 File No.: PS/00199/2021

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

to the following

BACKGROUND

FIRST: On June 11, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against A.A.A. (hereinafter the

claimed party). Notified of the initial agreement and after analyzing the allegations

presented, on February 2, 2022, the resolution proposal was issued that

is transcribed below:

<<

File number: PS/00199/2021

PROPOSED RESOLUTION OF PUNISHMENT PROCEDURE

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

the following:

BACKGROUND

FIRST: B.B.B. (hereinafter, the claimant) filed a claim on 12/4/2020

before the Spanish Agency for Data Protection that is directed against A.A.A. with NIF

***NIF.1 (hereinafter, the claimed one). The grounds on which the claim is based are:

On 12/4/2019, he contracted a medical-aesthetic service for several sessions with the defendant.

that began that same day, authorizing photographs to be taken “of the area treated to

that can be used for documentary, training and commercial purposes of the clinic”.

He went to the clinic on 01/10/2020 and, while waiting, he was able to observe in one of the

screens that there was "an advertising video" in which the treatment appeared recorded, without his

consent. He then complained to the person in charge and demanded their withdrawal. "Nevertheless,

days later he returned to the clinic and the video remained there".

"In July 2020 it was demanded by email that they delete their data as

client, which the clinic refused and never proceeded with."

"On 11/10/2020, we contacted on behalf of the claimant through a burofax

demanding the amount of 4,800 euros for having violated the fundamental right to

intimacy and self-image. We have not yet received a response. "

"On 11/20/2020… the video to which we refer appeared published on the account of

FACEBOOK of Dr. A.A.A., which was published on 12/11/2019. That is, after

complain from the first month of a video recording and publication… Immediately afterwards

We contacted the clinic and demanded its withdrawal, but they did not communicate anything to us either.

regard. Of course, a few days later they removed the video from the page.

Provides:

1-File called "procurement documentation" in which are grouped:

Four-page document: "informed consent for chemical peeling" from

a)

03/12/2020 (date after the contract is signed and states that the video appears

in the clinic). It contains various information about medical treatment, technique

used, and risks.

At the foot of the pages there is an informative clause on the data, indicating

effects of exercising rights, the domicile of the claimed party or an address of

email, "duly identifying and clearly requesting the

right to exercise”.

Page 3 of the document states:

“I AUTHORIZE the taking of photographs of the intervened area that may

be used for scientific, educational or medical purposes, it being understood that their

use does not constitute any violation of privacy or confidentiality to which I have

law".

“I am aware that my data will be processed in an automated manner, which I authorize

My rights have been explained to me in accordance with the current LOPD. I know

has also informed me of my right to reject the intervention or revoke

this consent. I have been able to clarify all my doubts about everything

previously exposed and fully understood this consent document

reaffirming in each and every one of its points and with the signature of the document in

all the pages in duplicate I ratify and consent that the treatment is carried out”

Below are two lines for you to mark with an x, indicating on the

first:

“Mark with an x if you authorize the making of images. These that can be

used for the purposes described above.”, and the second:

"Mark with an x if you want to be informed about our products and services."

Neither of the two options is marked with an X, at least in this copy

contributed.

Copy of invoice issued on 12/4/2019 by the claimed party, stating the same legend

a)

on the treatment and information on the exercise of rights.

C/ Jorge Juan, 6

28001 – Madrid

On folios 6 and 7 "SWT and Laser "SWT INFORMED CONSENT", treatment

b)

of intense pulsed light with ELLIPSE equipment. Both pages bear the “ELLIPSE” logo.

In this case, the information is that "the data is incorporated into a file owned by ELLIPSE

SPAIN SL” and its address

“to carry out all the necessary steps for the

maintenance of our commercial relationship”, reporting the rights to exercise. "The

company is part of the Ellipse Group, to which my data could be transferred "although

The claimant's signature is recorded as Doctor on 12/4/2019. In a literal figure:

“I authorize photographs of the treated area to be taken so that they can be

used for documentary, training and commercial purposes of the clinic”.

On this occasion there is no possibility of not authorizing.

2-File entitled “communications with the clinic”. Mail exchanges are contained

emails by representatives of the claimant with the address of the claimed, @A.A.A..

Among them, that of 06/21/2020, in which information is provided on what is necessary to be able to exercise the

right to delete data: the request must be signed with a copy of the DNI, yes no, no

could be processed. In addition, it informs about your request for data deletion with reference to

which are clinical history data and have a specific regulation.

