

6475721 Athens, 28-02-2018 Prot. No.: G/EX/1686/28-02-2018 Α Π Ο Φ Α Σ Η 18 /2018 (Department) The Personal Data Protection Authority met as a Department at its headquarters on 17.1.2018 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, and the alternate members Panagiotis Rontogiannis, Charalambos Tsiliotis, as rapporteur, and Grigorios Tsolias in place of the regular members Antonios Symvonis, Spyridon Vlachopoulos and Charalambos Anthopoulos respectively, were present, who, although they were legally summoned in writing, they did not attend due to obstruction. Present without the right to vote were Fereniki Panagopoulou, legal auditor - lawyer, as assistant rapporteur and Irini Papageorgopoulou, employee of the administrative department, as secretary. The Authority took into account the following: With the no. prot. APDPH C/EIS/2197/16.03.2017 appeal of o A complains that the Community Mental Health Center X which is under the ... Psychiatric Clinic - Aeginetio Hospital of the School of Medicine of the National and Kapodistrian University of Athens did not satisfy the right of access to medical file of his son, B. More specifically, A applied with the no. first ... his application to the Community Mental Health Center X for the granting of a detailed report of his son's examination. In response to his request, he was granted the no. first goat Hospital ...(no. prot. ... Psych. Clinic ...) informative note which includes the conclusion of the psychological evaluation of his son. Then, A with no. first goat Hospital ... requested a copy of his son's medical file. With the no. first ... Psych. Clinic, ..., the ... Psychiatric Clinic denied him a copy of the medical file of his minor son, B, for ethical reasons pointing out that the clinic's doctors are at the disposal of other mental health professionals who may be involved in his evaluation or treatment minor to provide additional information. The ... Psychiatric Clinic with the no. prot. APDPX/G/EIS/7578/20.10.2017 in her letter to the Authority clarified following a question from the Authority that the granting of the medical file is only possible if a child psychiatrist technical consultant is appointed, who will evaluate the file and grant the data that it considers may be useful for the benefit of the child. The Authority called with the nos. prot. C/EX/8/02-01-2018 and C/EX/9/02- 01-2018 invited the Aiginite Hospital and A to attend the meeting of the Department of the Authority on Wednesday 10.1.2018. The Aeginetio Hospital was represented by C, Associate Professor of Child Psychiatry EKPA. A came in person. A complained to the Authority that he has not been given a copy of his minor child's medical file. C stated that in order to be given a copy, A must appoint a psychiatrist of his choice. A limited his request to providing a copy of his son's medical record through a doctor. 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, following a thorough discussion ,

CONSIDERED ACCORDING TO THE LAW 1. Because, Article 12 of Law 2472/1997 states the following: "1. Everyone has the right to know whether personal data concerning them is or has been the subject of processing. To this end, the data controller has an obligation to respond in writing. 2. The data subject has the right to request and receive from the data controller, without delay and in an understandable and clear manner, the following information: a) All personal data concerning him, as well as their origin. b) The purposes of the processing, the recipients or categories of recipients. c) The progress of the processing for the period of time since its previous update or information. d) The logic of automated processing. The right of access can be exercised by the data subject and with the assistance of an expert. e) as the case may be, the correction, deletion or blocking (locking) of data whose processing is not in accordance with the provisions of this law, in particular due to the incomplete or inaccurate nature of the data, and f) disclosure to third parties, to whom the data has been communicated, of any correction, deletion or blocking (locking) carried out in accordance with case e', as long as this is not impossible or does not require disproportionate efforts. \* 3. The right of the previous paragraph and the rights of article 13 are exercised by submitting the relevant application to the data controller and simultaneously paying a sum of money, the amount of which, the method of payment and any other related issue are regulated by a decision of the Authority . \*\* This amount is returned to the applicant if the request for correction or deletion of the data is considered valid either by the data controller or by the Authority, in case of appeal to it. In this case, the person in charge has the obligation to grant the applicant, without delay, free of charge and in an understandable language, a copy of the corrected part of the processing that concerns him. 4. If the controller does not respond within fifteen (15) days or if his response is unsatisfactory, the data subject has the right to appeal to the Authority. In the event that the data controller refuses to satisfy the interested party's request, it communicates its response to the Authority and informs the interested party that he can appeal to it. [...] 6. Data concerning health are communicated to the subject through a doctor. 2. Because article 12 of Directive 95/46/EC states that "Member States guarantee the persons to whom the data refer the right to receive from the data controller: a) free and unlimited, at reasonable intervals and without excessive delay or expense: - the confirmation that there is or is not processing of data concerning them as well as information, at least regarding the purposes of the processing, the categories of data being processed, the recipients or the categories of recipients to which this data is communicated, - the disclosure , in an understandable way, of the data being

