

Athens, 02-28-2018

Prot. No.: G/EX/1714/28-02-2018

## PRINCIPLE OF DATA PROTECTION

### OF A PERSONAL CHARACTER

A P O F A S H 21/2018

(Plenary)

The Personal Data Protection Authority met in Plenary composition on

its headquarters on Tuesday 16.01.2018 at 11:00 a.m., following the invitation of its President,

in order to examine the case referred to in the present history. They were present

Konstantinos Menudakos, President of the Authority and the regular members of the Authority Konstantinos

Christodoulou, Antonios Symvonis, Spyridon Vlachopoulos, Konstantinos Lambrinoudakis,

Eleni Martsoukou, Charalambos Anthopoulos, and the alternate member, Grigorios Tsolias,

as a presenter. The meeting was also attended, by order of the President, Evangelia

Vassilopoulou, legal auditor, as assistant rapporteur, who provided clarifications and

Irini Papageorgopoulou also left before the conference and decision-making,

employee of the Administrative Department of the Authority, as secretary.

The Authority took into account the following:

With the no. prot. ADDPH C/EIS/7981/7-11-2017 his request, through the attorney

of Athanasios Kalogiannis, private doctor A asks the Authority if it is in accordance with the legislation

on the protection of personal data, the use by him of health data of B

before the Single-Member Court of First Instance of Athens, in order to refute the lawsuit

compensation for tort and moral damage brought by B against him (as well as

other treating physicians) before the Single Member Court of First Instance of Athens (registered file no. ...

- regular procedure) with a scheduled hearing on ..., after being postponed from the originally scheduled

trial of... According to B's claims, doctor A committed medical malpractice against

the performance of a medical intervention to correct his nasal septum.

With the under no. 3/2018 its decision, which was issued on the above case and another related matters that were examined jointly, the Authority referred "for reasons of not issuing objections

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decisions" these cases in the Plenary, in order to decide on issues that arose and are referred to in the reasoning of this decision.

The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote and then left from the discussion of the case and before the conference and decision-making afterwards thorough discussion,

#### THOUGHT ACCORDING TO THE LAW

1. Because the provisions of articles 2 par. b', 4 par. 1 and 7 par. 2 item. c' of Law 2472/1997 determine the terms and conditions for the lawful processing of sensitive personal data health related data. With the provisions of articles 5 par. 3 and 13 par. 3 item b of Law 3418/2005 (Code of Medical Ethics) provides for the exceptional granting medical certificates to a third party, as long as he has a legitimate interest and proves it, and the conditions for lifting medical confidentiality. Furthermore, article 11 par. 3 of Law 2472/1997 stipulates that, if the data is communicated to third parties, the subject is informed of the announcement before them.

2. Because, according to article 914 of the Civil Code, whoever damages another illegally and culpably has obligation to compensate him. Furthermore, in accordance with article 932 of the Civil Code, in case tort regardless of compensation for property damage, the court may award monetary satisfaction reasonable at its discretion due to moral damage.

3. In the case under consideration, doctor A requests to use his complete medical file of patient B that he keeps in his practice, in order to counter a claim for compensation before of the Single-Member Court of First Instance of Athens (registered file no. ... - regular procedure) for

tort and moral damage that B has brought against himself and other treating doctors,  
as set forth in the present history. Through the use of B o.'s medical file  
doctor A wants to prove that B's alleged state of health and general development  
is not due to his medical error.

4. The proposed processing purpose is consistent with the aforementioned provision of article 7  
par. 2 item c' of Law 2472/1997. At the same time, the principle of proportionality of  
data (article 4 par. 1 letter b of Law 2472/1997), as through the granting of the medical  
file, the competent court will be able to know whether the damage caused to B  
is the result of the contrary to the generally accepted rules of medical science  
treatment of the plaintiff's health problem by doctor A. Doctor A owes, as

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controller, to inform, in accordance with the provisions of article 11  
par. 3 of Law 2472/1997, B for the use of his personal data by him before  
of the competent Court before this use.

FOR THOSE REASONS

The Authority grants permission to doctor A to use B's medical file before him  
Single Member Court of First Instance of Athens for judicial use, as it is specialized in its history  
present, after the doctor previously informed B.

The president

The Secretary

Konstantinos Menudakos

Irini Papageorgopoulou