3- Burofax addressed to the claimed person, delivered on 11/11/2020, requesting the payment of €4,800

because on 01/10/2020, while the claimant was in the waiting room, he observed that in the

screens showed a video with his images, with his initials, because he did not authorize

no video recording of his full face with his initials, but only

Photographs of the treated area. He adds that he recorded it with his mobile and communicated it to the

responsible demanding its removal, not knowing until the exact date it was exposed

recording, calculating 32 days on screen, from the first session, 12/4/2019, to

01/10/2020.

4-Email from the claimant's representative dated 11/20/2020, 5:42 p.m., informing you that

the claimant “has informed me that the same person appears on FACEBOOK of the claimed

recording that appeared on screens in the clinic. This recording was published on 11/11/2019

and it is still on the social network as of today”, he asks that all the videos be removed. What

response one of the respondent, indicating on 11/22/2020, "That issue is in the hands of

our lawyers, and they will contact you when they deem appropriate”

5-A video projected on a screen inside a venue, duration 1.20 seconds, and

the video starts at 19 seconds. In the beginning appears the logo of the clinic of the

claimant Dr. A.A.A. Aesthetic medicine, and "ELIPSE IPL laser". In the video she is seen lying down

a person on a stretcher, and a substance is applied to his face and with a device that

it could be the laser acting on it. The patient has his eyes covered with

glasses that are later removed, at minute 15 seconds. While the video is playing

appears in the image: IMPROVEMENT:-Redness -Couperosis- Rosacea. We finance 100% you

treatment. At the top of the screen appears "Laser (...) video 29019 11-12-11.-

mp4” although when it is playing the title disappears.

6- Another video, posted on a FACEBOOK page of the claimant, visible dated

11/20/2020, according to the tab. The content, similar to the previous one, of shorter duration, does not

starting from the beginning, if not already started, it can be read on the screen: “We finance

100% your treatment” and with the addition of “Inform yourself without commitment”, with a line

phone number that corresponds to the one listed as contact on the FACEBOOK page.

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

provided by the claimant, the General Subdirectorate for Data Inspection proceeded to

transfer of the claim on 02/05/2021, with the following content:

“The claimant denounces the respondent who performed an aesthetic medical treatment on him, for

record and broadcast a video of the treatment carried out where you can see your face in full

and superimposed initials. This video was played in the waiting room of the clinic and in

her Facebook account. On 07/03/20 you requested the deletion of your data

as a client, receiving no response. On 11/20/20, it again requested the

removal of the video in question from the clinic's Facebook account. After a few days

it was retired. The processing of the personal data of the claimant is denounced without basis

legitimizing, the violation of the confidentiality of your personal data and the lack of

attention to the right to delete your data”.

On 03/07/2021, the respondent replied:

“The claimant contracted aesthetic medical services for treatment with IPL Laser

1)

ELLIPSE, signed the document: AUTHORIZATION FOR THE PROCESSING OF DATA OF

PERSONAL CHARACTER"

“AUTHORIZATION FOR THE

Attach the document in an attached file

PROCESSING OF PERSONAL DATA" of 11/28/2019, which does not coincide

with the one provided by the claimant described as "informed consent for peeling

chemical” and has a different clause wording.

titled

In the one that provides "authorization..." it appears in the PURPOSE OF YOUR DATA section

“Images made with your consent may be used for scientific purposes,

medical teachers, it being understood that its use does not constitute a violation of the

privacy or confidentiality to which you are entitled.”

In another section, within RIGHTS, it indicates: "by this document gives

consent to" the claimed "to capture images, either through cameras or

video cameras, in which the person affected is clearly identifiable. The exercise of

capture of images or videos by "the claimed" or another delegated company

will be limited to the set of activities carried out within the scope of its activity

professional. “

"We inform you that your data will be incorporated into the treatment of the owner and the claimed."

The section that “if you authorize the production of images for scientific purposes,

teachers or doctors.

1) Likewise, he signed the document: "INFORMED CONSENT (SWT)". East

document is the same as the one provided by the claimant in point 1.c).

