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»Opinion of the CPDP on the form of authorization in exercising the rights of a data subject in front of medical establishments

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OPINION

ON

THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA

Reg. № NDMSPO - 01-197/2019

Sofia, May 27, 2019

SUBJECT: Form of authorization in the exercise of data subject rights

Commission for Personal Data Protection (CPDP, Commission) composed of: Chairman: Ventsislav Karadzhov and members:

Tsanko Tsolov and Tsvetelin Sofroniev at a meeting held on 22.05.2019, considered a file with registration №

NDMSPO-01-197 / 17.05 .2019 by Prof. G.N. MD, in his capacity of Executive Director of the University Hospital "SE". The

request relates to the application of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016

on the protection of individuals with regard to the processing of personal data and on the free movement of such data and

repealing Directive 95 / 46 / EC (General Data Protection Regulation, DPO). In the sense of the cited regulation UMHAT "SE"

EAD Sofia is a controller of personal data, which is why the adoption of internal rules for personal data protection in the

medical institution is forthcoming.

During the preparation of the internal rules, an issue arose on which there is no explicit indication in Regulation (EU) 2016/679

and in the Personal Data Protection Act (PDPA). Exercising the rights of data subjects implies the possibility of access to

personal data, the right to correct incomplete or inaccurate data, the right to delete data ("right to be forgotten"), the right to

restrict data processing, the right to portability of data. data, the right to object to the processing of the data. In exercising these

rights, data subjects should submit an application to the controller - in person or through an authorized person. Given the

circumstances that neither the Ordinance nor the LPPD specifies the form of the power of attorney, namely - whether the

power of attorney of the representative / proxy should be notarized, or an ordinary power of attorney can be presented, Prof.

G.N. asks the Data Protection Commission for an opinion on the need for notarization of the power of attorney of the data

subject's representative.

Legal analysis:

The provisions of Art. 12 of Regulation (EU) 2016/679 regulate the conditions for exercising the rights of data subjects. The first condition for exercising these rights is that the data subject be identified by the controller. Due to its technology neutrality, the Regulation does not specify specific mechanisms for verifying the identity of the data subject. This depends on the specific context in which the data is processed. As a rule, identification is based only on data about the entity that the administrator already has.

If necessary, when the "administrator has reasonable concerns about the identity of the natural person" ("Article 12, paragraph 6 of the ORD"), who submitted a request to exercise their rights, he may request additional information from him in order to establish indisputably the identity of the data subject. If the controller considers that he is unable to identify the data subject, he bears the burden of proving this fact. In this case, the controller may refuse to take action on the data subject's request to exercise his or her rights.

In connection with the need to certify the identity of the data subject and to ensure that the rights under Art. 15 - 22 of Regulation (EU) 2016/679 are exercised by the respective right holder, LPPD introduces certain requirements to the procedure by which they are implemented. According to Art. 37b of LPPD, the rights under Art. 15-22 of Regulation (EU) 2016/679 shall be exercised by a written application to the controller of personal data or in another way determined by the controller. The application can be submitted electronically under the terms of the Electronic Document and Electronic Certification Services Act, the Electronic Government Act and the Electronic Identification Act. An application can also be submitted through actions in the user interface of the information system that processes the data, after the person has been identified with the appropriate means of identification for the information system.

The requisites of the application are described in detail in Art. 37c of LPPD. In the provisions of Art. 37c, para. 2 of the LPPD states that when submitting the application by an authorized person, the relevant power of attorney is attached to the application.

In view of the fact that the question concerns a data controller who has the capacity of a medical institution, the relevant special legislation should also be discussed.

The Health Act (PA) regulates public relations related to the protection of citizens' health. It defines the term "Health

Information", namely personal data related to the health, physical and mental development of individuals, as well as any other information contained in medical prescriptions, prescriptions, protocols, certificates and other medical documentation.

According to the provisions of Art. 28b, para. 2 of the Health Insurance Act, the patient has the right to authorize in writing another person to get acquainted with his medical documents, as well as to make copies of them.

The legal institute of authorization is regulated in Art. 36 - 43 of the Law on Obligations and Contracts (LOAC). In particular, the provision of Art. 37 of the CPA stipulates that "the authorization to conclude contracts for which the law requires a special form must be given in the same form."

Neither the Health Act, as a special law, nor the provisions of the General Regulation and the Personal Data Protection Act require a notarial form of authorization in the case of exercising the rights of a natural person - data subject / patient.

Therefore, the medical establishments have no legal grounds to require notarization of a power of attorney when exercising the rights of individuals under Art. 15-22 of the General Data Protection Regulation.

In connection with the above and on the grounds of Art. 58, para. 3 of the General Data Protection Regulation, the Commission for Personal Data Protection stated the following

OPINION:

The medical establishments, in their capacity of administrators of personal data, have no legal grounds to require notarization of the signature upon authorization of another person to exercise the rights of the data subject under Art. 15-22 of Regulation (EU) 2016/679, namely the right of access to personal data, the right to correct incomplete or inaccurate data, the right to delete data (the "right to be forgotten"), the right to restrict the processing of personal data. data, right to data portability, right to object to data processing.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Tsvetelin Sofroniev / p /

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