

□ Procedure No.: PS/00391/2020

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 06/30/2020

before the Spanish Data Protection Agency directed against IDCQ HOSPITALES Y

HEALTH, S.L.U. with CIF B87324844 (hereinafter, the claimed).

He declares that during his years of work as a doctor in the aforementioned hospital "I have been using using the computer system of said center in which several thousand histories are contained- the doctors of patients that I have been treating in said center".

The defendant terminated his contract on 02/28/2019. He states that when he was dismissed, "the

The medical records of the patients have been filed in the computerized database.

claimant, having cut off my access to it and denied a copy of the same

mos". He filed a lawsuit resolved by the Social Court No. 9 of ***LOCALITY.1,

Judgment XXX/2019 of 07/22/2019 (JUDGMENT 1 hereinafter) that accompanies as

DOCUMENT 1. In it, the "incompetence of the social jurisdiction to know

cer of the demand origin of these actions promoted by the claimant..." against

the claimed "on dismissal, and I absolve the claimed of the claims deducted

against him". In the second legal foundation, it is indicated at the end and after analyzing the

circumstances of the provision of the service that "All of the above leads to the conclusion that

possession of such an essential note to configure the employment relationship in the terms in which

it is set up in article 1 of the Workers' Statute, such as acting under the

organization and management of the company".

The claimant states that, given that said company considers that "my relationship was not

but mercantile”, the ownership of the personal data of the medical records of the patients that I have attended in said hospital center that includes medical histories, I cannot must be kept in the computer system of the claimed party and must be guarded and stored based on the fact that the respondent considers me to be a self-employed entrepreneur”. Invokes the judgment of the Superior Court of Justice of Castilla y León, Valladolid seat, room of the social, first section, of 02/11/2015, resource 67/2015, which “provides that if the relationship commercial relationship of the doctor with the patient or with his insurer is direct, that is, the pro-own doctor who receives the fees and manages his clientele, as an organization separate investigation, must be the owner of the medical records and recipient of the personal data. patients' sonals. The aforementioned sentence of the social, part of a claim of the General Treasury of the Social Security against a hospital, originated by an act of Infringement tion of the Labor Inspection. In the minutes, among other issues, it is indicated that he is the host pital who files and safeguards the medical records of each patient.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/26

The claimant deduces that given that the sentence that he provides-Sentence 1-, he does not appreciate re-labor relationship, and interpreting the judgment of the TSJ of Castilla León, in which it is analyzed that: “so that the labor nature of the employment relationship can be legally denied, a An essential element is the ownership of personal data, which includes the histories clinical practices regulated in the patient autonomy law” he considers himself responsible of the treatment, and the claimed party would be violating the Data Protection regulations. It provides, in addition to what is indicated:

-Copy of a first contract for the provision of services, signed with the claimed party, dated

01/02/2001 (it is not the one mentioned in its sentence of the social).

(9 pages) (it is the one mentioned in the judgment of

-Copy of another contract, of

the social that affects the claimant), between the claimed (Management Company) and several licenses-

two in medicine (PROFESSIONALS), each in their own name, among which is

the claimant.

10/1/2012

It is indicated that the defendant, Sociedad Gestora, operates the health center ***CENTRO.1,

***LOCALITY.2, Street ***ADDRESS.1, of ***LOCALITY.2 (CENTER), dedicated to the

healthcare.

(2) "The Management Company intends to open a new unit in which they provide the

trauma medical emergency services, which is why it is interesting to have the action

activity developed by PROFESSIONALS."

(3) "The PROFESSIONALS are specialized in orthopedic surgery and active traumatology.

life they provide through their professional experience and what they also want to carry out

their activity in the CENTER".

(4) They agree to enter into this professional services lease contract that

will be governed by the following clauses:

(4.1) Object of the contract and nature: The contract regulates the general conditions in which

that the Management Company provides spaces for PROFESSIONALS to develop

llo of its consultation activity, with civil legislation being applicable in matters not

contemplated in this document.

(4.2) Obligations of the Management Company:

Allow PROFESSIONALS access to the facilities of the center for the co-

□

correct development of the activity derived from this contract.

Provide adequate space for PROFESSIONALS so that these develop-

☐

fill their consultation activity, as well as that logistical and administrative support that is agreed upon.

will give at all times so that this activity is not impeded.

Obligations of PROFESSIONALS:

Provide the professional services contracted efficiently and effectively during the

☐

24 hours a day, 365 days a year. To this end, the PROFESSIONALS undertake

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/26

on the days that they autonomously determine to attend to the patients they consult.

so for orthopedic and trauma medical emergencies.

The PROFESSIONALS will also attend individual or joint consultations that

☐

come from or are a consequence of the general services of the center and correspond to its

specialty.

The PROFESSIONALS undertake to comply with all the obligations that the

☐

labor and Social Security legislation.

Carry out its activities in strict compliance with the obligations derived from

☐

Organic Law 15/999 of 13/12, on the Protection of Personal Data (LOPD) as well

such as the adoption, implementation and compliance with security measures that are applicable

cables, in accordance with Royal Decree 1720 / 2007 that develops it, assuming exclusively any consequence of the infractions that may occur in this matter in relationship with the activities carried out in the leased facilities and expressly exempting mind the Management Company of any responsibility.

(4.3) The contract will have a duration of one year, which is tacitly extended for equal periods.

rivers of time

(4.4) Price and form of payment:

"The PROFESSIONALS will receive as remuneration for the professional services provided the amount equivalent to €42 gross per patient treated as an honorarium accrued medical fees, after issuing an invoice within the first 10 days of each month by the professional. Payment will be made months in arrears, by bank transfer. Bank account."

(4.5) Without prejudice to the duty of coordination inherent to work in any medical center, PROFESSIONALS will be fully autonomous in the development of their activity.

The PROFESSIONALS must coordinate in a timely manner with the medical management of the CENTER for the purpose of guaranteeing adequate service to patients.

Assistance must be provided in accordance with ethical, deontological and professional standards that applicable, and will comply with the quality accreditation standards imposed by the Sociedad Gestora at all times, and must be completed at all times when These requirements establish the legal and regulatory provisions on management and provision of medical services."

On page 6, clause 7, entitled "Personal Data Protection", it is stated:

"Regarding the assurance of compliance with legal responsibilities and obligations, In terms of Data Protection, it is indicated that so that "the Management Company can carry out a correct management of the CENTER based on the different data regarding assistance, occupation, use of spaces, types of interventions, etc., PROFESSIONALS

LES undertake to use the existing hospital information systems in the center

another.”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/26

In accordance with the provisions of article 12 of the LOPD, access by the Company

Manager of personal data contained in files that are the responsibility of the PROFE-

SIONALES, either for the use of the information systems of the Sociedad Gestora or

for the provision of the latter of common services that involve data processing

responsibility of the PROFESSIONALS, the Management Company will assume the condition of

charged with the treatment, in the terms of the LOPD, and must comply with the following obligations:

cations:

Treat personal data in accordance with the instructions provided by PROFESSIONALS.