2) It is known according to a copy of reviews of visits to the clinic that it provides, in the form

list, a relationship, by dates in which he attends treatment sessions, and annotations

(since 11/29/2019 in which it appears that the patient attends and what the patient refers, treatment

proposed and cost, first and subsequent sessions: 12/4/2019, 01/10/2020, 02/14/2020. In the

session of 02/17/2020 side effects are listed and three sessions of another

treatment, deciding not to perform the initial treatment on 03/12/2020. last date that

consists 06/04/2020. They are contained in comments, offered medical indications,

comments that are made, costs and treatment cycles and figure that "they are carried out

Photographs". In the visit of 01/10/2020 it appears, for example, that "photo protocol is carried out

before and after", in the one of 02/14, also, adding "photos before and after, it is observed

improvement".

3) Provide a written response to a claimant's complaint, dated 11/15/2020 in the

that tells him that before the treatment he is told that they will take some

video images to analyze the evolution of the case, "to which it does not show

disagreement" (referring to a session in which the treatment was applied, that of 12/4/2019).

The claimant states that during the control visit on 01/10/2020, she reviewed and decided not to

apply the second session that day and postpone it. Figure: "The screen where you watch the video

It is the only screen of the clinic located in the entrance area and it does not put

advertising, but videos of treatments facilitated by the providers of the clinic…"

At the time this man watched his video, he was the only person in the clinic apart from the

doctor and her assistant" On February 14 the patient returns. From 2:00 p.m. to 4:00 p.m. we did

training in the clinic and the video of the patient was reviewed with the health personnel, for this reason the

patient was able to see it before being treated."

4) Regarding the response to the exercise of rights, it indicates that on "07/03/2020, notify Dr.

A.A.A. the exercise of the right of DELETION/CANCELLATION. to which obviously

answered and communicated effectively the realization of said right, taking into account

account as a medical professional cannot erase and destroy any documentation

referring to clinical or medical records."

"As of that date, any access to data and/or visualization of images was suppressed.

of a personal nature."

"We attach the two response email documents, of which

We copy part of this document. The first informing you that a

reliably signed application since it was received from an email

unknown. The second acknowledging receipt and informing of the blocking of the data."

THIRD: In the transfer process, the transfer service indicates: "It is verified

"4/12/21 I check FACEBOOK that the video is no longer posted."

FOURTH: In addition, in the absence of a response by the claimant to the claimant, it is sent

letter of 04/12/2021 urging that you provide a copy of the communication that you have addressed to the

claimant.

Dated 04/25/2021 "The claimant is answered in the same sense as the AEPD.",

bearing the document signed date 04/23/2021.

FIFTH: On 06/11/2021, the Director of the AEPD agreed:

"INITIATE PUNISHMENT PROCEDURE against A.A.A., with NIF ***NIF.1, for the alleged

violation of article 6.1 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 60,000 euros, without prejudice to what results from the

instruction."

SIXTH: On 06/17/2021, a letter is received from the claimant indicating that

waiver of his complaint, "by virtue of the provisions of article 94 and following of the

LPCAP, requesting the file of the same".

SEVENTH: On 07/08/2021, the respondent made allegations, stating:

1) Request that the procedure be declared concluded because the claimant has submitted

resignation. "This evidences that the processing of your data was lawful and expressly

consented", and as stated in the initiation agreement itself, there are no third parties harmed apart from the claimant himself.

1) There has been no hearing procedure, view of the file. A situation of defenseless, not having been able to see or analyze and verify the content of the documentation and videos provided by the claimant. The right to view file emerges from the reading of article 82.1 of Law 39/2015, of 1/10, of the Common Administrative Procedure of Public Administrations (LPACAP), when he points out that once the procedures are instructed, they will be revealed to the interested.

2) Disproportionality of the sanction, considering the concurrent circumstances. The The claimant was attended to on February 14, outside business hours, which explains the video viewing for training purposes for clinic staff. She is the owner autonomous from the activity of a small clinic, with two employees. Accompany a copy of the personal income tax return for the year 2020, which includes "operating income" 187,349, 29 euros, and total deductible expenses 157,991.11, with the sum of reduced net income 29,359.18, which is the general tax base.

Accompany:

-Copy of informative response from the AEPD to the claimant, dated 02/19/2021 on “if it is possible to withdraw a complaint filed on 12/4/2020”, indicating that this act was not for withdraw it but to consult. The response cites article 94 of the LPCAP. As of that date, the initial agreement had not been signed, presenting a letter of resignation a few days later of issuing the initiation agreement.

