Procedure No.: PS/00424/2018

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and

based on the following

BACKGROUND

FIRST: On July 27, 2018, entry is registered in this Agency

claim made by Don A.A.A. (hereinafter, the claimant or A.A.A.) against the

ANDALUSIAN HEALTH SERVICE, (hereinafter, the claimed party or SAS), for not having

attended, on the date of the presentation of the claim, the right of rectification that

exercised before the Hospital Complex of Jaén, on June 20, 2018,

Regarding the health data of a third party that was incorporated into your history

clinic after being attended on several occasions in said Center when identifying himself with data

corresponding to the claimant.

According to the claimant, said third party came identifying himself as the claimant

to the Emergency Service of said Center on the morning of May 20 to 21, 2016,

on May 21, 2016 and was admitted on May 24, 2016 for an intervention

surgery, absconding on May 25, 2016, but without documentation

any that will accredit the identification provided, despite which by the Center

Hospitalario no verification was made in this regard.

The claimant attaches a copy of the initial valuation report dated 05/24/2016,

Observations Sheet of 05/25/2016, Evolution Sheet and Clinical Course of

Hospitalization on 05/25/2016, as well as information on care upon discharge from

05/25/2016, as corresponding to medical acts performed on the impersonator. In

These documents show the name, surnames, sex, date of birth and age of the

claimant. It also contains the name, first surname and mobile phone number of the

caregiver of the patient, except in the Sheet of Evolution and Clinical Course of

Hospitalization.

In support of these statements, it also provides a copy of the Sheet of

Claims filed by his father dated June 7, 2016 against the

Emergency Department of the Neurotraumatological Hospital of Jaén for not having

verified the identity of the patient who supplanted the identity of his son.

It also presents a copy of the answering brief made on July 6,

2016 by the Medical Director of the Hospital Complex of Jaén to the father of the

claimant, of which his father obtained a copy after appearing at the Hospital Center

dated July 6, 2017. In said answer it was indicated that:

“According to the report of the Head of HR of the S.A.C., the professionals

The aforementioned proceeded according to the protocol established in the Emergency Admission of the

Citizenship Service of the Jaén Hospital Complex.

Usually, the patient is asked for the health card and/or the Document

National Identity Document (D.N.I., in the absence of both, the number of the D.N.I. or

their surnames and names, verifying with the patient some personal data that

appear in the User Database, such as the date of birth.

Regarding the address, they indicate that it is a data of frequent variability, since

there may have been a change of address and not have been notified in your

Health Center for modification.

Likewise, indicate that the Emergency Admissions Area has the function of
main computerized administrative record of all users requesting care
healthcare, being the responsibility of the users, to reveal the real and truthful data".
Correlatively, the claimant proves that on July 12, 2017
I fill out a SAS form to exercise your right of access to the history
complete clinic and x-rays of the same work in the Hospital Complex of
Jaén, also providing a copy of the resolution adopted on September 18
of 2017 by the mentioned Complex considering the request presented by the
claimant. The claimant alleges that in the medical record provided, a copy of which
attached, there is still evidence of assistance that has not been provided and some injuries
that he has never suffered, adding that together with that documentation he was given
medical tests of a 58-year-old patient with his personal data (name and
surnames).
Adds the claimant who, on June 20, 2018, exercised before the
mentioned Hospital Center of Jaén, right of rectification in relation to the
false and inaccurate data contained in medical reports and tests that identifies and
details as included in the medical history received, and whose copy is attached to your
request to exercise the right of rectification regarding such inaccurate information. The
The claimant states in said request that:
"This part has never been admitted to the Neurotraumatological Hospital of Jaén in
the dates that appear in the clinical history and much less have I had the
medical tests that appear in the same, having not had a fracture or injury
some elbows.
Not even less have I suffered any heart injury, attaching to my history
Clinical evidence relating to MRI of the heart of a 58-year-old patient.
As already indicated to this Agency on June 7, 2016, it was supplanted

my personality, and this entity continues to maintain lesions in my clinical history

suffered by a third person, who was the one who was the object of the tests that

are recorded, and this despite the repeated requests of my parents Mr. A.A.A. and Mrs.

B.B.B., that they be corrected, being that the only thing that has been eliminated from the

same have been the reports related to the income and subsequent escape of the impersonator

of the hospital.

Thus, my clinical history continues to reflect some tests that have not been

practiced never and some injuries that I have not suffered. “

Likewise, the claimant points out that on the date of presentation of the

claim before the AEPD has not received any answer to the exercise of its

right of rectification, a copy of which is attached, and on which the seal of

entry record of said document in the General Registry of the Complex

Hospital of Jaén on the date indicated by the claimant.