☐

SIONAL.

Do not apply or use personal data for a purpose other than those for which they are

☐

PROFESSIONALS indicate, provided for in this contract.

Do not communicate, transfer or allow access to personal data, not even

☐

ra for its conservation to other natural or legal persons, with the exception of the personnel

of your organization that, for the fulfillment of the functions entrusted to the Company

Manager, need access to them.

However, the PROFESSIONALS expressly authorize the Management Company to

in your name and on your behalf may subcontract with third parties the execution of provision of all or part of the functions entrusted to the extent that this results necessary and essential for its fulfillment and, therefore, enable said third parties companies to access and process personal data from files owned by the professionals.

Maintain the absolute secrecy and confidentiality of the data provided

□

by the PROFESSIONALS and enforce the same duty to the staff of your organization that intervene in any phase of data processing.

Destroy or return personal data to PROFESSIONALS, as well as any

□

support document where it appears in any of the indicated personal data, once fulfilled the provision that justified the access of the Sociedad Gestora to said data.

The Management Company must adopt and implement and comply with the security measures

□

of a technical and organizational nature necessary to guarantee the security and integrity of data data and avoid its alteration, loss, unauthorized access treatment of the data files.

responsibility of PROFESSIONALS in accordance with Royal Decree 1720/2007.”

It is noted that no express reference to the files or data that make up the history is included.

clinical ria, but nonspecific mention.

In clause 8, “responsibility” it is indicated that “the PROFESSIONALS are responsible of their professional activity in the facilities of the CENTER and of the consequences that could derive from their medical actions with respect to hospital patients.

The PROFESSIONALS undertake to have each of them contracted for the duration the professional relationship civil liability insurance.”

C/ Jorge Juan, 6

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 to the claimant on 07/15/2020:

On 07/30/2020 (folios 57 et seq.), the respondent states:

1) (folios 60 et seq.) The Hospital is the entity that collects patient data according to Article 14.2 of Law 41/2002 of 11/14, basic regulation of the autonomy of the patient and rights and obligations regarding information and clinical documentation (LAP hereinafter).

Likewise, it cites article 17.1 of the LAP, which indicates the obligation of health centers to keep the clinical documentation, from which he deduces that he is responsible for the treatment I lie.

2) The claimant had leased his free professional activity, issuing the corresponding bills for professional fees and "for which the Hospital required that the claimant accessed and processed the data collected in the records on behalf of the Hospital clinics and other documentation related to the different healthcare processes". "The access to the processing of patient data meant that the Hospital only enabled the claimant mante to carry out data processing (care treatment, consultation, comparison, collection, access for software support, modification and interconnection) and only when it is necessary for prevention or medical diagnosis, health care or medical treatment or management of the health service."

Likewise, "the claimant treated the data solely and exclusively for the purposes established two and proceeded with his treatment in accordance with the instructions indicated by the Hospital

as data controller. Likewise, it could not process data for its own purposes nor include personal data in products or services offered to third parties.” “The claimant is treatment manager”. “The claimant at no time has acted as a responsible treatment, since the appropriate technical and organizational measures were applied by the Hospital, in compliance with the Data Protection regulations”.

3) About the causes that have motivated the incidence that originates the claim and measures adopted, indicates:

“The Hospital has a procedure for managing merchandise contracting

a.
Useful and in charge of treatment by which the treatment of personal data is regulated. personal nature of medical records by external physicians.”

“Given the incidence, they are going to review the LOPD management procedure in the
b.
mercantile dealings.”

“All the doctors are informed of the existence of the procedure.

c.
Data Protection management in commercial contracts and is transferred to the importance of proper management following the established procedure.”

THIRD: On 10/22/2020, the admission to processing of the claim is agreed. With dated 11/12/2020, a copy was also sent to the respondent. In the admission for processing, expressly states that there is no administrative appeal in accordance with article 112.1 of the Law

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

(LPACAP).

FOURTH: The respondent submits a document indicating that they are allegations, referring to the agreement do of admission to procedure. They are summarized in the following:

1) Regarding the responsibility of the treatment, custody and storage of data of patients by the Hospital, indicates that the contract signed on 10/1/2012 was for provide the trauma medical emergency service, being the relationship between the parties trade. "Said relationship consisted of the Hospital subcontracting the claimant so that provide its services to the patients of the Hospital, including the access codes with the insurance companies belong to the Hospital and not to the claimant, so the claimant He only attended to the patients that the Hospital summoned him. In no case did he attend to his own patients in the hospital facilities.

"For the services rendered to the Hospital, the claimant issued invoices as honora- Professionals of the Hospital paid the claimant."

2) "Due to an involuntary error in the drafting of the Seventh clause of the contract, it was included He said that the Hospital assumes the status of treatment manager when what really mind meant is that the Hospital was responsible for the treatment.

"Despite the error consigned in the contract, since the contractual relationship with PROFESSIONALS, and in particular with the claimant, the Hospital has always acted as data controller and the claimant has acted as data processor I lie."

3) He cites the reports of the Legal Office of the AEPD 359/2002 and 449/2004 to consider that the Hospital is the entity that collects patient data, as well as an obligation tion that the LAP imposes on health centers.

4) The Hospital, considering the nature of the context and the purposes of the treatment, applied the appropriate technical and organizational measures to ensure and demonstrate that the

treatment is in accordance with data protection regulations, also highlighting the im-supplementation of the security measures with the obligation of the people who deal with personal cough under his authority to follow the instructions of the Hospital (article 25 of the GDPR).

5) You have a record of treatment activities that will allow you to demonstrate your compliance treatment, has a technical instruction for the management of the record of treatment activity. unto It also states that it has different procedures implemented for compliance Compliance with Data Protection regulations.

6) The claimant has never acted as data controller and has not complied fulfill its obligations established in article 24 of the RGPD. Nor did he make any repairs. He did not object to any opposition when he rendered his services.

7) The Hospital was the one that "established the information system used instead of storage

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/26

nation, suppliers and so on". "The claimant never treated the patient data for their own purposes nor do I include them in products or services offered to third parties" "At all times, the claimant complied with the technical and organizational measures contained in the policies, procedures, technical instructions and clauses prepared by the Hospital as responsible for the treatment, in compliance with the Data Protection regulations. cough".

8) The Hospital has complied with all the obligations to safeguard and store the data of the patients.

9) "The trauma emergency service of a Hospital is a central service of the same,

such as the radiology service and others that have this same consideration what in the am-
health care means that they are services to which patients go requesting a
specific health care, but not from a specific doctor, that is, they are not patients of
a doctor who attends his private practice, nor are they therefore patients of the doctor,
but patients who come to receive emergency health care whose service
center lends the Hospital.”

10) The Hospital was the one that directly billed the patients or their insurance companies.
providers for said assistance and “it was the physician who issued the invoices for
professional fees that the Hospital paid to it, the physician acting on behalf
of the hospital.”

