible for compliance with the aforementioned principles, and capable of demonstrating it, known as "compliance" which could be equivalent to, not only regulatory compliance in this case, but also in prevention and responsibility of the members that make up your organization. organization and the total commitment of its leaders, a mechanism to ensure good governance government and regulatory compliance regarding data protection.

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With the RGD, anticipation of the infringement or injury of rights is sought, compliance in advance to avoid injury or infringement of the right or freedom of the interested party. Yes Well, the RGD/LOPDGDD binomial does not specifically list what those measures are, It is especially linked to the protection of the data of natural persons, demanding a proactive responsibility, and not a reactive responsibility, as it happened in the model previous. This proactive focus on the "permanent implementation" of the measures implies that they are no longer static (as in the previous model), but dynamic. Consequently, proactive responsibility is required, rather than reactive (risk-based approach), having to act preventively, having the

due diligence to avoid unwanted processing or breaches in the protection of the interests of citizens in the field of privacy.

In this case, it is estimated, according to the proven facts, that there were enough elements provided for the processing of data with guarantees in terms of forecasting of the existing risks, dissemination of information on data protection to staff, concurring in addition an active occupation in the recorded incident and its follow-up.

SAW

Law 40/2015, of 1/10 of the Law on the Legal Regime of the Public Sector, states in its article the 28.1 and 4:

"1. They may only be sanctioned for acts constituting an administrative infraction natural and legal persons, as well as, when a Law recognizes them capacity to act, affected groups, unions and entities without legal personality and estates independent or autonomous, who are responsible for them by way of fraud or fault."

"4. The regulatory laws of the different sanctioning regimes may classify as infraction breach of the obligation to prevent the commission of infractions administrative by those who are subject to a relationship of dependency or bond.

Likewise, they may provide for the cases in which certain persons will be responsible for the payment of the pecuniary sanctions imposed on those who depend on them or are linked to them."

And in article 29.3.a):

"3. In the normative determination of the sanctioning regime, as well as in the imposition of sanctions by the Public Administrations, the due suitability and necessity of the sanction to be imposed and its adequacy to the seriousness of the constitutive act of the infringement. The graduation of the sanction will especially consider the following criteria:

a) The degree of culpability or the existence of intent"

The principles of the field of criminal law are applicable, with certain nuances, in the

administrative penalty, among others, the STS of March 18, 2005, Rec. 7707/2000, recalls

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“That an administrative infraction could not be considered committed, if the subjective element of guilt or what is the same, if the behavior typically constitutive administrative infraction, was not attributable to intent or fault. It should be noted that the principle of guilt prevents the admission in the sanctioning administrative law of the Strict liability, it is also true, that the absence of intentionality results secondary since this type of infraction is normally committed for an act guilty or negligent, which is enough to integrate the subjective element of guilt. From the material point of view, culpability consists in the ability of the subject obliged to act differently and, therefore, in accordance with the legal system. Therefore, what is relevant is the diligence displayed in the action by the subject, in this case the responsible for the treatment, as indicated in article 70.1.a) of the LOPDGDD, which is accredited, excluding the imposition of a sanction solely based on the mere result, that is, to the principle of strict liability.

Considering the nature and type of the infraction, the circumstances that occurred in that moment, taking into account the principle of guilt and proactivity, it is not considered that the behaviors carried out by the employees of the defendant, is required any responsibility to this, or stop the damage of the sanction, since it is not possible to demand from the defendant a different way of acting than the one she has had, insofar as the framework of compliance is reasonably adequate for the assurance of the measures technical and organizational information on the confidentiality of the data and in no way is it accredited



that the way of acting is the ordinary one.

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE the sanctioning procedure followed by CLÍNICAS DEL SUR, S. L. -

GRUPO HOSPITEN, with NIF B38031241, for violation of articles 5.1.f) and 5.1.b).

SECOND: NOTIFY this resolution to CLÍNICAS DEL SUR, S. L. - GROUP

HOSPITEN with delivery of the ANNEX.

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 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 Agency

Spanish Data Protection Authority within a month from the day following the

notification of this resolution or directly contentious-administrative appeal before the Chamber

of the Contentious-administrative of the National High Court, in accordance with the provisions of the article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13

July, regulatory of the Contentious-administrative Jurisdiction, in the term of two months to count from the day following the notification of this act, as provided in article

46.1 of the aforementioned Law.

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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

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

You must also transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the day

following the notification of this resolution, it would end the suspension

precautionary

Sea Spain Marti

Director of the Spanish Data Protection Agency

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EXHIBIT

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