processed as well as the available information about their origin, - the information about the logic on which any automated processing of the data that refers to these persons is based, at least in the case of the automated decisions of the article 15 paragraph 1-b) as the case may be, the correction, deletion or blocking of the data whose processing is not in accordance with the provisions of this directive, in particular due to the incomplete or inaccurate nature of the data - c) the notification to third parties, to whom the data has been communicated, of any correction, deletion or blocking carried out in accordance with point b ), as long as this is not impossible or does not require disproportionate efforts. Furthermore, according to recital 42 of Directive 95/46/EC "Member States may, in the interest of the person to whom the data refer or in order to protect the rights and freedoms of third parties, limit the rights of access and information- that they can, for example, specify that access to medical data can only be done through a healthcare professional." 3. Because article 14 par. 8. of Law 3418/2005 (Code of Medical Ethics) states that "The patient has the right to access the medical records, as well as to receive copies of his file. This right, after his death, is exercised by his heirs, as long as they are relatives up to the fourth degree." Furthermore, article 11 par. 1 of the same law states that "The doctor has a duty of truth to the patient. It must fully and comprehensibly inform the patient about the actual state of his health, the content and results of the proposed medical procedure, the consequences and possible risks or complications from its execution, the alternative proposals, as well as about the possible recovery time , so that the patient can form a complete picture of the medical, social and economic factors and consequences of his condition and proceed, accordingly, in making decisions." Furthermore, article 28 par. 5 of Law 3418/2005 stipulates that "The psychiatrist must inform the person who suffers from mental disorders for the nature of his condition, the therapeutic procedures, as well as any alternatives thereof, as well as the possible outcome of the therapeutic procedures." 4. Because article 47 par. 4 of Law 2071/1992 stipulates that "4. The patient has the right to request information regarding his condition. The interest of the patient is decisive and depends on the completeness and accuracy of the information given to him. The patient's information must allow him to form a complete picture of the medical, social and economic parameters of his situation and to make decisions himself or participate in the making of decisions that may prejudice his later life. 5. Because article 10 of the Convention of Oviedo which has been ratified in Greece by law 2619/1998 (Government Gazette A'132) states that: "1. Everyone has the right to respect for their personal life in relation to information about their health status. 2. Everyone has the right to receive knowledge of any information related to their state of health. However, the wishes of individuals who choose not to be informed will be respected. 3. In exceptional cases, it is possible to impose restrictions by law on the exercise of the

rights referred to in par. 2 in the interest of the patient." 6. The Code of Ethics of the Association of Greek Psychologists states in Chapter V, paragraph 6 that "resolving the obligation to maintain professional confidentiality is permitted in exceptional cases where the psychologist has formed the opinion that the life (safety) of his client is at risk or the life and physical integrity of third parties. In this case, the announcement is made only to competent persons or bodies (relatives, guardian, justice)." In Chapter VI, it states that "1. It is not permitted to disseminate tests in any way among non-experts, either as circulation or as reprinting or description of them in popular periodicals, prints or broadcasts, as well as their use for purposes other than those of psychological assessment because it wears them out and the useless as psychometric instruments for practicing the profession. If a relevant incident comes to the attention of the psychologist, he must inform the Association without delay. [...] 7. Psychological opinions or reports are provided by the psychologist only for professional use and not for private use and are addressed only to competent persons or services. 8. it is not allowed to communicate the IQ in writing or verbally to parents, patients, institutions or services, when they do not maintain psychological services. Only the category to which the customer belongs is announced (e.g. normal, superior, etc.). In general, the announcement of any detail that could lead to misunderstandings is avoided." 7. According to the no. first ... opinion of the Special Control Committee for the Protection of the Rights of Persons with Mental Disorders of the Ministry of Health regarding access to the medical file of hospitalized persons with a mental disorder, the following is noted: "In addition to the patient, the parent has the right of access in the case of minors, the judicial assistant or a person legally authorized by him. [...] - All psychiatric nursing units, together with the discharge, should provide the patient with a comprehensive medical discharge note. This note should state the reasons for admission, the duration of hospitalization, the final diagnosis and the clinical picture at discharge, the medication or other treatments administered, findings from the paraclinical control as well as co-existing conditions and finally the drugs and the instructions given for the immediately following period. As for the psychiatric diagnosis, it would be good if it should be written with the codes of the World Health Organization (ICD-10) or descriptively, but in the case of stigmatizing diagnoses (e.g. schizophrenia) only the code could be used as an alternative of the ICD-10 classification system. The comprehensive discharge note, on the one hand, validates the patient's right to information, and on the other hand, serves the continuum of treatment, providing valuable information to those who take on the therapeutic responsibility of follow-up. - In the (rare) case in which the patient requests a complete copy of his file, the responsible psychiatrist is obliged to grant it to him. If the patient wishes to be given to a doctor of his choice or another legally authorized person, the responsible psychiatrist should respect

this wish (SOC/221,3.2.5). It is reminded, here, that the complete psychiatric file is composed of the hereditary, developmental, medical and psychiatric history, the description of the clinical picture, the social history, the results of the laboratory, psychometric, etc. control, the "disease course" medical notes, the therapeutic regimens applied, the rationale for the differential diagnosis and the final instructions. -In the (even rarer) case where the psychiatrist in charge judges that the file contains information which, if given to the applicant, may disturb his mental homeostasis, the existing legal framework does not allow the omission of these elements when serving a copy of the complete file . \*The Special Committee considers, however, that for this case the possibility of erasing the specific data should be provided for by law, as long as the therapeutic purpose is put forward, provided that the applicant is informed about it and that the data that was erased and the reasons for erasure they will be recorded by the psychiatrist in charge and will remain in a separate file of the Clinic. \* This paragraph was approved by the majority of the members of the Special Committee."