11) Considers that the contracts are not what the parties say they are, cites, among others, the
judgment of the Supreme Court, first chamber of 12/18/2019 appeal 1458/2016, “Los con-
deals are what they are, according to their legal nature, and not what the parties say they are.
are (irrelevance of the nomen iuris, for all, judgments 765/2010, of November 30;
and 335/2013, of May 7)”. It affirms that “the contract included an error that the development itself
of the relationship and obligations assumed by each party revealed its true nature.”

FIFTH: On 02/01/2021, the Director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE against IDCQ HOSPITALES Y SANIDAD, S.L.U.,
with CIF B87324844, for the alleged infringement of article 28.3.g) of the RGPD, in accordance with
ity with article 83.4 a) of the RGPD, and 74.k) of the LOPDGDD.

ORDER eventually, and as the result of the instruction to IDCQ HOSPITALS AND SANI-
DAD, S.L.U., the measures related to the provisions of article 58.2 d) of the RGPD.”

"For the purposes specified in the art. 64.2 b) of Law 39/2015, of October 1/10, of the Procedure
Common Administrative Procedure of the Public Administrations, the sanction that could
responding, without prejudice to what results from the investigation, would be an administrative fine of
100,000 euros.”

SIXTH: The respondent makes allegations on 02/17/2021, indicating:

1- Reiterates that there is an involuntary error in the seventh clause of the contract of 10/1/2021,

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/26

where it was indicated that "professionals undertake to use information systems

existing hospitalization in the CENTER

", which does not correspond if the Hospital

was a treatment manager. The parties were inverted, calling "in charge of

treatment" to the Management Company (that is, to the Hospital) and to the professionals who lease

They ban their services for the Hospital, as "responsible for the file". Consider that both the

claimant like the rest of the doctors who are part of the contract have always

adopted the legal position of treatment manager with respect to the Hospital, following the

instructions of the latter in relation to access to information systems and consequently

access to the clinical histories of the patients of the health center. The claimant never

assumed the position of data controller, since the relationship was terminated once,

who claimed the "work of it". The claimant, after the ruling, "using the

error in the wording of said clause takes advantage to claim the stories" "of the fathers

patients he attended in the center's emergency room". The very wording of said clause

This limits the interpretation that the respondent is responsible for the treatment, since it is stated:

"Professionals undertake to use existing hospital information systems

in the center", which would not correspond if the hospital were a treatment manager.

I lie. Regardless of this, it states that since the contractual relationship began

and in particular with the claimant, the Hospital has always acted as responsible for the treatment

processing and the claimant as the person in charge. It has not violated article 28.3.g) of the RGPD

because they have not acted as treatment manager

1- The contract was signed with more doctors, and if the clinical histories had been delivered, cas of the patients, serious damages would have been caused to the patients, by not having been able to access the other professionals to the records to provide them with assistance medical.

2- Considering that it falls into confusion in the first fact of the resolution. With date 01/02/2001, IBÉRICA DE DIAGNÓSTICO Y CIRUGÍA, S.L., signed a service contract of services with the claimant. Subsequently, on 10/1/2012, the same company signed signed a contract for the provision of services with several professionals, including contraba the claimant, so that they provide the trauma medical emergency service, in the form and conditions established in said contract. In 2015, IBERICA DE DIAGNOSIS AND SURGERY, S.L. was absorbed by IDCQ HOSPITALES Y SANIDAD, S.L.U.

The trauma emergency service of a hospital is a "Central Service" which in health field means that they are services to which patients go requesting specific health care, in this case hospital emergencies, but not that of a doctor.

specific, that is, they are not patients of a doctor who come to his private practice.

nor, therefore, are they patients of the doctor, but rather patients who come to receive medical emergency health service whose central service is provided by the Hospital.

3-The aforementioned services are billed by the Hospital, either directly to the patient or to through health insurers contracted by the patient.

In relation to billing with the different health insurers, the Hospital has formalized signed contracts with most of them, with the Hospital holding the "access keys" of the web pages of the companies, which means that it is the health center that is obliged to record the activity of all its policyholders and to invoice the services provided by applying do the rates stipulated in the contracts signed with them. It is the hospital that

invoice said services and “in no case the professionals who provide services in our

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/26

after installations.” Connects the claimed, the fact that the claimant was not the owner of the codes mentioned to be able to invoice with which he provided services on behalf of the Hospital, without that received fees directly from the patients, treating the health data of the patients on behalf of the Hospital. In “no case did the claimant attend to his own parents. patients in the hospital facilities. Contribute in doc. 1 page screen printing access start-up lines to various health insurance companies.

The claimant issued invoices with fixed rates for services rendered, not for a specific patient. However, in no case did he receive any payment from the patients. Provide document with invoices years 2018 and 2019.

It indicates that based on legal basis III of JUDGMENT 1, the Hospital "being the entity that collects payment from patients and manages their health care, is the owner of the clinical records of the patients” gives them the reason that he is the owner of the records. clinical trials.

4- The computer system used by the claimant to care for patients was “the pro- pio of the Hospital”. The respondent has complied with the obligations set forth in articles 14 and 17 of the LAP. These obligations imposed exceed the instructions of the person in charge of the treatment, making it impossible to apply article 28 of the RGPD, and to consider that the hospital is a treatment manager.

5- Article 17.5 of the LAP is not applicable, since the claimant did not carry out his activity individually, was not responsible for the management and documentation that it generated.

neraba In addition, the clinical history may contain care episodes of the claimant and of other doctors from different specialties of the health center, which is why it is applied article 17.4 of the LAP that supposes the custody of the clinical histories under responsibility address of the health center.

6- Attach a copy of the registration of files in the RGPD under the protection of the LOPD art 26, of the do- security document and audit certificate carried out under the regulations of the LOPD and its Regulations. In another document accompanies the procedure by which it is governed currently on applicable security measures.

7- Accompany a copy of the technical instruction for managing the registration of treatment activities. ment and the corresponding registry. It also provides breach notification models security and the interested party.

8- Within the contract with the claimant, the Hospital enabled the claimant access to patient data to carry out:

- Healthcare treatment
- Consultation, collation, collection, access for software support, modification and interconnection, and only when it was necessary for prevention or medical diagnosis, the provision health care or medical treatment or the management of the health service.

SEVENTH: On 07/09/2021, a test practice period begins. They are given by re- produced for such purposes the claim the documents obtained and generated by the Inspection Services and the Report of previous Inspection actions that form part of file E/05820/2020 and allegations to the initial agreement.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

In addition, it was decided to collect:

1. To claimant and respondent, regarding the provision of the claimant's services at the Center

toilet XXXXXXXX,

HOSPITAL XXXXXX

***LOCATION.2, must inform, accrediting their statements or providing documents

ments that confirm it if possible in the necessary points, the following aspects.