-The rest of the documents you provide had already been provided before: (security document:

in which the data processing of "CLIENTS / RECORDS-Categories of

data: NIF/DNI, SS/Mutua number, Name and surnames, Address, Telephone, Signature, Image/Voice,

Email address, Personal characteristics, Social circumstances, Data

relating to health, genetic data, biometric data, very high level of security".

EIGHTH: Of the actions carried out in this procedure and of the

documentation in the file, the following have been accredited:

PROVEN FACTS

1) The claimant contracted with the respondent to provide an aesthetic service of

Laser & IPL ELLIPSE treatment on 12/4/2019, starting the treatment that same day.

1) The claimant claims against the claimed because their images were recorded on video and

were spread on a clinic screen and on FACEBOOK, without their consent.

consent to these treatments. He contributed "in order to prove it" in his claim

that he formulates on 12/4/2020, two videos he recorded with his mobile.

2) In the first video, 1 minute 19 seconds long, starting in the second

19, is projected on a screen inside a local, the logo of the clinic and the

words Dr. A.A.A. Aesthetic medicine, and "ELIPSE IPL laser". The claimant stated that the

He had seen the video in the second session he attended, 01/10/2020, and adds that he returned to it

see "days later". According to what the respondent stated and as can be inferred from her notes, the

The next time he went was on 02/14/2020. The video starts from a more distant shot and

approaches the face of the patient who appears with some protectors on his eyes, while

applies the laser on the face, appearing in the image "IMPROVEMENT:-Redness -Couperosis-

Rosacea. We finance 100% your treatment", then the protectors of the eyes are removed,

1.16, ending at 1.19.

The claimant states that he requested the suppression of that video, although he does not provide proof of

this, ignoring whether it was suppressed from it, although in the request for

compensation made by the claimant to the one claimed for that video exclusively, the

11/10/2020, (event 6), only counts as permanence of the same, until 01/10/2020

3) It is proven that the respondent responded to the exercise of the right to suppress the

claimant, with email sent on 07/06/2020, which is preceded by another

explanation of the duty to preserve the data of the clinical history. It is not proven that in

request for deletion express mention was made of the video, not appearing either in the

response.

4) In the other video, 35 seconds long, it is a reduction of the previous one, it appears

posted on a FACEBOOK page of the claimed party. At the top and bottom is the

name of the doctor and the dates of 12/11/2019 and 12/5/2019. You see the date it is

view playback on computer, 11/20/2020, tab visible (top right).

The video in its content is the same as the previous one, not starting from the beginning of the

another, if not already started, can be read on the screen: "We finance 100% your treatment" with

a telephone line that corresponds to the one that appears as contact on the page of

FACEBOOK.

5) A copy of the written request for compensation for the first video appears in the file

to the claimant, dated 11/10/2020, addressed to the claimed by burofax and delivered the same

day. In it, it reports that when the claimant went to the clinic, on 01/10/2020, in one of

the screens, there was a video in which he was recognizable. He states that he recorded it with the

cell phone and that he communicated it to the person in charge, demanding its withdrawal. Add to such date: "In

based on the fact that if the first session was held on 12/4/2019 and the recording was viewed on

01/10/2020, could be from the next day to the same day 10, and consider based on

use

to those 32 days on screen, he would be owed compensation of €4,800 euros, for “

said video without the consent

“ . It is not proven that after the date up to which he considers

may have been exposed by the claimant, continue. There is no reference to the continuation of

exposure of the video in any subsequent writing.

However, on 11/20/2020, the claimant adds to that claim, through

e-mail that "the same recording appears on the social network of the claimed person", to day

today, and asks for "removal of all videos". The video on FACEBOOK is credited as

a shortened version of the first. In the transfer phase of the claim, it is verified that the

video on FACEBOOK did not appear, but already even at the time of the claim, the

a few days later it was withdrawn

complainant states that “

”.

6) Neither in the contract or clauses provided by the claimant: folios 6 and 7 "SWT and Laser"

INFORMED CONSENT SWT”, intense pulsed light treatment with equipment

ELLIPSE of 12/4/2019, nor the one provided by the respondent, entitled "AUTHORIZATION FOR THE

PROCESSING OF PERSONAL DATA" of 11/28/2019, contains

valid consent for the exposure or dissemination of data through image in

video of the medical treatment given to the claimant, either in the clinic of the claimed, or

on your FACEBOOK page.

