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Injunction order against the Triveneta Society of Surgery - April 15, 2021

Record of measures

n. 145 of 15 April 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Professor Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, members and the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / EC, "General Data Protection Regulation" (hereinafter the "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of individuals with regard to to the processing of personal data, as well as to the free circulation of such data and which repeals Directive 95/46 / EC (hereinafter the "Code");

GIVEN the Regulation n. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved by resolution no. 98 of 4/4/2019, published in the Official Gazette n. 106 of 8/5/2019 and in www.gpdp.it, doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

GIVEN the documentation in the deeds;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, Doc. web n. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

1. The violation of personal data and the investigation activity

The local social health unit no. 9 Scaligera (hereinafter the Company) sent the Authority a communication of personal data breach, pursuant to art. 33 of the Regulation, regarding the dissemination of data on the health of a patient, through the projection, by Dr. XX (in service at the Company), in a medical conference of some slides relating to a clinical case, from the same dealt with, and the subsequent publication of the same on the website of the Triveneta Society of Surgery (hereinafter the Society). On this occasion, the aforementioned clinical case was awarded by the aforementioned Company as the "Best clinical case 2017".

According to what was communicated, following the legal action taken by the aforementioned patient, the Company took an active part in order to remove the aforementioned slides from the Company's website, also intervening on the "possibility of tracing the images through the search engine" .

From the documentation on file it emerges that, in the aforementioned slides, were reported: the initials of the patient, the age, the sex, the detailed anamnesis of the pathology suffered by the same, details on the hospitalizations carried out from 1980 to 2016 and on the surgical interventions undergone in this period, indicating the dates of hospitalization and surgery (in many cases the day, month and year of the same is reported), the surgery unit that performed the operations, the days of hospitalization, numerous diagnostic images (14), as well as 22 photographs showing the person concerned during surgery. According to the opinion of the patient's legal representative in the formal notice, the aforementioned information "does not guarantee the impossibility of identifying in the person (of his client) (...) the person who has undergone the intervention". In support of the warning given by the lawyer of the aforementioned patient, printouts of the results made on the "Google" search engine were produced following the query of the same with the indication of the particular type of intervention carried out and of the diagnosis (ileal laparostomy; leiomyosarcoma paravesicale), from which it was possible to trace the web addresses where the aforementioned slides were published.

As part of the investigation launched by the Office regarding the aforementioned violation communication, information was acquired from the aforementioned Company, from Dr. XX and from the aforementioned Company.

In particular, the Office requested information from the Triveneta Society of Surgery (note of 22.11.2019, prot. No. 831733) which provided feedback with a note of 19 December 2019, in which it represented, in particular, that:

"Speakers (or Candidates, in case of competition) were then requested by our Association to sign a form in which they expressed the confirmation that the scientific paper had been presented by themselves to the Conference and authorized its

publication on the web platform of the Association ";

"With the release of the authorization by the Supervisor it is assumed that he has complied with the Code of Ethics (which he is required to know) and compliance with any policies and / or regulations imposed by the same structures regarding the processing of personal data and also with regard to the use of their logos and / or the publication of contributions for the purposes of research and / or scientific dissemination ";

"In the case reported, the authorization form is completed and signed by Dr. XX alone, who presented it personally on the occasion of the scientific event called" Clinical cases: what would you do? " of 03.02.2017 ";

"The Conferences of Continuing Medical Education (ECM) organized by our Association are sponsored by the various health facilities with ad hoc resolutions" and that "the health facilities also give their patronage to the congress events in which the slides are illustrated"

In relation to the results of the aforementioned investigation, the Office, with deed no. 22811 of 22 June 2020, notified the Triveneta Surgery Society, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in Article 58, paragraph 2, of the Regulations, inviting the aforementioned holder to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code; as well as art. 18, paragraph 1, of the law n. 689 of 24/11/1981).

In particular, the Office, in the aforementioned deed, represented that:

- the registration form for the aforementioned Award (in deeds) does not contain any authorization from Dr. XX for the publication of the aforementioned slides on the website of the Triveneta Society of Surgery;
- the Company has disseminated information on the state of health of a subject, through the publication on its website of the aforementioned slides of Dr. XX. The information present in the aforementioned slides, in particular, the patient's initials, age, details of hospitalizations and medical history, as well as the numerous photographic images have made the patient identifiable, who, according to what is indicated by the relative lawyer in the documentation in deeds, he has not given his informed consent regarding this disclosure of personal data;
- the publication, on the website of the Triveneta Society of Surgery, of the aforementioned slides has taken on the connotation of the dissemination of health data, expressly prohibited by art. 2-septies, paragraph 8 of the Code.