***LOCATION.2,

***ADDRESS 1,

a) It is requested that they provide a copy of the ruling of the Social Court No. 9 of ***LOCALI-

DAD.1, XXX/2019 of 07/22/2019 that is fully legible, the one provided in the claim

has extremes that are not.

In his response of 07/22/2021, the respondent provides a copy of the judgment.

The claimant on 07/28/2021 also provides a copy of the judgment.

b) Number of records (patients) and seniority managed by the claimant, and which provides

tion are automated and on other media, or if there are records for each patient from several

supports.

The respondent indicates that the claimant started his services in 1998, being the number of

patients attended by the claimant in the last five years, in emergency consultations

traumatology of about 12,000 patients.

The claimant does not know the number of patients, their seniority from the first contract is

01/02/2001 and the second on 10/01/2012. "The first years I made the clinical histories in

handwritten cards, from a date I do not know 2004, 2005, the computer of the

The hospital put me on a computer and explained to me how to make medical records in the system.

IT ma at the hospital. The handwritten cards were destroyed."

Inform about the data collection information clause that was provided to the

c)

patients when their data was collected. Copy of the clauses contained.

Respondent provides a copy of document 2 and 3 with the clause. The first document refers to when the LOPD was in force. It is an informative clause in a form of XXXXXX-XX, ***LOCALIDAD.2 that refers to the LAP and informs patients, users and the general public, of the purpose of the treatment of management and administration of health services, allowing also to the invoicing of services. It indicates before whom to exercise the responsibility aspect of the clinical history. The second document is the Data Protection clause of personal character adjusted to the RGPD, indicating the sections of purpose, legitimacy, recipients of the transfers, rights of the interested persons, origin of the data, referred among other circumstances to the same management of health services and administration treatment of the hospital, necessary for the healthcare of the patient.

It adds that "the patients treated by the claimant signed consents indicating

It clearly indicates that the hospital is responsible for the treatment". Attach THREE forms with consents signed by the patients cared for by the claimant as documentation to nº 4, appearing as responsible "Hospital of ***LOCALIDAD.2" with the information of data protection, with dates of 06/21/2018, 09/27/2018 and another of October, and guess a patient signature on each sheet.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/26

Complainant indicates that "I am not aware that during all the time until I was dismissed from the Hospital, it was not provided to the patients nor did they sign any information clause data collection information".

d)

Report how they answered and acted during the period in which they maintained the relationship, to petitions related to the exercise of rights of those affected referred to two to clinical history, accesses, transfers, etc. Providing accreditation if they had.

The respondent indicates that the requests are received and attended to by the Hospital. Have a procedure in which it informs that the personal data is the responsibility of the entities des that form the Hospital Group. Provide a copy of document No. 5: "technical instruction for attention to Data Protection rights", aimed at employees and facultative you, with three modified versions, from July 2016 to April 2020. It regulates the general conditions to comply with the legal obligation to attend exercise of rights of those affected whose personal data is processed by GRUPO HOSPITALA-RIVER XXXXX.

They provide in document No. 6 request for the exercise of rights of 2018 by a user in the that cites three medical centers of the claimed person in ***LOCATION.2, urging the cancellation of the clinical history, and the response given by the respondent on 06/09/2018.

Complainant indicates "I do not understand the question well", but to the "patients treated in consultation, they were given a report of the medical attention in consultation, through the in-hospital format, as well as discharge report to admitted patients and patients who underwent surgery".

e) Respond, have you received and processed, requested or resolved requests from patients for care? ordered by the claimant to transfer the medical record at the request of the claimant?, and what was answered.?

The respondent indicates no.

The claimant indicates that in the current consultation that takes place in ***LOCALIDAD.2, outside the Hospital Chiron pital, many patients have asked me if I had their previous medical history, con-testing them no. "No patient has brought me their clinical history from the Quirón hospital."

f) Regarding relationships with patients, care relationship with the Hospital or

health center and with the claimant, it is requested that they detail and explain, different origins of patients in relation to the legal basis from which they come, type of relationship that covers the provision of said service and if it was distinguished in the database or was noted down any distinction based on this, as well as the volume of patients expressed in relation with the different bases of provision of the service.

The respondent indicates that in databases no distinction was made and annotation of descriptions, because the provision of health care is carried out in the hospital whose clinical history is under conservation and custody of the same as responsible for the treatment I lie.

Attached as document No. 7 "procedure for managing admissions" initially approved

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/26

Initially in June 2014 and revised. Among others, it contains the performance by the staff of the claimed from the admission of patients, registering in the computer system the provision that is going to be carried out, the creation of a medical history number for the new patient, ger requests for clinical documentation from the HHCC of patients”.

Patients can come from health companies, insurers and mutuals, organizations

We are public, hospitals, Junta de Comunidades de Castilla la Mancha, and private. This tipification of patients is necessary for the billing of the services provided by of the hospital. Attached as document No. 8, procedure for invoicing the activities data performed in the hospital.

The claimant indicates that “the patients that I treated at the facilities of the hospital XX-XXX came from the healthcare companies that the hospital had arranged and from lists of

Surgical waiting for the SESCAM that the hospital arranged with said health organization public".

g) What percentage of patients are estimated to have come from interventional modalities?

mediation of the hospital and that the claimant's own part?

The respondent indicates that all the patients come from the hospital, and that the citations for

All services are performed by the hospital admission service, as detailed in the

procedure for managing admissions, document no. 7.

The complainant indicates that "all the patients I have treated at the hospital, both in consultation

as in the operating room, they came from intermediary modalities of the hospital and none

by".

h) Indicate whether, with regard to the surgical interventions performed by the claimant on pa-

private clients of yours or private patients from a contract with insurers

medical, there was some differentiation in the treatment of their databases or in histories

clinics, and if the volume attended by this modality is differentiated.

The respondent indicates that "There was not and there is no differentiation in the treatment of

Hospital databases because they all were and are patients of the Hospital."

Claimant indicates that he has never had private patients or contracted with any insurer

all patients were contracted by the hospital and all were listed in the database.

data from the computer system of the Hospital.

Yo)

Indicate if the claimant could have a contract with a health insurer and receive payments

patients with said origin, and if the same thing happened with the hospital, it could be the same insurer.

guarantor or there was some agreement on this aspect, or how this issue was resolved.

The respondent indicates that the claimant could not have a contract with any medical insurer.

in relation to patients treated at the Hospital, because the Hospital has formalized

two the contracts with the insurers, being the hospital the owner of the "access keys"

of the web pages of the companies, which means that it is the health center that is obliged to record the activity of all its policyholders and to invoice the services provided by applying the rates stipulated in the contracts signed with them. Ultimately, the title holder of said passwords determines that it is the Hospital that bills said services to its patients and in no case the professionals who provide services in our facilities.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

13/26

ness. In the specific case of the claimant, he was never the holder of said access codes for being able to bill insurers, which reveals that he provided his services on behalf of the Hospital and that in no case received fees directly from the patients, treating the health data of patients on behalf of the Hospital. It is attached as a document No. 9 screenshots of the home pages of various insurance companies...