8. The parent who does not have custody, but maintains parental care (has not been taken away from him according to article 1513 of the Civil Code) has access to the medical file of his minor child. As the Authority has ruled in decision 53/2010, a parent who does not exercise custody of the children by court order has the right of access, in accordance with the provisions of article 12 of law 2472/1997. And this is because, in accordance with the provisions of articles 1510 and 1513 of the Civil Code, the parent exercises joint parental care with his ex-wife of their minor children and, therefore, has the right of access to their personal medical data, as it appears from the combination of the provisions of articles 1510 and 1513 AK, 14 par. 8 sec. a of the Code of Medical Ethics and 12 of Law 2472/1997, without further requiring the participation of the specific legitimate interest.

9. Because the information found in the medical file of minor B constitutes sensitive personal health data, which concern him directly and personally as the subject of the data, in accordance with the provisions of articles 2 par. a, b and c of Law 2472/1997. Furthermore, in the health data of article 2 par. b' of Law 2472/1997 includes information related to both physical and mental health, without however differentiating from Law 2472/1997 their degree of protection, depending on the nature of this information.

10. Because A, with his applications from ... and ... to the Community Mental Health Center X of the ... Psychiatric Clinic of the Aiginite Hospital, in essence exercised the right of access provided for in Article 12 of Law 2472/1997. Aiginite Hospital, in its capacity as data controller, did not deny access to his son's medical file, but pointed out that it will provide his medical file to a pediatric psychiatrist-technical consultant who will evaluate the file and provide the data that is usable to benefit of the child.

11. The disclosure of health data to the data subject through a physician is intended to ensure that the physician assists the patient in understanding the medical

information. Therefore, the provision of data through a doctor should in principle be seen as reinforcing the right of access, in the sense that the patient will be able, with the help of the doctor, to understand the medical information more thoroughly in order to give his informed consent. The doctor's intervention is aimed at providing more complete and appropriate information to the patient, and more likely to the mentally ill person who - as the case may be - needs special treatment due to the specificity of the mental illness [see Emilia Panagou, His contribution to the access to the medical record of the mentally ill: medical privacy vs access to the documents? in: Citizen's Advocate (ed.), Medical privacy, Sakkoula Publications, Athens-Thessaloniki 2006, p. 229 ff (235)]. However, it is noted that from the teleological interpretation of article 12 par. 6 of Law 2472/1997, in the spirit of Directive 95/46/EC which was incorporated into the Greek legal order with Law 2472/1997, of the Oviedo Convention and Law 2071/1992, of article 14 par.8

of Law 3418/2005, Chapters V and VI of the Code of Ethics of the Association

of Greek Psychologists, it appears that the disclosure of health data to

data subject through a physician should not apply to all

without exception the cases of access to the medical file, but the cases

those where the doctor's intervention is deemed necessary. (In this direction

see analyst Decision 7/2016 of the Authority, under no. prot. G/EX/2352-1/02-05-2011

document of the Authority, Zoi Kardasiadou, in: Citizen's Advocate (ed.), Medical

privacy, Sakkoula Publications, Athens-Thessaloniki 2006, p. 71 ff (105)). The

subject, i.e., of the data or his legal representative is free,

without the mediation of a doctor, right of access to health data and,

only in serious cases, related to the protection of life or her

health, access through a doctor is justified for the purpose of its specialization

medical information.

12. In this particular case, given that the father limited his request

for access to the child's file through a doctor, the access through a doctor

can be accepted, without this meaning that the Psychiatric Hospital must

to satisfy all cases of access through a doctor, but must judge

case by case, taking into account its special characteristics

case by case. However, it is noted that as already said or any explanation

of the file through a child psychiatrist should not in this case be taken as

limitation of the right of access, but as a reinforcement thereof, given that

the access through

doctor will make the provided more thorough

information, always based on the patient's interest.

FOR THOSE REASONS

The Authority considers that A has the right of access to the minor's medical file

of B's child who is kept at the ... Psychiatric Clinic - Aeginetio Hospital of

School of Medicine of the National and Kapodistrian University of Athens through

doctor of his own choice.

The Honorable President

The Secretary

George Batzalexis

Irini Papageorgopoulou