

Athens, 04-04-2018

Prot. No.: G/EX/881-1/04-04-2018

## PRINCIPLE OF DATA PROTECTION

### OF A PERSONAL CHARACTER

A P O F A S H 31/2018

(Department)

The Personal Data Protection Authority met as a Department

at its headquarters on Wednesday 04.04.2018 at 10:00 a.m. upon invitation of the President

of, in order to examine the case referred to in the history of the present.

The President of the Authority, Konstantinos Menoudakos, and the alternates were present

members Panagiotis Rontogiannis, Evangelos Papakonstantinou and Grigorios Tsolias, as

rapporteur, replacing regular members Antonios Symvonis, Konstantinos

Lamprinoudakis and Charalampou Anthopoulos, respectively, who, although they were summoned

legally in writing, they did not attend due to obstruction. They were present without the right to vote

Evangelia Vassilopoulou, legal auditor, as assistant rapporteur and Irini

Papageorgopoulou, employee of the administrative affairs department, as secretary.

The Authority took into account the following:

With the no. first... (ADPPH G/EIS/881/31-01-2018) his application, the G.N.Th. "C

GENNIMATAS" - ... (hereafter Hospital) forwards to the Authority under no. first...

application of A, an obstetrician-gynecologist and requests the Authority's permission for it

processing of sensitive personal data. Specifically, A requests to receive from

as above Hospital "copy of medical files (surgery - gynecology clinic

– ICU), copy of practical surgery, copy of histopathological examination and

copy of B's TEP book entry to refute the monetary action

satisfaction due to moral damage from medical error and its consequences, according to them

her claims, caused damage to her health which also led to a danger to her life of, which the latter has brought against the applicant doctor and the anonymous company with the name "EUROMEDICA Medical Services Provision Company", as legally represented, before the Single Member Court of First Instance of Thessaloniki (ordinary procedure – no. of submission ... with a closing date for submission of proposals on ...).

According to the above lawsuit, which was forwarded to the Authority by A (with the case no. APDPH C/EIS/1437/20.02.2018 supplementary document) and according to the claims of plaintiff B, obstetrician-gynecologist A demonstrated illegal and culpable behavior during the exercise of his duties and the provision of medical services, i.e. "in violation of the fundamental principles of medical science a) proceeded to misdiagnosis of her condition, i.e. she did not diagnose that there was an ectopic pregnancy, b) suggested and applied wrong therapeutic treatment to her and specifically to her administered simple antibiotics, which did not address the problem, resulting in not only not be restored to health but suffer even greater damage, c) failed to perform the required histological examination and a new hormonal examination, appropriate action after the therapeutic scraping to which he subjected her."

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 left after the discussion of the case and before the conference and decision-making, after 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 legal processing of sensitive of personal health-related data. The provisions of articles 5 par. 3 and 13 par. 3 item b' of Law 3418/2005 (Code of Medical Ethics) provide for the exception granting medical certificates and opinions to a third party, if

has a legitimate interest and proves it, as well as the conditions for lifting the medical privacy. Because, further, article 11 par. 3 of Law 2472/1997 stipulates that if the data is communicated to third parties, the subject is informed of the communication before

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from 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. Because, in the case under consideration, A is requesting in the capacity of a third party (article 2 letter i) of Law 2472/1997) the granting of sensitive personal data (personal data health) that concern B and are kept in the file of the above Hospital as responsible processing, (article 2 item g' of Law 2472/1997). From the details of her file case, it follows that the purpose of processing consists in refuting it as above of the mentioned action for monetary satisfaction to restore the moral damage as a result of an alleged medical malpractice brought by B against the applicant doctor and of the joint-stock company with the name "EUROMEDICA Joint Stock Company of Medical Services, as legally represented, before the Single-Member Court of First Instance Thessaloniki.

4. The proposed purpose of processing the rebuttal of the above action is consistent with the aforementioned provision of article 7 par. 2 item c' of Law 2472/1997, while at the same time the principle of proportionality of the data is also met (Article 4 par. 1 letter b of Law 2472/1997), because with the use of said requested health data the competent A court will be able to judge the existence or not of a medical error and its consequences to rule on the conductive claim.

The Hospital must, as the controller, inform, in accordance with

defined in the provision of article 11 par. 3 of Law 2472/1997, B for the transmission

of her sensitive personal data to doctor A for judicial use in the context

of the described legal dispute.

FOR THOSE REASONS

The Authority grants the license to G.N.Th. "C GENNIMATAS" - ..., as controller,

to grant the obstetrician-gynecologist A the requested health data which

mentioned above and concerning B, in order to use them in

context of the aforementioned legal dispute between them, based on the no. registered ... lawsuit, since

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the Hospital informs B beforehand.

The president

The Secretary

Konstantinos Menudakos

Irini Papageorgopoulou