Claimant indicates that he has never had a contract with any health insurer. All services to patients were arranged by the hospital.

j) Who established the mode of access to the database of medical records?, -Persons authorized to such information, detailing the aspects, and how it was organized in the aforementioned database.

The respondent indicates that "the Hospital established and establishes access to medical records from the patients. The head of the Personnel Department makes a request for registration through the request management application in which you attach a form with the necessary data to access the applications. Once the request is received, the IT department performs the registration in the security systems and the application to the system that you have to have access for your role. In this case, being a care professional, you are given

access to the medical records tool (through a named user and a password that only the professional knows) IMDH, which is the access mode to the databases medical record data.

"It is the IT department itself, which, once the resignation of a professor has been communicated, by the Personnel department, proceeds to disable the users in the applications nes".

The claimant indicates "The hospital computer scientists".

k) What requirements and security protocol did they have until they reached the bases? of patient data contained in their medical records? Who managed the administration system nistration? - Who determined the attention of the computer system?

The respondent indicates "the Hospital computer scientists manage the system, supported by a external provider (INDRA). On the other hand, the Hospital has a Technical Instruction for Revision of Access to Critical Systems, which regulate the general conditions to guarantee Enforce compliance with the obligation to review access to the information systems especially protected, such as the medical records of Hospital Group XXXXXXXXXX by part of their users. In this sense, said Technical Instruction states that

Access to the Clinical History within the scope of a health center is limited to the health personnel who provide assistance to the patient, in order to guarantee their adequate diagnosis. diagnosis and treatment and, the administration and management staff, exclusively in what is necessary for the exercise of its own functions, as well as the records and reviews ns of access to medical records". Attached is the "Technical Instruction for the revision of access to critical systems", duly published, as document No. 10. The do-

The document refers to article 24 of the RGPD and the LAP, referring to access to the HC for the provision sanitary station. Informs the staff of the access log, their review and periodicity. unjustified access of these and the functions of the Information Security Committees. mation.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

14/26

Likewise, the Hospital has carried out the corresponding data protection audits to check compliance with security measures and protection regulations current data (in this period by the LOPD 15/99 it was mandatory that the person responsible for treatment carry out audits). The security document version 3.0 date is attached 2016 where the security measures are detailed, covering the treatment centers, equipment, systems, programs and media used by HOSPITAL XXXXXXXX ***LOCALI-DAD.2 that covers three locations and for the staff of said location, including the files of ownership of the HOSPITAL, which are attached to these documents". The document refers re, among others, the computer application where the medical records of patients are integrated, digitization and storage of medical images and the certificate issued by the external auditor terno XXXXX LEGAL ADVISERS who carried out the audit, as document No. 11, date-Sun to 07/11/2016.

The claimant repeats: "the computer scientists of the hospital"

l) Regarding backup copies of information and data, how was it carried out?

curity and systems used.

The complainant indicates that they are carried out by the systems team, as indicated in point 5.1.e) of the security document that appears in document number 11.

m) Report on how the reception system that the Hospital put into operation operated and functioned.

relation to the consultations that the claimant passed, and what it consisted of, indicating that computer tools were used, who was the owner and what functions, benefits or services vices offered to physicians contracted as the claimant. Indicate what data you accessed

that receiving service and who originally collected that data. in identical terms about the system used to care for patients for the provision of care and that some stored the medical records (software, hardware and information security document) information, personal data and medical records that were handled).

The respondent indicates that "the patient reception system" is documented in the "Procedure for managing admissions", document No. 7, for which the Hospital uses creates its own computer tool, as a product produced by the technology company INDRA. With it, the services related to the care field of consultation are carried out.

tas, emergencies and operating room, as well as the preservation of the patient's clinical history. The administrative staff of Hospital Admissions accesses the personal data file of patient identification. For the provision of care and conservation of clinical histories nicas (software, hardware and information security document, personal data and medical records that were handled) the same IMDH system, indicated above, is used.

Complainant indicates that hospital admissions staff received calls from patients and made appointments with them using the Hospital's computer system. "The patient care, care provision and storage of medical records it was always done in the hospital computer system."

n) If they have invoices or payments for data custody, data processing equipment or information systems, or expenses in general incurred by the operations of treatment carried out with the data of the patients in medical attention / histories clinics.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

The respondent indicates that he contracts the maintenance services of the information system and also corrective maintenance. Provides a copy of document No. 12, "Maintenance of the healthcare information system" with INDRA (01/01/2018 to 12/31/2018) that includes among others, the care information system for care management. . When I had the documentation kept on paper support hospital contracted a company for the archiving and custody of the attached documentation invoice in document nº13.

Complainant indicates "this term corresponds to the hospital".

ñ) Inform if before the entry into force of the RGPD the treatments and files of the aforementioned hospital and service were registered in the AEPD Files and Treatments Registry, providing a copy of your references.

The respondent indicates that "The files were duly registered in the Registry General Data Protection of the Spanish Agency for Data Protection, appearing The Hospital is responsible for the treatment". Attached document No. 14, press releases 04/27 and 05/11/2016 of the AEPD of the registration of files, including RESIDENTS, and PATIENTS, related to the management of clients and clinical history, category of users rivers: customers and users.

Complainant indicates "this term corresponds to the hospital".

o) Adaptations made on the aforementioned treatments and files when it comes into force the GDPR.

The claimant indicates a list of procedures, instructions, guides, clauses and contracts that are part of the Hospital's data protection management system, published by Hospital Group XXXXXXXXX in the Hospital Quality System and on the intranet, at Reason for adapting to the new data protection regulations. Provide document no. 15, screenshot of procedures, also available on the intranet, and in document no. 16, procedure to prepare the Record of Treatment Activities contained in the "the Technical Instruction for the management of the Record of Treatment Activities. "

Complainant indicates "this term corresponds to the hospital".

p) In the contract signed between the claimant-claimant and other doctors, there is a clause which indicates:

"In accordance with the provisions of article 12 of the LOPD, access by the Company Manager of personal data contained in files that are the responsibility of the PROFESIONALES, either for the use of the information systems of the Sociedad Gestora or for the provision of the latter of common services that involve data processing responsibility of the PROFESSIONALS, the Management Company will assume the condition of charged with the treatment, in the terms of the LOPD, and must comply with the following obligations: cations:

What file/s were the professionals responsible for?

If the professionals, claimant, issued instructions on access

What types of data did the Hospital or the personnel in charge of it have to access, with

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

16/26

what purpose?