In the aforementioned deed of 22 June 2020, the Office therefore considered that the Company had processed the personal

data of the person to whom the aforementioned slides refer in violation:

- the obligations of the owner, in order to comply with the basic principles of the processing referred to in Articles. 5, par. 1, lett. a) and c), 6 and 9 of the Regulations;
- the prohibition on the dissemination of health data, provided for by art. 2-septies, paragraph 8, of the Regulations.

With a note dated 21 July 2020, the Company asked to be heard by the Authority and sent its defense briefs, in which, in particular, it was represented that:

"At the time, Dr. XX was asked to sign an authorization form in which she declared that" regardless of the outcome of the competition, Associazione Triveneta Chirurgica has the exclusive use of my work up to / 31.12.2017 ". With this formula, it was evidently intended to refer to the use of the work in all its primary rights contemplated by the legislation on copyright, among which certainly the publication on our institutional site, as per established practice in the environment. Otherwise, the specific exclusivity clause for a fixed period would have had no reason to be affixed ";

"In the present case, being a Prize not included in a congress context, there was no sponsorship by any body, including the AUSLL, as it was not even requested by our Association";

"Regarding the duration, the presentation was published in February 2017 (after 03.02.2017, date of presentation of the clinical case; we are not able to provide the exact date of publication) until 11.10.2019";

"It is not believed that the conduct put in place could constitute malicious or negligent hypotheses, given that it was relied in complete good faith on the respect of the medical speakers, the only subjects entitled to provide presentations for the initiatives of the Association, of the art. 11 of the Code of Medical Ethics. The publication took place solely and exclusively for the purpose of scientific sharing and recognition and without profit by the Association ";

"Triveneta Association of Surgery on 11.10.2019 was informed by telephone by the Data Protection Officer of AUSLL9 Dr.

Franco Margonari of the warning addressed to AUSLL9 by the lawyer of the patient concerned, in which it was meant, among other things , including the violation of her right to privacy by posting Dr. XX's presentation on our site. Still on the same day (11.10.2019) our Association took precautionary measures to remove the elaborate object of the complaint from its institutional website. An IT consultant was therefore given the task of verifying and possibly intervening so that there was no longer any indexing trace of the removed contents ";

"The Association has adopted a Security Policy document and procedure for the protection of personal data and a Regulation

for the presentation and publication of the documents by the Speakers at the events organized by our Association, as well as providing for an explicit written commitment by the Speakers themselves to provide only documents prepared in compliance with art. 11 of the Code of Medical Ethics, the provisions of the GDPR, the Privacy Code and the contents of the provisions of the Guarantor ";

"According to the content of the dispute, the Authority became aware of the violation through notification of the violation by the AUSSL9 Company (...). As a consequence, we proceeded to insert a note in the Register of violations in point, as soon as we received news of the same, not considering, however, that it was necessary to proceed with further notification to the Guarantor Authority, having already done so the AUSLL9 ";

in the future, the "publication will in any case be subject to the creation of a reserved area on the institutional website in which the published material will be collected, limiting access to the members of the Triveneta Association of Surgery, to the Speakers and to those employed in the health professions, also that the pages of the reserved area of the site are not indexed by search engines, so that - not even by entering the name of the doctor, the structure or the pathology (which obviously cannot be removed from the presentations) - it is possible to trace contents minimums of the page itself ";

"Our Association is set up with the aim of promoting the study, updating, cultural exchanges, research, progress and image of Surgery in its various branches, enhancing and promoting the scientific activity of our members through the 'organization of the study, research, mutual information and common acquisition of data and experiments in the surgical field and - in fact - is based on the voluntary activity of its members and the Board of Directors ".

In relation to the request of the Company, on 24 November 2020, at the Office of the Guarantor, pursuant to Articles 166, paragraphs 6 and 7, of the Code 18, paragraph 1, by law no. 689 of 11/24/1981 the hearing was held using telematic methods during which the Company reiterated what has already been represented, specifying in particular that:

- "in the period between 1 July 2019 and 11 November 2019, taking into account that the removal date of the aforementioned documentation was 11 October 2019 (from the analysis of the log files) it can be assumed that the subjects who a small number may have had access to the aforementioned documents and that the aforementioned documents were removed from the Company's website at the same time as the company Scaligera was informed of the matter under consideration. As a precaution, in the following days the documents relating to the presentations of other clinical cases that were available on the aforementioned site were also removed ";

- "absolute good faith and diligence in the management of the matter under examination, (is) demonstrates (ta) the promptly provided activity of requesting de-indexing of the aforementioned documents on Google";
- "following the affair, the models used for the participation of professionals in the scientific meetings promoted by the Company were modified and the analysis actions of the documentation presented by the aforementioned professionals were implemented, in order to verify that there are no elements that make identifiable the patient and that the professionals themselves have had all the authorizations required by the sector regulations both by the person concerned and by the healthcare facility where they operate ";
- intends "to comply with the indications that will be made on the subject also following the adoption of the code of conduct for the use of data for educational purposes and scientific publications, currently being analyzed by the Authority";
- "The work of the President of the Company and their advisors is carried out free of charge, with the sole purpose of offering opportunities for sharing scientific knowledge in the medical community and therefore improving the offer of care to patients. The proof of the absence of the Company's profit-making purpose is also given by the smallness of the membership fee required from members (10 euros for postgraduates and 25 euros for other professionals) ".