In the first, both pages bear the “ELLIPSE” logo. In this case, the information is

"the data is incorporated into a file owned by ELLIPSE SPAIN SL" and its address "for

carry out all the necessary steps to maintain our relationship

commercial", informing of the rights to exercise. "The company is part of the Group

Ellipse, to which my data could be transferred" even if the signature of the

claimant as of 12/4/2019. In a literal figure:

"I authorize photographs of the treated area to be taken so that they can be

used for documentary, training and commercial purposes of the clinic".

On this occasion there is no possibility of not authorizing.

In the second, the respondent is identified as responsible for the treatment, within the

PURPOSE OF YOUR DATA section "the images made with your consent

may be used for scientific purposes, medical teaching, it being understood that their

use does not constitute any violation of privacy or confidentiality to which you have

law."

In another section, within RIGHTS, it indicates: "by this document gives

consent to" the claimed "to capture images, either through cameras or

video cameras, in which the person affected is clearly identifiable. The exercise of

capture of images or videos by "the claimed" or another delegated company

will be limited to the set of activities carried out within the scope of its activity

professional. "

"We inform you that your data will be incorporated into the treatment of the owner and the claimed."

It appears marked by hand with a cross, the section that "if you authorize the

images for scientific, educational or medical purposes".

FOUNDATIONS OF LAW

Yo

The resignation of the claimant is regulated in LPACAP, article 94, which indicates: "Withdrawal and

waiver by the interested parties

"1. Any interested party may withdraw their request or, when this is not prohibited by the

legal system, waive their rights.

[…]"

4. The Administration will accept the withdrawal or resignation outright, and will declare the termination

the procedure unless, having appeared in the same interested third parties,

they urge their continuation within ten days from the time they were notified of the

withdrawal or resignation.

5. If the issue raised by the initiation of the procedure involved general interest or

it is convenient to substantiate it for its definition and clarification, the Administration may

limit the effects of the withdrawal or resignation to the interested party and will follow the procedure."

In this case, the procedure is not initiated by the complaint or claim of the claimant,

but by agreement of the competent body, ex officio (art 54 and 58 LPCAP). Article 63 of the

LPACAP determines that sanctioning procedures will always be initiated ex officio.

So it is not a request. In addition, article 62.5 of the LPCAP indicates that: "The

Filing a complaint does not, by itself, confer the status of interested party in the

process". For all these reasons, the procedure must continue.

On the other hand, the withdrawal, once the initiation agreement has been initiated and communicated, does not

It means, as claimed by the respondent, that it conforms to the regulations. In this case, analyze

data processing, particularly the taking and display of images of the claimant

receiving treatment in two different exposure channels, based on the

clauses of collection, use of data and information provided and analyzed and that appear in

The file. The basis of the treatment of the consent and the object on which they fall

covers such treatments as will be explained below regardless of whether they are

have completed that waiver. The imputation therefore has to continue its processing.

II

Regarding the statement of the respondent that they have not had access to see the

videos or other documentation, this is due to the fact that a copy of the

file, despite which he made allegations. With your letter, also dated 01/14/2022

The copy of the file was delivered to the respondent, in case she considers it convenient for her

right to argue any additional issue.

He also points out that no hearing process has been given and he is made defenseless.

Article 82 of the LPACAP indicates that, once the administrative and in-

immediately before drafting the motion for a resolution, it is made clear to the

Interested parties, who within a period of not less than ten days nor more than fifteen, can allege and

present the documents they deem appropriate. The LPACAP, in section 4 of article

82, establishes that the hearing process may be dispensed with when they do not appear in the

transfer or other facts or other allegations are taken into account in the resolution and

evidence than that adduced by the interested party.

In the present case, only what is contained in the start-up agreement is imputed based on the documentation

information and indications that are contained in it, without after it has been practiced

do any action, and the defendant alleged and had the opportunity to propose the evidence

opportune would have agreed, without appreciating violation of his right to defense

nor defenseless.

III

The defendant is charged with an infringement of article 6.1 of Regulation (EU) 2016/679 of the

European Parliament and of the Council of 04/27/2016 on the protection of people

regarding the processing of personal data and the free circulation of these

data (hereinafter GDPR); based on the fact that it has not provided a legal basis that is

tender for the singular treatment of the taking of images of the claimant and his

exposure in two different channels, the clinic itself and on FACEBOOK.