The defendant indicates that "None of the files were the responsibility of the professionals", and they already specified it in allegations. It was, due to an involuntary error in the wording of the clause clause that the parties inverted, calling the company "in charge of processing" managing entity (this is the Hospital) and the professionals who leased their services for the Hospital, as "responsible for the file". The true fact is that for as long as

The relationship between the Hospital and the aforementioned doctor lasted -as with the rest of the professionals- contracted, which are also part of said contract-, all of them (including the claim-

ment) always adopted the position of "treatment manager" with respect to the hospital (as Responsible for the file -today of treatment-) following the instructions of the latter.

mo in relation to access to information systems, and consequently to access to medical records of the patients of the Health Center. The Hospital, as responsible for Treatment, has complied with the obligations established in articles 14 and 17 of the LAP, such as the conservation and custody of clinical documentation in conditions that guarantee its correct maintenance and safety, for the proper assistance to patients during the appropriate time of each care process.

The Hospital is the entity that collects the patient's data, and relates it to the article 14.2 and 17.1 of the LAP, considering that the clinical history may contain assisted episodes potential provided by the claimant and other doctors from different specialties of the health Center

Complainant indicates "no file is the responsibility of the professionals I never inhabited in-access instructions".

2. To claimant:

a) Type of computer equipment used in terms of the record of the consultations of patients, if there was any extreme about it, contained in agreements signed with claims mado, who was the owner of the team/teams. How were the aforementioned teams implemented? with the conservation and storage of information, what types of servers were used for it? What database did you use and what software did you use?

He states that the computer equipment he used was owned by the Hospital and has never been used a computer or a computer system owned by him.

b) Contribution, if you have any document delivered to the claimed and received by it on the express request of the data of the medical records that it considers its ownership.

He states that "he has no documents delivered to the Hospital."

3. To claimed:

a) Proof of having issued instructions, guidelines, clarifications to the other party

on data processing, the file, security measures, etc.

Indicates that: "prepares, publishes and communicates to health professionals the internal regulations

necessary for data processing and compliance with security measures

implanted by the Hospital. The internal regulations have been published by the Hospital Group

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

17/26

rio XXXXXXXXXX in the Quality System of the Hospital and the intranet as we have indicated

in point 16. Likewise, the acknowledgment of receipt of said documentation due-

mind signed by the claimant as document No. 17, signed on 05/11/2015 in which

indicates that "it has received the internal regulations for healthcare professionals and staff

of administration and management of the Hospital in relation to the mandatory security measures

compliance for all authorized users."

b) What protocol or action guidelines did you have when someone addressed the claim?

mented as a provider of medical care in matters of medical records and exercised his

right of access to your personal data or requested the medical history? Accreditation

if he had it.

It indicates that they have no record of any request for access addressed to the claimant regarding

rights, and that in "compliance with our procedure, if it had been carried out, it would have

to have submitted the request to the hospital as responsible for the treatment for your care

as in the cases of judicial claims or patrimonial responsibility". Contribute do-

document 18 in which, upon a request for documentation from the medical inspection service

for patrimonial responsibility, requesting, among other things, a report from the trauma service

gia, from 03/18/2019.

c) The contract signed with the claimant indicated:

Carry out its activities in strict compliance with the obligations derived from

□

Organic Law 15/999 of 13/12, on the Protection of Personal Data (LOPD) as well

such as the adoption, implementation and compliance with security measures that are applicable

cables, in accordance with Royal Decree 1720/2007 that develops it, assuming exclusively

goes to any consequence of the infractions that may occur in this matter in

relation to the activities carried out in the leased facilities and exempting expressions

the Management Company of any responsibility."

The contract does not refer to any lease, but to the access and use of facilities

talaciones, please clarify this aspect.

It states that the contract does not regulate a lease of facilities, so it is a

It is wrong to include leased facilities because only the lease of services is regulated.

professional vices.

The invoices issued by the claimant correspond only to the services provided

in no case for lease of facilities.

Attached is a copy of the invoices issued by the claimed party to the claimant in document No. 19, dated Jan.

January to March 2019, including the personal income tax discount, list of treatments and amount per

each of them, indicating "Hospital Traumatology Service XXXXXX ***LOCALI-

DAD.2".

b) How do you interpret and materialize the content of the clause of the contract, which indicates:

"4.5) Without prejudice to the duty of coordination inherent to work in any medical center,

PROFESSIONALS will be fully autonomous in the development of their activity.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

18/26

The PROFESSIONALS must coordinate in a timely manner with the medical management of the CENTER for the purpose of guaranteeing adequate service to patients.

Assistance must be provided in accordance with ethical, deontological and professional standards that applicable, and will comply with the quality accreditation standards imposed by the Sociedad Gestora at all times, and must be completed at all times when These requirements establish the legal and regulatory provisions on management and provision of medical services.”

It states that the fact that this clause is established refers to the fact that the professional healthcare provider has autonomy to provide healthcare, diagnose and treat to treat the patient, based on their professional criteria and that is, the main element of autonomy The professional mine that doctors enjoy is the guarantee that they can issue freely their professional opinion regarding the care and treatment of their patients. patients, as established by the Declaration of the World Medical Association and the code deontological

SIXTH: On 09/17/2021, a resolution proposal is issued with the literal:

“That the Director of the Spanish Data Protection Agency file the infraction tion of article 28.3.g) of the RGPD, to IDCQ HOSPITALES Y SANIDAD, S.L.U., with CIF B87324844, as determined in article 83.4 a) of the RGPD, typified for the purposes of providing as determined in article 74.k) of the LOPDGDD, with a fine of 100,000 euros. ros.”

Against the proposal no arguments are received

SEVENTH: Of the actions carried out in this procedure and the documentation tion in the file, the following have been accredited:

PROVEN FACTS

FIRST: The claimant requests in his claim, that he was prevented by the claimed when the contract was terminated, access to patient medical record data to the that he attended, and that he considers it contrary to data protection regulations.

SECOND: The claimant provides a judgment of the Social Court No. 9 of ***LOCA-LIDAD.1, no. XXX/2019 of 07/22/2019 on dismissal against the claimed. In the same fails the "incompetence of the social jurisdiction to know the demand origin of the these actions promoted by the claimant..." against the claimed one "and I acquit the one claimed from the claims deduced against him". On the basis of law

Second, it states:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

19/26

it is "considered that the legal relationship between the parties is not of a labor nature because the actor enjoyed the freedom to organize his work without being subject to a day or schedule or to governing or disciplinary organizational regime of the defendant.

The plaintiff for interest agrees to have the physical space in the hospital to spend consultation and the operating room the use of these physical and productive elements for the plaintiff the defendant received income 25% of the fees received for the activity of consultation, the plaintiff did not submit, beyond what is proper in a contract commercial service leasing to orders or guidelines of an organizational nature of the hospital itself, the plaintiff was completely free to set his hours, days of consultation, use of the operating room, the plaintiff was free to use the assigned facilities, freedom to schedule your medical consultation and operating room activity, logically once

informed the reception of the hospital of the days of consultation and hours, you must notify with prior to receipt to carry out modifications and cancellations. He fixed his vacations and the activity was suspended.

It is not subject to orders and instructions from the defendant beyond the order of attend to a certain patient on whom he should, if he accepted, carry out the activity professional. He was registered in the RETA census as a self-employed worker.