2. Outcome of the preliminary investigation.

The preliminary investigation carried out by the Office concerned the dissemination on the website of the Triveneta Society of Surgery of the slides presented by Dr. XX on the occasion of the presentation of her paper for the "Best Clinical Case 2017" Award, sponsored by the aforementioned Company.

Pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation"), personal data must be "processed in a lawful, correct and transparent manner towards the interested party ("Integrity and confidentiality") "and must be" adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed ("data minimization") "(Article 5, paragraph 1, letter a) and c) of the Regulation).

The regulation on the protection of personal data provides - in the health sector - that information on the state of health can only be communicated to the interested party and can be communicated to third parties only on the basis of a suitable legal basis or on the indication of the interested party. subject to written authorization from the latter (Article 9 of the Regulations and Article 83 of Legislative Decree No. 196 of 30 June 2003 (Code regarding the protection of personal data - hereinafter the "Code") in conjunction with 'Article 22, paragraph 11, legislative decree 10 August 2018, n.101; see also general provision of 9

November 2005, available at www.gpdt.it, web doc. n. 1191411, deemed compatible with the the aforementioned Regulation and with the provisions of decree no.101 / 2018; see Article 22, paragraph 4, of the aforementioned Legislative Decree no. 101/2018).

The current legislation, forwards, expressly prohibits the dissemination of data suitable for revealing the state of health of the interested parties (Article 2-septies, paragraph 8 and Article 166, paragraph 2, of the Code).

With specific reference to the publication of clinical cases, the Code of medical ethics approved by the National Federation of orders of surgeons and dentists in 2014 (as amended in 2016 and 2017) provides that "the doctor insures (a) (i) the non-identifiability of the subjects involved in scientific publications or disclosures of clinical data and studies "(art. 11 - Confidentiality of personal data).

4. Conclusions.

In light of the aforementioned assessments, taking into account the statements made by the data controller during the investigation □ and considering that, unless the fact constitutes a more serious crime, anyone, in a proceeding before the Guarantor, falsely declares or certifies information o circumstances o produces false deeds or documents is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the execution of the tasks or exercise of the powers of the Guarantor" □ the elements provided by the data controller in the defense briefs do not allow to overcome the findings notified by the Office with initiation of the procedure, however, as none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

In particular, it is noted that the Triveneta Society of Surgery has disseminated information on the state of health of a subject, through the publication on its website of the aforementioned slides of Dr. XX. The information present in the aforementioned slides, in particular, the patient's initials, age, details of hospitalizations and medical history, as well as the numerous photographic images have made the patient identifiable, who, according to what is indicated by the relative lawyer in the documentation in deeds, has not given its informed consent regarding this disclosure of personal data.

In this regard, it should be noted that the registration form for the aforementioned Award (in deeds) does not contain any authorization from Dr. XX for the publication of the aforementioned slides on the website of the Triveneta Society of Surgery. The publication on the website of the Triveneta Society of Surgery of the aforementioned slides has taken on the connotation of the dissemination of health data, expressly prohibited by art. 2-septies, paragraph 8 of the Code and, therefore, resulted in a

violation of the basic principles of the processing referred to in art. 5 par. 1, lett. a) and c) and - in the absence of a suitable legal basis, in violation of Articles 2-septies of the Code and 6 and 9 of the Regulation. The violation of the aforementioned provisions makes the administrative sanction provided for by art. 83, par. 5, lett. a) of the Regulations.

Given that the aforementioned slides have been removed from the site of the Triveneta Society of Surgery, that the aforementioned documents have been de-indexed and that the documents relating to the presentations of other clinical cases that were available on the aforementioned site have also been removed. prerequisites for the adoption of the corrective measures pursuant to art. 58, par. 2, of the Regulation.

5. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (articles 58, par. 2, lett. l and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The violation of articles 5, par. 1, lett. a) and c), 6 and 9 of the Regulation and art. 2-septies, paragraph 8, of the Code, caused by the conduct put in place by the Triveneta Company of Surgery is subject to the application of a pecuniary administrative sanction pursuant to art. 83, paragraph 5, lett. a) of the Regulations also pursuant to art. 166, paragraph 2 of the Code.