Recapitulating, of the signed clauses, purpose of the treatment and use of the data: image

that makes the claimant identifiable and recognizable, and the distinction between capturing and disseminating or

expose, which also in this case appear together in its result, it can be seen:

a)

The claimant in none of the clauses authorizes the collection of images

recorded on video of the medical intervention for the purpose of projection later, nor for the purpose of

advertising or commercials in the consultation room.

a)

The claimant in none of them authorizes the collection of images recorded in

video of the medical intervention for commercial advertising purposes on the social network

FACEBOOK of the claimed party, proving that there is a video on said page that refers

in terms of its existence, as of 11/20/2020.

b)

Regardless of the right of deletion exercised against the claimed one,

certifies that the right is not met, at least in the social network FACEBOOK, where

it would still be exposed, possibly forgetting that it should also have been suppressed.

c)

According to the clause provided, the one claimed is the only one that foresees in some way

mode the specific reference to the video support, which is a way and support of collection and

reproduction different and specific to that of the photographs.

It must be remembered that regarding the video, it indicated in the document of

11/28/2019”AUTHORIZATION FOR THE PROCESSING OF CHARACTER DATA

STAFF":

- Within the PURPOSE OF YOUR DATA section “the images made with your

consent can be used for scientific purposes, medical teaching, being

understood that its use does not constitute any violation of privacy or confidentiality to the

have the right." This constitutes a unilateral declaration, since any use of images

must be adjusted to certain conditions and that it cannot be a generalized, unspecific use,

being clear that its use does constitute a disclosure of intimate data, and must be contained

the opposite option of not consenting, without producing negative consequences in the service.

In addition, in this case there is no evidence that these purposes were given, at least exclusively, to the

include offers announced with the videos.

-In another section, RIGHTS: "hereby gives consent to" the

demanded “to capture images, either through cameras or video cameras, in which the

affected is clearly identifiable. The exercise of capturing the images or

videos by "the claimed" or another delegated company will be limited to the set of

activities carried out within the scope of their professional activity. “ Nothing is indicated of

the confusing wording about exposition of the images.

The section that “if you authorize the production of images for scientific purposes,

teachers or doctors.

The wording of the informative clause, in addition to intermingling with those of the

clinical history and be different from this, so it should have been differentiated, it is

decisive and clear, in that it does not authorize any dissemination, it only speaks of the

exercise of capturing videos, but it does not specify or detail that they can be exposed instead

any, and much less in the consultation room, for advertising purposes, or through

FACEBOOK. It stops at the limits of capture and does not explain the specific purposes that

would make these exhibitions possible.

It should not be forgotten that consent is defined in article 4.11 of the RGPD, which states:

“Any manifestation of free, specific, informed and unequivocal will by which the

The interested party accepts, either by means of a declaration or a clear affirmative action, the

processing of personal data concerning you”.

Therefore, it is considered that the claimed party has infringed article 6.1 of the RGPD, which indicates:

"1. The treatment will only be lawful if at least one of the following conditions is met:

a) the interested party gave his consent for the processing of his personal data for

one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is

part or for the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the

data controller;

d) the treatment is necessary to protect the vital interests of the interested party or another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the responsible for the treatment or by a third party, provided that said interests are not prevail the interests or the fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions.

Article 6, paragraph 1, letter a), confirms that the consent of the interested party for the processing of your data must be given "for one or more specific purposes" and that a The interested party can choose with respect to each of said purposes. In this case it was data on a health intervention, captured on video and exposed through two channels, proving that it contained a specific purpose of exposure of these data or the consent to do so is considered valid.

As for the two channels and broadcasts other than video, it should be clarified:

The video of the clinic is seen by the claimant and recorded on his mobile. The characteristic of it is its emission, without authorization in the alleged consent or in any other cause of the article 6.1 of the RGPD. It is also indifferent whether it is seen by one person or several, whether there is only one screen or several, the fact is that it was exposed to the public. When you come on 01/10/2020 is when the claimant makes it clear, although he states that he requests the deletion without any writing of your request, and on 07/06/2020, the respondent responds to the exercise of the right of suppression, although it is revealed that the same video in a more reduced can be seen on the claimant's FACEBOOK page at least the 11/20/2020.

IV

Article 58.2 of the RGPD indicates:

“Each control authority will have all the following corrective powers indicated below:

continuation:

“d) order the person responsible or in charge of the treatment that the treatment operations

comply with the provisions of this Regulation, where appropriate, in a

certain manner and within a specified period…”.

“i) impose an administrative fine in accordance with article 83, in addition to or instead of the

measures mentioned in this section, according to the circumstances of each case

particular;"

The imposition of the measure referred to in d) is compatible with the sanction consisting of a fine

administrative, according to the provisions of art. 83.2 of the GDPR.

Article 83.5.a) of the RGPD indicates:

v

“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:

“ the basic principles for processing, including conditions for consent

pursuant to articles 5, 6, 7 and 9;”

For the purposes of calculating the prescription, the LOPDGDD states in its article 72:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

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:

b) The processing of personal data without the concurrence of any of the conditions of legality

of the treatment established in article 6 of Regulation (EU) 2016/679”

SAW

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, have

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, 5 and 6 are in each individual case, effective, proportionate and dissuasive.

laugh.”

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

individual case, 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 infringement, taking into account the nature, al-

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

affected parties and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

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

account of the technical or organizational measures they have applied under articles

25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the infraction.

fraction 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 if

the controller or processor reported the violation and, if so, to what extent;

i) when the measures indicated in article 58, section 2, have been ordered prior to

directly against the person in charge or the person in charge in question in relation to the same

matter, compliance with said measures;

adherence to codes of conduct under article 40 or certification mechanisms

i)

approved under article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as

the financial benefits gained or losses avoided, directly or indirectly, through

see the 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, also

may be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing

personal.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have led to the commission of

the infringement.

e) The existence of a merger by absorption process subsequent to the commission of the

infringement, 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 mechanisms, in those cases in which

there are disputes 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."

In accordance with the precepts transcribed, in order to set the amount of the sanction of a fine

to impose in the present case for the infringement typified in article 83.5.a) of the RGPD, of

which the claimed party is held responsible, are considered concurrent as aggravating circumstances

the following factors that reveal greater unlawfulness and/or culpability in the conduct

of the claimed:

- article 83.2.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 of interested parties affected and the level of damages they have suffered.

in the case of two videos with images of the claimant exposed, one in the clinic, the other

on FACEBOOK, a social network, both advertising their treatment (83.2.a).

As mitigating factors, which contribute to reducing culpability, the following should be considered:

- article 83.2.c) “any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties. From the second video they left

of having news shortly after the claimant submitted his letter of 11/20/2020, the same

mo states that it was removed after a few days. Of the first, it is not accredited, with the documentation

tion of the file, and the statements of the defendant, who was exposed beyond

the dates you are considering in your 10/11/2020 claimant compensation request.

In view of the foregoing, a fine of 7,000 euros is considered appropriate for the

imputed offense.

MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction A.A.A.,

with NIF ***NIF.1, for an infringement of article 6.1 of the RGPD, typified in article 83.5

a) of the RGPD, and 72.1.b) of the LOPDGDD, with a fine of 7,000 euros.

Likewise, in accordance with the provisions of article 85.2 of the LPACAP,

informs that you may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which will entail

a reduction of 20% of the amount of the same. With the application of this reduction, the

sanction would be established at 5,600 euros, and its payment will imply the termination of the

process. The effectiveness of this reduction will be conditioned to the withdrawal or

Waiver of any administrative action or recourse against the sanction.

In case you chose to proceed with the voluntary payment of the amount specified

above, in accordance with the provisions of article 85.2 cited, must make it effective

by depositing it in the restricted account number ES00 0000 0000 0000 0000 0000 open to

name of the Spanish Agency for Data Protection in the bank

CAIXABANK, S.A., indicating in the concept the reference number of the procedure that

appears in the heading of this document and the cause, by voluntary payment, of

reduction in the amount of the penalty. Likewise, you must send proof of admission to the

Subdirectorate General for Inspection to proceed to close the file.

By virtue thereof, you are notified of the foregoing, and the procedure is made clear to you in order to

that within TEN DAYS he can allege whatever he considers in his defense and present

the documents and information that it considers pertinent, in accordance with article 89.2

of the LPACAP).

RRR

INSPECTOR/INSTRUCTOR

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SECOND: On February 26, 2022, the claimed party has proceeded to pay

of the sanction in the amount of 5,600 euros making use of the reduction foreseen in the

motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in via

against the sanction, in relation to the facts referred to in the

resolution proposal.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: “The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common to Public Administrations (hereinafter LPACAP), under the rubric "Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the

competent body to resolve the procedure will apply reductions of, at least,

20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00199/2021, of

in accordance with the provisions of article 85 of the LPACAP.

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

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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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