He received prior remuneration the extension of the corresponding invoices, of different amounts. That the bills were made by a hospital employee does not undermine the reality of the person issuing the invoice for tax purposes and creditor.

As proven facts it was indicated:

"FIRST: The defendant is dedicated to hospital activities, general medicine and specialized, and surgery, with private hospital centers that work with the insurers, concerts with public health and private patients.

SECOND: On 10/1/2012, the parties signed a service lease agreement by virtue of which, the plaintiff, as a doctor specialized in traumatology, agrees with the respondent pass consultation and carry out the activity of the operating room in Hospital XXXXXX of *** LOCATION.2 (XXXX).

Using the physical space of the hospital as a private practice and the operating room to carry out scheduled operations to your private patients and patients with health insurance private. The plaintiff contributing his personnel and non-expendable materials to assist in the surgical interventions and consultations except the reception that is a service that gives the hospital.

THIRD: The plaintiff had a consultation at the hospital, consultation area, that has a reception of calls, a service that collects calls and gives Appoints patients who come to the plaintiff's consultation, respecting the indications of days and hours marked by the plaintiff.

The patients who come to be treated by the plaintiff are people from private insurers or private patients who are interested in consultation with the plaintiff in the days and times set by the actor.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

20/26

FOURTH: The remuneration, the fees, the parties agreed that by consulting the actor received 75% and the other 25% for the defendant for the physical space of consultation in the reception.

If the plaintiff carried out operating room activity, he will receive 100% of the fees and the company receives as consideration the expenses charged to the patient or the insurance carrier.

FIFTH: The plaintiff is voluntarily included in the clinical picture of the insurers that also have an agreement with the defendant patients / insured they choose within the medical chart that their insurer has.

The plaintiff receives his fees in accordance with the rates established by the private insurer. Of this amount, as agreed, the plaintiff receives the 75% and 25% the defendant.

The plaintiff, if he received patients who did not have private insurance, could charge directly to the patient or who is paying the amount at the reception of the hospital and During these times, the hospital also received 25%.

The invoicing of the claimant depends on the activity carried out, such as consultations and operating room, they are not identical depending on the work you do.

The plaintiff has his material means for the activity of consultation and operating room, the

hospital gives you the consumables.

SIXTH: Since 2013, it is part of the special regime for workers

autonomous.

The plaintiff does not have exclusivity and has his own private activity outside the hospital.

The plaintiff is not subject to a schedule, he organizes his agenda and his days of consultation.

He did not participate in training activities or conferences held by the defendant

You have access to the employee portal.

SEVENTH: Once the applicant has presented the invoice, it is paid within a period of

60 days.

EIGHTH: The plaintiff received for the period 03/1/2018 to 02/28/2019, the amount of

€205,267.13 for consultation activity, operating room and emergency care

traumatology that also receives its fees per patient treated in the service of

emergencies.

NINTH The company notified the plaintiff on 12/26/2018 of the termination of the lease of the

services that united the parties, with effect from February 28, 2019.”

THIRD: The claimant had a first service provision contract with the respondent.

cios, signed on 01/02/2001 (it is not the one mentioned in its social ruling), and another of

10/1/2012, the one mentioned in the social ruling, which affects the claimant), between

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

21/26

the defendant (Management Company) and several medical graduates (PROFESSIONALS),

each in their own name, including the claimant.

The literal of the contract appears and is reproduced for evidentiary purposes in the antecedent PRIME-

RO.

FOURTH: The respondent stated that the record in the contract of his position as en-loaded treatment is by mistake. It is credited:

- The respondent states that the claimant provided his services in trauma emergencies-lodge. He claimed that "In the early years I made the clinical histories in written records by hand, from a date I do not know 2004, 2005, the hospital's informatics me he set up a computer and explained to me how to make the clinical histories in the computer system of the hospital. The handwritten cards were destroyed."
- The data collection information was provided by the claimed party in forms in which indicated that the person responsible for the treatment is the hospital, which attaches copies of printed with consents signed by patients cared for by the claimant, in which that appears as responsible for data processing, the hospital, with different dates in ju-September or October 2018. The claimant was unaware of the existence of those documents informative as indicated in tests.
- The claimant stated in evidence that the patients seen in consultation were trained-gaba medical care report in consultation through the hospital computer system, as well as a discharge report for admitted patients and patients who underwent a surgical intervention.
- The claimant has a procedure for the management of admissions approved in June of 2014 and revised. Indications are contained by for the staff of the claimed admission to patients, registering the computer system, in the provision that is going to be made, the creation of the medical record number to the new patient, and to collect the requests for clinical documentation from the clinical history of patients.
- According to the defendant, patients can come from health companies such as insurance-and mutual, public bodies, Castilla la Mancha Community Board and private two, being necessary the differentiation of the origin for the invoicing of the services

provided by the hospital. The claimant indicated that the patients treated at the hospital facilities came from the healthcare companies that the hospital had certified and SESCO surgical waiting lists that the hospital arranged with said public health agency.

The claimant indicated that all the patients he treated at the hospital, both in consultation as in the operating room, they came from intermediary modalities of the hospital and none for your part.

The claimant stated that he had never treated private patients nor had any deal with any health insurer. All patients were recruited for the hospital.

such and all appeared in the database of the hospital's computer system

-The defendant established the method and form of access to the medical records of the patients through its personnel department, granting user registrations through

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

22/26

of a management application, with the IT department registering in the systems

safety issues care staff were given access to the history tool

clinics through username and password the claimant indicates that the access modalities

so to the database of medical records was provided by computer scientists of the hospital.

-The requirements and security protocols that existed until accessing the

medical records in the databases were managed and administered by the claimed to

through a contract with an external treatment commissioner. In this sense, the claimant

states that it was the responsibility of the hospital's computer scientists.

-The respondent also states that the patient reception system is included in the procedure for the management of admissions carried out by the administrative staff hospital itself, while the claimant states that admission to the hospital of the calls were received in the hospital's computer system, and that patient care patients the provision of care and storage of medical records was carried out always in the hospital computer system

-The defendant provides invoices for the maintenance of the management and custody of equipment data processing and information systems, while the claimant stated that these procedures corresponded to the hospital

-The defendant accredits the registration of the resident and patient files carried out with the validity of the LOPD, while the claimant states that this corresponded to the hospital.

-The respondent also has documentation that accredits the updating of the treaties-procedures and files to the RGPD, as well as the record of treatment activities, while that the claimant stated that this term corresponded to the hospital.

-The claimant stated that the computer equipment he used to manage the medical records was owned by the hospital and had never used a computer or system. computer ma of your property.

-The defendant: "prepares, publishes and communicates to health professionals the international regulations na necessary for data processing and compliance with security measures implanted by the Hospital. Attach the acknowledgment of receipt of said documentation duly signed on 05/11/2015 by the claimant as document No. 17, which indicates that "has received the internal regulations for healthcare professionals and administrative personnel Hospital management and management in relation to mandatory security measures ment for all authorized users."