In the present case - also considering the reference contained in art. 166, paragraph 2, of the Code - the violation of the aforementioned provisions is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the Regulation, which therefore applies to the present case.

It should be considered that the Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations, as well as art. 166 of the Code, has the power to "inflict an administrative pecuniary sanction pursuant to Article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, depending on the circumstances of each single case "and, in this context," the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166, paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

The aforementioned administrative fine imposed, depending on the circumstances of each individual case, must be determined in the amount taking into account the principles of effectiveness, proportionality and dissuasiveness, indicated in art. 83, par. 1, of the Regulation, in light of the elements provided for in art. 85, par. 2, of the Regulation in relation to which it is noted that:

- the dissemination of the data concerned information on the health of a patient (Article 83, paragraph 2, letters a) and g) of the Regulation);

- from the analysis of the log files carried out by the Company it can be inferred that the subjects who may have had access to the aforementioned slides are small (Article 83, paragraph 2, letter a) of the Regulation);
- the dissemination of data on the health of the interested party took place as part of an opportunity to share scientific knowledge in the medical community as the Company was established with the aim of promoting study, updating, cultural exchanges, research , the progress and image of Surgery in its various branches, enhancing and promoting the scientific activity of our members through the organization of study, research, mutual information and common acquisition of data and experiments in the field (art. 83, par. 2, letter k) of the Regulations);
- the Company promptly took action to remove the aforementioned slides from the website and to request the de-indexing of the aforementioned documents (Article 83, paragraph 2, letter c) of the Regulations);
- following the affair, the models used for the participation of professionals in the scientific meetings promoted by the Company were modified and the analysis actions of the documentation presented by the aforementioned professionals were implemented, in order to verify that there are no elements that make the patient and that the professionals themselves have had all the authorizations required by the sector regulations both by the person concerned and by the healthcare facility where they operate (Article 83, paragraph 2, letter c) of the Regulation);
- the Company has declared that it intends to comply with the indications that will be made on the subject also following the adoption of the code of conduct for the use of data for educational purposes and scientific publications, which was recently approved by the Authority (provision of January 14, 2021) (Article 83, paragraph 2, letter j) and f) of the Regulations);
- the Authority became aware of the event following the notification of personal data violation made by the aforementioned Company and that the aforementioned Company did not consider it necessary to proceed with further notification to the Authority, as the Company had already done so (art . 83, par. 2, letter h) of the Regulation);
- the work of the President of the Company and their directors is carried out free of charge and the involvement of the Company itself in the affair was minimal (Article 83, paragraph 2, letter k) of the Regulations).

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction provided for by art. 83, par. 5, lett. a) of the Regulations, to the extent of € 2,000.00 (two thousand) for the violation of Articles 5, par. 1, lett. a) and c), 6 and 9 of the Regulations and art. 2-septies, paragraph 8, of the Code, as an administrative pecuniary sanction withheld, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

It is also believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019, also in consideration of the potential number of interested parties and the type of personal data subject to unlawful processing.

Finally, it is noted that the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

WHEREAS, THE GUARANTOR

declares the unlawfulness of the processing of personal data carried out by the Triveneta Society of Surgery, for the violation of Articles 5, par. 1, lett. a) and c), 6 and 9 of the Regulations and art. 2-septies, paragraph 8, of the Code, within the terms set out in the motivation.

ORDER

pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations, as well as art. 166 of the Code, to the Triveneta Society of Surgery, with registered office c / o Clinica Chirurgica, Policlinico, via N. Giustiniani 2, 35128 Padua, P.I. 04988660280, Tax Code 92033430288, in the person of the pro-tempore legal representative, to pay the sum of € 2,000.00 (two thousand) as a pecuniary administrative sanction for the violations indicated in this provision, according to the methods indicated in the annex, within 30 days of notification in motivation; it is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within 30 days, an amount equal to half of the sanction imposed.

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to the aforementioned Company, to pay the sum of € 2,000.00 (two thousand), according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the law n. 689/1981. In this regard, it is recalled that the offender has the right to settle the dispute by paying - again according to the methods indicated in the annex - of an amount equal to half of the sanction imposed, within 30 days from the date of notification of this provision, pursuant to art. 166, paragraph 8, of the Code (see also Article 10, paragraph 3, of Legislative Decree no. 150 of 1/9/2011);

HAS

pursuant to art. 166, paragraph 7, of the Code, the full publication of this provision on the website of the Guarantor and believes that the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance,

aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Pursuant to art. 78 of the Regulation, of art. 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision, it is possible to appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the applicant resides abroad.

Rome, April 15, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei