

Athens, 18-01-2018 Prot. No.: G/EX/456/18-01-2018 PERSONAL DATA PROTECTION AUTHORITY AS OF PHASE 06/2018

(Department) The Personnel Data Protection Authority Character met as a Department at its headquarters on Wednesday 17.01.2018 at 10:00 a.m. upon the invitation of its President, in order to examine the case referred to in the present history.

The Deputy President, Georgios Batzalexis, who was in the way of the President of the Authority, Konstantinos Menoudakos, was present, the alternate members Panagiotis Rontogiannis, Charalambos Tsiliotis, as rapporteur, and Grigorios Tsolias in place of the regular members Antonios Symvonis, Spyridonos Vlachopoulos and Charalambos Anthopoulos, respectively, who, although they were legally summoned in writing, they did not attend due to obstruction. Present without the right to vote were Evangelia Vassilopoulou, legal auditor, as assistant rapporteur and Irini Papageorgopoulou, employee of the administrative affairs department, as secretary. The Authority took into account the following: With the no. prot/ ... (ADPPH G/EIS/8776/05.12.2017) his application, the "PAPAGEORGIOU" General Hospital forwards to the Authority the under no. first ... application of A, surgeon ..., and requests the Authority's permission for the processing of sensitive personal data.

Specifically, A requests to receive from the above hospital a copy of the complete medical file of B in order to refute the action for monetary satisfaction due to moral damage from a medical error that the latter has brought against him and the hospital "YATRIKO ATHINON E.A.E." before the Multi-Member Court of First Instance of Thessaloniki as well as in support of the appeal - interlocutory action which he has brought against the Anonymous Insurance Company with the name "GENERALLI HELLAS Anonymous Insurance Company" before the Multi-Member Court of First Instance of Thessaloniki. With the no. prot. APDPH C/EIS/9062/15.12.2017 supplementary document, A, through the attorney of Panagiotis Giannopoulos, forwards to the Authority an application requesting the priority examination of his application for the granting of copies of his medical file B in order to prepare in time in view of the submission of the motions on the compensation action brought by B against him before the Multi-Member Court of First Instance of Thessaloniki, on With the no. prot. APDPH C/EIS/9090/15.12.2017 supplementary document, A, through the attorney of Panagiotis Giannopoulos, repeats what he states in the previous supplementary document above. Then, after a relative verbal disturbance from the Authority, with the no. prot. APDPH C/EIS/76/04.01.2018 supplementary document, the attorney of the applicant forwards to the Authority the document of the action for monetary satisfaction to restore the moral damage of B against A filed in the Multi-member Court of First Instance of Thessaloniki (Regular procedure - filing no. ... with a deadline for the submission of proposals ...) as well as the document of the counterclaim - interlocutory action of A against the Anonymous Insurance Company with the name "GENERALLI HELLAS

Anonymous Insurance Company" before the Multi-Member Court of First Instance of Thessaloniki (Regular Procedure - no. deposit...). Consequently and based on the above relevant supplementary documents, A requests B's complete medical file from the requesting hospital and "specifically for the following time periods: a) on ..., when she underwent an MRCP examination, b) on ... until ..., whereupon she was hospitalized at the 1st Surgical Clinic of the applicant hospital and c) from ... to ..., when the plaintiff (B) did a series of hematological tests". According to the no. of filing ... an action for monetary satisfaction due to moral damage due to medical error, B underwent on ... a surgical operation to remove the gallbladder with surgeon A, after which and as a consequence, according to her claims, she "suffered a bile leak and a bile duct obstruction" and because of this "obstructive jaundice and cholera" and further health problems which are described in detail in the above treatment for which he underwent medical examinations and hospitalizations. Among the examinations and hospitalizations reported by B, the above-mentioned information requested by A is also mentioned in her medical file kept by the "PAPAGEORGIU" General Hospital for the year

3 The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote and left after the discussion of the case and before the conference and decision-making, after a thorough debate, CONSIDERED ACCORDING TO THE LAW

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

2. Because, according to article 914 of the Civil Code, whoever damages another illegally and culpably has an obligation to compensate him. Furthermore, according to Article 932 of the Civil Code, in case of tort regardless of the compensation for the property damage, the court can award a reasonable monetary satisfaction due to moral damage.

3. Because, in the case under consideration, A requests in the capacity of a third party (Article 2 item i of Law 2472/1997) the granting of sensitive personal data (health data) concerning B and kept in the files of the General "PAPAGEORGIU" Hospital, as data controller, (article 2 item g' of Law 2472/1997). From the data in the case file, it appears that the purpose of the processing consists in the rebuttal of the action for financial satisfaction to restore moral damage as a result of a medical error brought by B against A before the Multi-Member Court of First Instance of Thessaloniki

(Regular procedure - filing no. ... with final date of pre-submission of proposals...) as well as in support of the interlocutory action brought by A against the Anonymous Insurance Company with the name "GENERALLI HELLAS Anonymous Insurance Company" before the Multi-Member Court of First Instance of Thessaloniki (Regular Procedure - filing no....). 4. The intended purpose of processing the rebuttal of no. ... of a lawsuit filed against A or B in accordance with the aforementioned provision of article 7 par. 2 item. c' of Law 2472/1997, while at the same time the principle of proportionality of the 4 data is fulfilled (Article 4 par. 1 letter b' of Law 2472/1997), because with the use of said requested health data the competent a court will be able to judge the existence or not of a medical error and consequently rule on the conductive claim. However, despite the second proposed purpose of support no. ... counterclaim - interlocutory action brought by A against the Anonymous Insurance Company with the name "GENERALLI HELLAS Anonymous Insurance Company" is in principle consistent with the provision of article 7 par. 2 item. c' of Law 2472/1997, the granting of the above-mentioned copies of B's complete medical file in order to achieve the intended purpose exceeds the measure required by the principle of data proportionality. And this is because the judicial use of the medical file in question is not necessary to support the purpose in question, that is, the invocation of the insurance company as well as the satisfaction of the incidental judicial request of its conviction in order to pay to the insured doctor A everything that may be awarded against him and in favor of B in the main trial no. ... lawsuit. Specifically, the relevant judgement, in view of the subject matter of that trial, can be based on the decision on no. ... lawsuit (a milder means to achieve the intended purpose) and not to the health data of B. Consequently, with regard to the first aforementioned judicial use of the health data, the "PAPAGEORGIOU" General Hospital must, as the controller, inform, in accordance with the provisions of article 11 par. 3 of law 2472/1997, B for the transmission of her sensitive personal data to A for the said purpose of judicial use in the context of their legal dispute based on the no. ... lawsuit. FOR THESE REASONS, the Authority grants permission to Papageorgiou General Hospital, as data controller, to provide A with the requested information concerning B, only in the context of as above their legal dispute based on the no. ... lawsuit, after the Hospital informs previously B.

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The Honorable President

The Secretary

George Batzalexis

Irini Papageorgopoulou