-The respondent provides invoices issued to the claimant in which the relationship of trafficking is included-

payments and amount for each of them, indicating "hospital traumatology service XX-

XXXXXX ***TOWN.2.

FOUNDATIONS OF LAW

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

23/26

Yo

By virtue of the powers that article 58.2 of the RGD 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 process.

Article 4 of the RGD indicates:

II

"two). "processing": any operation or set of operations performed on data personal information or sets of personal data, whether by automated procedures or no, 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;

"6) "file": any structured set of personal data, accessible according to criteria. certain criteria, whether centralized, decentralized or distributed functionally or geographical;

7) "responsible for the treatment" or "responsible": the natural or legal person, public 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;

8) "in charge of the treatment" or "in charge": the natural or legal person, public authority, ca, service or other body that processes personal data on behalf of the person responsible for the treatment;"

Guidelines 07/2020 on the concepts of data controller and data processor
treatment in the RGPD, adopted on 09/02/2020 in its preamble indicates:

"The concepts of data controller, joint data controller and en-
charged with processing play a crucial role in the application of the General Regulation.

General Data Protection 2016/679 (GDPR), since they determine who will be responsible of compliance with the different data protection regulations and how the interested parties can exercise their rights in practice. ..."

The concepts of data controller, joint data controller and en-
charged with the treatment are functional concepts insofar as they have as their object assign responsibilities according to the actual functions of the parties and concepts autonomous in the sense that they must be interpreted primarily in accordance with the legislation EU data protection regulation.

By examining the five basic requirements of the data controller, I would establish indirectly those of the manager. The principles would be:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

24/26

1-«natural or legal person, public authority, service or other body»

2-« that determines »

3- «alone or jointly with others»

4-« the purposes and means »

5-« of the processing of personal data ».

In principle, there is no limitation as to the type of entity that can assume the payment.

role of data controller, but in practice it is usually the organization as such, and not an individual within the organization (such as the CEO, an employee, or a member of the board), which acts as data controller.

A controller is a body that decides certain key elements of the treatment.

I lie. Control can be defined by law or can be derived from an analysis of the elements facts or circumstances of the case. Some treatment activities may be considered be naturally linked to the role of an entity (an employer to employees, a publisher to subscribers or an association to its members). In many cases, the terms of a contract can help identify the data controller, although they are not decisive in all circumstances.

A data controller determines the purposes and means of the processing, i.e. the why and how of the treatment. The respondent formulated the rights care policy, information from them about the medical records, file registration of the treatment of data.

In this case, involving the clinical history data, article 14.2 of the LAP states:

“Each center will file the medical records of their patients, whatever the support. paper, audiovisual, computerized or of another type in which they appear, so that they remain guaranteed its security, its correct conservation and the recovery of the information”, adding article 17.1 that "Health centers have the obligation to preserve the clinical documentation in conditions that guarantee its correct maintenance and security, although not necessarily in the original support, for the due assistance to the

patient for the time appropriate to each case and, at least, five years counted

from the discharge date of each care process”.

Article 17.4 of the LAP establishes that "the management of clinical records by centers with hospitalized patients or those who care for a sufficient number of patients under any any other care modality, according to the criteria of the health services, how it will be carried out through the admission and clinical documentation unit, in charge of integrating in a single File medical records. The custody of said medical records will be under the responsibility reliability of the management of the health center.”

At the same time, the above is clarified, in relation to the professionals who exercise the medicine privately, providing article 17.5 of the LAP: "Health professionals who carry out their activity individually are responsible for the management and custody of the healthcare documentation they generate”.

In any case, the completion of the clinical history in the aspects related to the Direct assistance to the patient will be the responsibility of the professionals who intervene in it, that they have a duty to cooperate in the creation and maintenance of documentation orderly and sequential clinic of the patient care process.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

25/26

It is also relevant that the purpose of the clinical history is the direct relationship of the exercise of patient rights with access to clinical documentation through the request for access to the data that comprise it. Both aspects will be related in this process. An attempt will be made to verify whether it is true that the claimant holds, for purposes of data protection the responsibility that derives from the management, custody and storage

argument that it advocates and therefore, the defendant is the one that does not correspond to said role meet the legal requirements that consider it not responsible for said data and treatment. to, being initially imputed for that reason.

In this case, the claimant obtained a judgment regarding dismissal, declaring the jurisdictional incompetence. The access to data of the claimant was executed by virtue of the Signed service lease agreement. It is not proven that the claimant had in some way: technical, organizational, legal, informative of rights of protection of data to patients, the organization of the purposes or means of data processing. The claimant provided services by virtue of which there is a relationship of dependency, in this case non-work, showing a total care relationship between patients and the center sanitary.

The consignment in the contract signed with the defendant and other professionals is not decisive, and analyzed the functions carried out in the data processing by both parties it is concluded that the claimant professional dumped his opinion in the database diagnosed in each medical care he provided to patients who came to the claimed, in the organization of the claimed that included not only the physical spaces, but as here accredited in the technical, legal and information decision-making field of the patients, including their data. Without the patients, the computer systems and the decisions on implementation of data and information collection information on patient rights carried out by the defendant, it would not have been possible to data processing. The one that has articulated the technical and organizational means has been the claimed, which, therefore, holds the ownership of the obligations imposed on the responsible for the treatment. When a user of the system, as in this case the claimant is terminated the contract, you must have no access to the data of which the defendant is responsible. This, logically, regardless of whether a patient can request a copy of his medical history from the person claimed and go to his services, a right that

is contemplated in the LAP.

It is not possible to become responsible for the treatment because the literal of the contract so point out, or avoid the obligations of the data controller simply by configuring the contract in a certain way when the factual circumstances say something else as in this case.

It is not observed that the claimant met any requirement to be considered responsible for the treatment, so that in no way can it be considered for the purposes of data protection responsible for the file or treatment, circumstances that, if comply with the defendant, which implies that the infraction imputed to the defendant becomes a file because it is not considered such.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

26/26

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE the infraction attributed to IDCQ HOSPITALES Y SANIDAD, S.L.U., with CIF B87324844, of article 28.3.g) of the RGPD, provided for in article 83.4 of the RGPD, typified for prescription purposes in article 74.k) of the LOPDGDD, and its fine of €100,000.

SECOND: NOTIFY this resolution to IDCQ HOSPITALS AND HEALTH, S.L.U...

THIRD: In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of one month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, with 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 two months from the day following the notification of this act, according to the provisions of article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, it may be provisionally suspend the firm resolution in administrative proceedings if the interested party states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Registry Electronic Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1 october. You must also transfer to the Agency the documentation that accredits the effective filing of the contentious-administrative appeal. If the Agency did not have knowledge of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

Sea Spain Marti

Director of the AEPD, P.O. the Deputy Director General of Data Inspection, Olga Pérez

Sanjuan, Resolution 4/10/2021

938-131120

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es