It is observed that the documents included in the clinical history of the

claimant whose rectification he requested corresponded to the following:

Detail of the episode, corresponding to admission to the Hospital Emergency Room

Neurotraumatology of Jaén dated 05/21/2016, associated with the NUHSA of the

claimant; Five documents of “Diagnosis by Imaging dated 05/21/2016,

where the NHC, NUHSA, NUSS, name

and surnames, postal address, town, postal code, province, sex. Date

birth and age, also including the description of the examination performed; Petition

of radiological study dated 05/21/2016, with the identification data of the

patient indicated above; Clinical documentation Radiological report, with data from

the request linked to the name, surnames, NUHSA and date of birth of the patient,

matching those of the claimant includes, along with the medical report containing

the

studied regions,

findings/diagnostic indication and recommendations signed by the physician;

Radiological reports from 05/21/2016, associated with a patient with the same name and

surnames of the claimant, but born on September 12, 1960 and who suffers from a

coronary ailment.

scans carried out,

clinical rationale,

SECOND: On October 1, 2018, in accordance with article 9.4 of the

Royal Decree-Law 5/2018, the claim presented by the

claimant to the SAS-Jaén Hospital Complex, for analysis and communication to the

complainant of the decision adopted in this regard. Likewise, it was required to refer to this

Agency, within a month, to reply to the following points:

- Copy of the communications, of the adopted decision that has been sent to the

claimant regarding the transfer of the claim, and proof that the

claimant has received communication of that decision

- Report on the causes that have motivated the incidence that has originated the

claim.

- Report on the measures adopted to prevent the occurrence of

similar incidents.

- Any other information that is considered relevant.

An attempt was made to notify the aforementioned shipment by electronic means through the

Nottific@ platform that sends notifications to the Citizen Folder and

Authorized Electronic Address of the Ministry of Finance and Administrations

Public.

It appears in the file that it was made available to the SAS on the 1st of

October 2018, producing the automatic rejection of the same on the 12th of

October 2018, as stated in the certification issued on October 12,

2018 by the Support Service of the Electronic Notifications Service and Address

Electronics Enabled.

According to sections 2 and 3 of article 43 of Law 39/2015, of October 1,

of the Common Administrative Procedure of Public Administrations, the

notification shall be deemed rejected when ten calendar days have elapsed

from the time the notification is made available without accessing its content,

understanding fulfilled the obligation to notify with the availability of the

notification in the electronic headquarters or in the unique authorized electronic address.

Without prejudice to which, and exceptionally, on October 24,

2018, another attempt is made to notify the transfer of the claim and the request for

information made to the SAS-Hospital Complex of Jaén, working in the

certified file issued by the State Post and Telegraph Society, SA in the

stating that the aforementioned shipment was delivered on 10/30/2018 to said Center

Hospitable.

THIRD: On March 21, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure of WARNING

to the ANDALUSIAN HEALTH SERVICE (JAEN HOSPITAL COMPLEX), of

in accordance with the provisions of article 58.2.b) of Regulation (EU) 2016/679 of the

European Parliament and of the Council of April 27, 2016, regarding the protection of

individuals with regard to the processing of personal data and the free

circulation of these data, (hereinafter RGPD), by:

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The alleged infringement of article 32.1.b) of the RGPD, in its relationship

with the provisions of articles 5.1.d) and f) of the RGPD, typified in article 83.4.a) of the

RGPD, in accordance with the provisions of article 58.2.b) of the same standard, and

qualified for prescription purposes as serious in article 73.f) of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter LOPDGDD).

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The alleged infringement of article 16 of the RGPD, an infringement typified in

article 83.5.b) of the RGPD and qualified for prescription purposes as mild in the

Article 74.c) of the PDPGDD.

Likewise, in said initial agreement it was indicated that, if the

existence of infringement, for the purposes provided in article 58.2.d) of the RGPD the

corrective measures that could be imposed on the defendant in the resolution that is

adopted would consist of ORDERING the adoption of technical measures and

appropriate organizational arrangements to ensure the accuracy, security and confidentiality of

the personal and health data incorporated and processed in the medical records of

patients, in addition to ordering the authorization of mechanisms that allow

without undue delay, when appropriate, the right to rectify the data

inaccurate personal information included in the medical records of treated patients.

Said initial agreement was notified by the Postal Service on 23

April 2019.

FOURTH: Notification of the aforementioned initiation agreement, dated May 9, 2019 on

The respondent filed a pleadings brief in which, in summary, it stated:

- That having evidence of identity theft, they have come

working on the corresponding rectifications, being completed on the date

02/05/2019.

- List the following events in chronological order.

related to the claim, the causes and consequences caused by the

same, providing as justification the documentation cited as an annex:

1. On 05/21/2016 the injured patient (identity impersonator)

was admitted to the Emergency Service of the Neurotraumatological Hospital, alleging that

did not have any physical accreditation at that time, so that after carrying out the

questions established by protocol for identification, the patient provided the

claimant information.

2. From then on, the Hospital provided the patient with the documentation

necessary for the successive visits to the center, accepting its accreditation with

said documentation, repeating the error.

3. On 06/07/2016 a person filed a claim at the center,

(annex 1), indicating a possible identity theft, without identifying himself as the

father of the affected party, without an explicit request for rectification, and without accrediting the source of

information that led him to detect the errors. This claim was understood as

a possible error in the identification protocol of patients in Admission, and in

In these terms, the response issued by the Medical Director of the Center was prepared with

date 07/06/2016, where clinical data were not included, (Annex 2)

4. The claimant did not submit a request to rectify their data until

06/20/2018, which is supported by annex 3. As the request was not made

through the ARCO procedure, but through a letter addressed to the Center, said

The petition was delayed, and it was not until 12/05/2018 (Annex 4) that a petition was opened.

ARCO request ex officio whose processing ended on 02/14/2019, fact communicated

to the claimant by acknowledgment of receipt on 02/19/2019 (Annex 5).

5. On 03/22/2019 the claimant again requested a copy of his history

clinic (Annex 6), which was answered on 03/27/2019 (Annex 7) and received with

date 04/01/2019, being able to verify that the claimed episodes are no longer

found in your medical record.

That, therefore, the exercise of the right to Rectification has been satisfied

of the patient's medical history.

-That a series of measures have been adopted in order to prevent the reproduction

similar incidents.

FIFTH: On October 17, 2019, the Formula Procedure Instructor

resolution proposal in the sense that by the Director of the Spanish Agency

of Data Protection is imposed on the ANDALUZ HEALTH SERVICE - COMPLEX

HOSPITALARIO DE JAEN, a sanction of warning, in accordance with the

provided for in article 58.2.b) of the RGPD, for the following infractions:

- Infringement of article 32.1.b) of the RGPD in its relation to the provisions of the

sections d) and f) of article 5.1 of the same regulation, typified in article 83.4.a) of the

GDPR.

-Infringement of article 16 of the RGPD, typified in article 83.5.b) of the RGPD.

Said proposal indicated that, if the correction of the

the irregular situation described prior to the issuance of the resolution that

appropriate, and in accordance with the provisions of article 58.2.d) of the RGPD, by the

Director of the Spanish Data Protection Agency ordered the SERVICE

ANDALUZ DE SALUD (HOSPITAL COMPLEX OF JAEN), to proceed to

fully attend the request to exercise the right of rectification made by

the claimant, extracting from his medical record the radiological report of

dated January 10, 2017 with health data of another patient and including it in the

medical history of the patient in question. It also proposed to order the execution

of the technical and organizational measures necessary so that the operations of the

treatment comply with the provisions of article 16 of the RGPD in its relationship with the

foreseen in article 12.1, 3 and 4 of the same norm.

Said measures would have to be adopted, where appropriate, within a period of one month.

computed from the date on which the sanctioning resolution is notified, and must

Proof of compliance must be provided.

SIXTH: Notification of the aforementioned resolution proposal, dated October 31, 2019

The respondent submitted a brief of allegations stating the following in relation to

with the actions carried out in relation to the exercise of the right of

rectification:

“This care is channeled through the ARCO Unit, which records, in

computer application for this purpose, the request for rectification and monitoring of the same with the affected clinical Units and the verification of resolution.

In the case of the claimant, D. A.A.A., after registration of the Claim, a for its resolution to Support Services of the SAS-SAP-, since the rectification of requested data required a modification in the DIRAYA-DAE- module and said rectification cannot be done locally.

After the actions carried out by SAP, once DAE is accessed, you can verify that, in the Clinical History of D. A.A.A. does not appear in the tree episodes, no episodes that do not correspond to the care given to this patient, although, in the History of Requests_Image Tests section, there is a series of applications, dates in 2016, which do not correspond to it. By clicking on these applications, Image Tests appear unequivocally nominated to another patient: FGC.

When asked about it with SAP, they inform us of the non-possibility, in principle, of elimination in DAE of these requests for Image Tests directly by the Hospital, as it is a record already past in time, as well as than other types of historical records.

For this reason, we have subsequently contacted the personnel responsible for execution of the Request for Image Tests module -PDI-, request ratified through ex officio communication via ARCO, for the elimination in DAE of the image requests already mentioned or indication that they do not correspond to D. A.A.A.. No response has yet been received from that ex officio communication.

Meanwhile, at the Jaén University Hospital level, the following actions:

1. When accessing the D.A.A.A. data through PDI, it is stated, in the PDI observations section, that “the current petition has been linked to

an incorrect patient and the correct request is the one with the code…." (the one from

correct request).

Upon emptying of the aforementioned imaging tests from the Clinical History of DI

A.A.A. and to the final transfer to its owner (FGC), so that:

2.1 New Image Requests have been created to Mr. FGC, in which

dump images and results reports, with their dates of

realization. Y

two.

2.2 in the Clinical History of D. A.A.A. only the record of the

requests, without any content, while it is definitively resolved at the

ex officio request from ARCO mentioned above.

Regarding the structural measures requested, the Circuit of

access to the Right of access or modification of clinical data, through a

more exhaustive follow-up of requests if possible, contemplating that, in the case of

DIRAYA, it has been found that, given the impossibility of eliminating historical records

directly by the Hospital, it is expressly indicated that they do not correspond to the

Clinical history that is accessed but it is a rectification of data.

Finally, both of the actions carried out to date, as once

Once this type of incident has been definitively resolved, the notification will be made to the

affected."

In view of everything that has been done, by the Spanish Protection Agency

of Data in this procedure the following are considered proven facts,

FACTS

FIRST: On July 27, 2018, entry is registered in this Agency
claim made by Don A.A.A. (hereinafter, the claimant) against the
ANDALUSIAN HEALTH SERVICE (JAEN HOSPITAL COMPLEX) (in
hereinafter, the claimed or SAS), for not having attended, on the date of the presentation
of that claim, the right of rectification that it exercised before the Complex
Hospitalario de Jaén, dated June 20, 2018, regarding the health data
of third parties that were improperly incorporated into your medical record.

SECOND: On June 7, 2016 Mr. A.A.A., father of the claimant, filed
a claim against the Emergency Department of the Neurotraumatological Hospital of
Jaén, for not having verified the identity of the patient who provided the data of his
son when he was treated at dawn from May 21 to 22, 2016 in said Service,
thus supplanting the identity of his son (Mr. A.A.A., the claimant), who is
patient of the Hospital Complex of Jaén, (hereinafter, CHJ).

In section 1 of the claim appear, among others, the data
identification of the signer of the document, their postal address and their condition of
relative of the patient who appears identified in section 3 of said claim, and
whose identity was stolen. The patient data provided is
correspond to those of the claimant, also coinciding with the address provided
in section 1 of said document with the address of the claimant
in your medical record.

THIRD: The claim filed by the claimant's father was answered
dated July 6, 2016 by the Medical Director of the Jaén Hospital Complex,
although there is no notification to Mr. A.A.A. until July 6, 2017, that is, a
year after its formulation. In said reply, it was stated that:

“According to the report of the Head of HR of the S.A.C., the professionals

The aforementioned proceeded according to the protocol established in the Emergency Admission of the

Citizenship Service of the Jaén Hospital Complex.

Usually, the patient is asked for the health card and/or the Document

National Identity Document (D.N.I., in the absence of both, the number of the D.N.I. or

their surnames and names, verifying with the patient some personal data that

appear in the User Database, such as the date of birth.

Regarding the address, they indicate that it is a data of frequent variability, since

there may have been a change of address and not have been notified in your

Health Center for modification.

Likewise, indicate that the Emergency Admissions Area has the function of

main computerized administrative record of all users requesting care

healthcare, being the responsibility of the users, to reveal the real and truthful data”.

FOURTH: On July 12, 2017, the claimant requested before the SAS the exercise

of his right of access to the complete clinical history and X-rays of the same

in the CHJ, a request that was accepted by said Center by means of a resolution

dated September 18, 2017, in which it was stated that the documentation

requested would be sent by certified mail.

FIFTH: In the clinical history provided by the SAS to the claimant when he attended the

exercise of their right of access were improperly included in the same

the following documents with inaccurate health data, since they corresponded to

medical tests performed on third parties.

Detail of the episode, corresponding to admission to the Hospital Emergency Room Neurotraumatology of Jaén dated 05/21/2016, associated with the NHC and NUHSA of the claimant; Five documents of "Diagnosis by Imaging dated 05/21/2016, where the data of the claimant appears in the fields of patient, NHC, NUHSA, name and surnames, postal address, town, zip code, province, sex. Date birth and age, also including the description of the examination carried out in wrists and elbows ; Radiological study request dated 05/21/2016, with the data identification of the claimant indicated above associated with their condition as a patient; Clinical documentation Radiological Report dated 05/21/2016, with data from the petition linked to the name, surnames, NUHSA and date of birth of the patient, coincide with those of the claimant and with the main medical report signed by the optional, which contains the clinical justification, examinations performed, regions studied (right and left elbow), findings/diagnostic indication and recommendations; Radiological report of 05/21/2016, associated with a patient with the same name, last name, date of birth and NUHSA of the claimant, in which the lesions seen on both elbows are described; Radiological report dated January 10, 2017 linked to a cardiac pathology suffered by a patient born on 09/12/1960 and whose patient identification number did not coincide with that of the claimant, born in 1997.

It is noted that the documents dated May 2016 correspond with the medical tests and their results carried out on a patient who supplanted the claimant's identity, while the report dated January 2017 corresponds to the result of a radiological test carried out on another patient.

SIXTH: On June 20, 2018, the claimant filed in the General Registry

of the CHJ request to exercise the right of rectification regarding the information

inaccurate that was associated with your personal data in the documents of your

clinical history that are detailed in the previous Proven Fact.

SEVENTH: On December 5, 2018, the SAS began processing the

request to exercise the claimant's right to rectification, proceeding with

date February 14, 2019 to check out communication dated February 7

of 2019 in which the person in charge of ARCO in CHJ indicated the following to Don A.A.A.,

claimant's father:

“I inform you that I have received a notification from the Central Services of the

SAS, where I am told that the emergency room episodes and subsequent hospitalization

of the patient D.A.A.A. they have been extracted from your Clinical History to assign them to your

true owner, who was the one who fraudulently impersonated his son.“

It is recorded that said communication was received by Mr. A.A.A. dated 19

February 2019.

EIGHTH: The respondent has provided a copy of the following documentation:

- Print capture of the computer record related to the exercise request

of right of access presented by Mr. A.A.A. dated March 22, 2019 before

the SAS to access your clinical history in the CHJ.

- Copy of the resolution dated March 27, 2019 agreed by the SAS

communicating to Don A.A.A. the estimate of your request for access to the annotations

outlined in his petition, notified on April 1, 2019.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that articles 55.1 and 2, 56.2, 57.1 and 58.2 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons with regard to the treatment of personal data and the free circulation of these data, (hereinafter RGPD), recognize each control authority, and as established in arts. 47 and 48.1 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this process.

II

Articles 1 and 2.1 of the RGPD provide the following:

“Article 1. Object

1. This Regulation establishes the rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of such data.

2. This Regulation protects the fundamental rights and freedoms of natural persons and, in particular, their right to data protection personal.

3. The free movement of personal data in the Union may not be restricted or prohibited for reasons related to the protection of persons regarding the processing of personal data.

Article 2. Material scope of application

1. This Regulation applies to the treatment in whole or in part

automated processing of personal data, as well as the non-automated processing of data

personal content or intended to be included in a file."

For these purposes, it is recalled that article 4 of the RGPD, under the rubric

"Definitions", provides that:

"For the purposes of this Regulation, the following shall be understood as:

1) "personal data": any information about an identified natural person or

identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person

whose identity can be determined, directly or indirectly, in particular by

an identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;

2) "processing": any operation or set of operations carried out

about personal data or sets of personal data, either by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use,

communication by transmission, broadcast or any other form of enabling of

access, collation or interconnection, limitation, suppression or destruction;"

"15) <<data relating to health>>: personal data relating to physical health

or mental health of a natural person, including the provision of care services

healthcare, which reveal information about their health status;

In accordance with the definitions contained in the aforementioned sections 1 and

2 of article 4 of the RGPD the SAS carries out a treatment of personal data and

data related to the health of the patients who are cared for in the centers and

facilities of said service, in such a way that they are identified or can

be identifiable.

III

In the first place, the respondent is accused of failing to implement the

technical and organizational measures necessary to guarantee a level of security

appropriate to the risk derived from the processing of patient health data

(special category of personal data in accordance with the provisions of article 9.1 of the

RGPD), in order to prevent the violation of the principles of accuracy and

confidentiality of the data processed in the medical records, as

follows from the assessment of the set of facts analyzed in relation to said

conduct.

Article 32.1.b) of the RGPD, regarding “Security of treatment”,

establishes that: “1. Taking into account the state of the art, the costs of

application, and the nature, scope, context and purposes of the treatment, as well as

risks of varying likelihood and severity to the rights and freedoms of individuals

natural persons, the person in charge and the person in charge of the treatment will apply measures

appropriate technical and organizational measures to guarantee a level of security adequate to the

risk, which in your case includes, among others:

(…)

b) the ability to ensure the confidentiality, integrity, availability and

permanent resilience of treatment systems and services;

(…)

2. When evaluating the adequacy of the security level, particular consideration shall be given to

taking into account the risks presented by the processing of data, in particular as

consequence of the accidental or unlawful destruction, loss or alteration of data

data transmitted, stored or otherwise processed, or the communication or

unauthorized access to said data. “

For its part, sections 1.d) and f) and 2 of article 5 of the RGPD, under the rubric

“Principles related to treatment”, establish that:

"1. The personal data will be:

(…)

d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed (<<accuracy>>);”

“f) processed in such a way as to ensure adequate security of the

personal data, including protection against unauthorized or unlawful processing and

against its loss, destruction or accidental damage, through the application of measures

appropriate technical or organizational (<<integrity and confidentiality>>)”

2. The data controller will be responsible for compliance with the

provided in section 1 and able to demonstrate it (<<proactive responsibility>>)”

On the other hand, regarding the "Principles of data protection", the articles

4.1 and 5 of the LOPDGDD determine:

4. Accuracy of data.

1. In accordance with article 5.1.d) of Regulation (EU) 2016/679, the data will be

accurate and, if necessary, updated.

Article 5. Duty of confidentiality.

1. Those responsible and in charge of data processing as well as all the

people who intervene in any phase of this will be subject to the duty of

confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary

of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain

even when the relationship of the obligor with the person in charge or person in charge had ended

of the treatment.

In the present case, through the documentation in the procedure,

It is proven that inaccurate data was recorded in the claimant's medical record

relating to a series of actions and medical tests carried out in May 2016

between May 21 and 24, 2016 that were not made to the claimant, but to

a third party who supplanted his personality. From the analysis of said documentation,

evidence that such misinformation has remained recorded in history

claimant's clinic since May 21, 2016, the date on which the

admission to the Emergency Room of the patient who supplanted the personality of the claimant, (in

hereinafter, the supplanter), until February 7, 2019, the date on which the claimed party,

the effects of meeting the request to exercise the right of rectification submitted

by the claimant dated June 20, 2018 in the General Registry of CHJ,

extracted from the claimant's clinical history the emergency episodes and subsequent

hospitalization that were associated with Don A.A.A. to assign them to your

true owner, who was the one who in May 2016 supplanted his personality.

Likewise, it is accredited in the procedure that on January 10,

2017, information related to a report was incorporated into the claimant's medical record

radiological study that, although it was associated with the name and surnames of the claimant, was actually

corresponds to another patient who underwent the tests outlined in

said document, as proof that said radiological report contains an ID of the

patient (NUHSA) and a different date of birth than the claimant.

In relation to said erroneous information, it should be noted that in the request

of exercise of the right of rectification presented by the claimant on the 20th of

June 2018 in the General Registry of the CHJ, the claimant stated that:

“This part has never been admitted to the Neurotraumatological Hospital of Jaén in

the dates that appear in the clinical history and much less have I had the

medical tests that appear in the same, having not had a fracture or injury

some elbows.

Not even less have I suffered any heart injury, attaching to my history

Clinical evidence relating to MRI of the heart of a 58-year-old patient.

As already indicated to this Agency on June 7, 2016, it was supplanted

my personality, and this entity continues to maintain lesions in my clinical history

suffered by a third person, who was the one who was the object of the tests that

are recorded, and this despite the repeated requests of my parents Mr. A.A.A. and Mrs.

JCLL, that they be corrected, being that the only thing that has been eliminated from it

have been the reports related to the income and subsequent escape of the impersonator of the

hospital.

Thus, my clinical history continues to reflect some tests that have not been

practiced never and some injuries that I have not suffered. “

In parallel, it is considered that the incorporation of third-party information

previously outlined to the claimant's medical history has involved a

violation of the principle of confidentiality, since the claimant has had

access to health data information of other patients that resulted

identifiable, as evidenced by the information contained in annex 4 attached by

the SAS in its brief of allegations to the initial agreement, in which the

name, surnames, date of birth, DNI and NUHSA of the impersonator, or

emerges from the radiological report dated January 10, 2017 incorporated

to the claimant's clinical history, since through the corresponding information

the patient's ID and date of birth makes it possible to identify the patient who owns the

health data collected in said report.

The respondent, in his capacity as responsible for said treatment, should

have adopted and implemented, in a proactive manner, the technical and

organizational structures that are appropriate to assess and guarantee a level of

adequate to the probable risks of diverse nature and seriousness

linked to the health data processing carried out that could affect, among

others, to the principles of accuracy and confidentiality. For these purposes, it is recalled that

article 24.1 of the RGPD, in line with the provisions of articles 5.2 and 32.2

previously transcribed, establishes the following regarding the obligations to be fulfilled

by the data controller:

“Article 24. Responsibility of the data controller

1. Taking into account the nature, scope, context and purposes of the

treatment as well as the risks of varying probability and severity for the rights
and freedoms of natural persons, the data controller will apply measures
appropriate technical and organizational measures in order to guarantee and be able to demonstrate that the
processing is in accordance with this Regulation. These measures will be reviewed and
They will update when necessary."

From the foregoing, it is evident that the defendant, as responsible for the
treatment object of study, has not shown the diligence that was required
to establish the security measures that are necessary to prevent
inaccurate health data may be entered and maintained, or leakage or
dissemination of this type of data to third parties.

Said conduct constitutes an infringement of the provisions of article 32.1.b) and 2 of the
RGPD, related to the "Security of the treatment", in its relationship with the provisions of the
sections d) and f) of article 5.1 of the same regulation.

This is without prejudice to the fact that the respondent has informed this Agency of having
adopted measures in order to prevent the recurrence of similar incidents,
consisting of reinforcing the patient identification circuit in admissions
of the center, emphasizing that the patient will always have to present a
official document that identifies it as such, not enough with the health card.

IV

Secondly, the respondent is accused of failing to pay attention to the right to
rectification of health data contained in the claimant's medical history with
origin in the medical tests carried out on a third party, specifically those referring to the
radiological report dated January 10, 2017 linked to cardiac pathology
suffered by a patient born on 09/12/1960 and whose identification number of
patient does not coincide with that of the claimant, born in 1997.

Article 16 of the RGPD regarding the "Right of rectification" establishes that:

“The interested party shall have the right to obtain, without undue delay, from the person responsible for the processing the rectification of personal data concerning you. Having in account the purposes of the treatment, the interested party will have the right to complement personal data that is incomplete, including by means of a declaration additional."

In relation to the exercise of the rights of the interested party, sections 1, 3 and 4 of article 12 of the RGPD, under the heading “Transparency of information, communication and modalities of exercising the rights of the interested party”, establish the next:

1. The person responsible for the treatment will take the appropriate measures to facilitate the interested all information indicated in articles 13 and 14, as well as any communication under articles 15 to 22 and 34 relating to processing, in the form concise, transparent, intelligible and easily accessible, with clear and simple language, in particular any information directed specifically at a child. Information shall be provided in writing or by other means, including, if applicable, by

electronics. When requested by the interested party, the information may be provided verbally provided that the identity of the interested party is proven by other means.

two.(…)

3. The data controller shall provide the interested party with information regarding its actions on the basis of a request under Articles 15 to 22, and, in any case, within one month from receipt of the request. Saying

The term may be extended for another two months if necessary, taking into account the complexity and number of requests. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means when possible, unless the interested party requests that it be provided in another way.

4. If the person in charge of the treatment does not process the request of the interested party, will inform without delay, and no later than one month after receiving the request, the reasons for its non-action and the possibility of presenting a claim before a control authority and to exercise legal actions."

In turn, article 12.4 of the aforementioned LOPDGDD, establishes as one of the "General provisions on the exercise of rights" that:

"4. Proof of compliance with the duty to respond to the request for exercise of their rights formulated by the affected party will fall on the person in charge. "

Article 14 of the LOPDGDD, under the heading, "Right of rectification", provides that: "By exercising the right of rectification recognized in article 16 of the Regulation (EU) 2016/679, the affected party must indicate in their request what data is refers and the correction to be made. It must accompany, when necessary, supporting documentation of the inaccuracy or incompleteness of the data treatment object."

Regarding the radiological report dated January 10, 2017 erroneously associated with the claimant's medical history, it should be noted that the claimed, on the date of formulation of the resolution proposal of this procedure, had not accredited by any means of evidence that there was adopted measures aimed at suppressing it from the claimant's medical record to the effects of meeting the aforementioned request to exercise the right of rectification

filed by the claimant on June 20, 2018 in the General Registry of the

CHJ. In fact, in the communication sent, dated February 7, 2019, by the

claimed to Don A.A.A. it is not indicated that it has been withdrawn from history

claimant's clinic the radiological report dated January 10, 2017

corresponding to the patient born in 1960.

In addition, the respondent did not respond within the period of one month provided for in article

12.3 of the RGPD, counted from its receipt, the aforementioned request to exercise

right of rectification, taking into account that although it was presented in the Registry

General of the SAS dated June 20, 2018, the claimant was not answered until

on February 7, 2019, in addition to the fact that the request was partially answered, since

that only the rectification of a part of the information outlined by the

complainant, which was the one referring to the episodes and reports dated May 2016.

Nor did the respondent inform the claimant of the possibility of extending the term of

earlier reply in another two months.

Likewise, it has not notified the claimant within the term indicated in article

12.4 of the RGPD the reasons why you have not processed the claimant's request

regarding the radiological report dated January 10, 2017.

The respondent, after receiving the agreement to initiate the procedure, informed the

this Agency to have adopted measures in order to prevent the occurrence of incidents

similar, consisting of including in the protocol of ARCO requests for Access and

Rectification the possibility that the user can exercise said rights by others

alternative means to the official models, acting ex officio to serve them in

time and form, involving both the members of the ARCO Unit and the

those of the General Registry, Clinical Services and Management.

In relation to these measures, it should be noted that the existence of

models aimed at facilitating the request for the exercise of the rights contemplated

in articles 14 to 22 of the RGPD does not exonerate the claimed party from attending said

requests in accordance with the provisions of the data protection regulations, where no

establishes a predetermined format or mechanism for the presentation of such

requests.

For all of which, said conduct constitutes an infringement of the provisions of the

article 16 of the RGPD.

v

Sections b), d) and i) of article 58.2 of the RGPD, "Powers", provide the

Next:

“2 Each supervisory authority shall have all of the following powers

corrections listed below:

(…)

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;”

(...)

“d) order the person responsible or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a specified manner and within a specified period;”

“i) impose an administrative fine in accordance with article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

For the purposes of determining the sanction that could be associated with

mentioned infractions, the following precepts must be taken into account:

Article 83 of the RGPD, under the heading “General conditions for the

imposition of administrative fines”, establishes in sections 4.a) and 5.b) that:

"4. Violations of the following provisions will be sanctioned, in accordance

with paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or,

in the case of a company, an amount equivalent to a maximum of 2% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8,

11, 25 to 39, 42 and 43.”

"5. Violations of the following provisions will be sanctioned, in accordance

with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

(…)

b) the rights of the interested parties pursuant to articles 12 to 22;”

In turn, article 73.f) of the LOPDGDD establishes that: “Depending on what

established in article 83.4 of Regulation (EU) 2016/679 are considered serious and

Infractions that suppose a substantial violation will prescribe after two years.

of the articles mentioned therein and, in particular, the following:

"f) The lack of adoption of those technical and organizational measures that

are appropriate to guarantee a level of security appropriate to the risk of the

treatment, in the terms required by article 32.1 of the Regulation (EU)

2016/679.

While article 74.c) of the LOPDGDD establishes that: "They are considered

minor and will prescribe after a year the remaining infractions of a merely formal nature of

the articles mentioned in paragraphs 4 and 5 of article 83 of the Regulation (EU)

2016/679 and, in particular, the following: (...)

c) Failure to respond to requests to exercise the rights established in the

Articles 15 to 22 of Regulation (EU) 2016/679, unless applicable

provided in article 72.1.k) of this organic law."

In parallel, article 83.7 of the RGPD establishes that:

"7. Without prejudice to the corrective powers of the control authorities under

of Article 58(2), each Member State may lay down rules on

whether it is possible, and to what extent, to impose administrative fines on authorities and

public bodies established in that Member State.

In this sense, sections 1.c), 2, 4 and 5 of article 77 of the LOPDGDD, under

the heading "Regime applicable to certain categories of responsible or

in charge of the treatment", establish that:

"1. The regime established in this article will be applicable to treatments

of which they are responsible or entrusted:

c) The General Administration of the State, the Administrations of the

autonomous communities and the entities that make up the Local Administration.

(…)

2. When the managers or managers listed in section 1

committed any of the offenses referred to in articles 72 to 74 of

this organic law, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

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The resolution will be notified to the person in charge or in charge of the treatment, to the

body on which it reports hierarchically, where appropriate, and those affected who have

the condition of interested party, if any.

(…)

4. The data protection authority must be informed of the

resolutions that fall in relation to the measures and actions referred to

the previous sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions

analogous of the autonomous communities the actions carried out and the

resolutions issued under this article."

In accordance with the foregoing, the defendant is responsible for the commission of

an infringement of the provisions of article 32.1.b) of the RGPD in its relation to the

provided for in sections d) and f) of article 5.1) of the same regulation, typified in the

article 83.4.a) of the aforementioned legal text and classified as serious for prescription purposes

in article 73.f) of the LOPDGDD, and may be sanctioned, in accordance with the

provided in article 58.2.b) of the RGPD, with a warning.

Likewise, the defendant is responsible for the commission of an infraction to the provisions of article 16 of the RGPD, typified in article 83.5.b) of the aforementioned text legal and classified as minor for prescription purposes in article 74.c) of the LOPDGDD, and may be sanctioned, in accordance with the provisions of article 58.2.b) of the RGPD, with a warning.

In this case, the respondent stated in his pleadings brief to the initial agreement the technical and organizational measures adopted both to strengthen the identity verification protocols of patients to implicate various units in speeding up the processing of files derived from the exercise of rights. However, at that procedural moment, the respondent did not accredited having adopted any type of measures for the purpose of attending to the right of rectification exercised by the claimant regarding the aforementioned radiological report dated January 10, 2017 in your medical record.

Consequently, in the proposed resolution of the procedure, proposed to the Director of the AEPD that, if the defendant had not justified the total rectification of the situation described prior to the adoption of the resolution that should be agreed upon, the provisions of article 58.2.d) of the RGPD, ordering the claimed in the resolution in question to carry out a series of specific actions to adapt the treatment operations to the provisions in the precepts of the RGPD that had been violated, and must be applied appropriate technical and organizational measures to ensure the accuracy, security and confidentiality of the personal and health data incorporated and treated in the clinical records of the patients, in addition to enabling the mechanisms that would allow to address without undue delay, when appropriate, the right to rectification of inaccurate personal data included in the medical records of the

treated patients.

After receiving said resolution proposal, the respondent has formulated a written

allegations stating the adoption of a series of actions whose description

It appears in the Background of Fact Six of this resolution. In view of them,

and without prejudice to the convenience of actions of a structural nature whose

establishment has been communicated, in relation to the measures adopted with respect to

From the information contained in the claimant's clinical history, it is observed that these

they only refer to the deletion of information relating to requests for

imaging tests and x-rays obtained as a result of performing such tests

in 2016, that is, the information referring to the health data of the person who

impersonated the identity of the claimant in May 2016, identified as FGC.

Therefore, these actions do not contemplate the adoption of any measure

tending to rectify the erroneous information in the clinical history of the

claimant referred to the radiological report dated January 10, 2017, that such and

as has been proven belongs to another patient. This despite the fact that in the proposal of

resolution expressly mentioned the measures whose execution would be proposed

order in order to correct the irregular situation described in relation to that specific

episode and in order to correctly address the right of rectification exercised by

the claimant.

Based on the foregoing, it is considered convenient to order the implementation of the

technical and organizational measures described in the operative part, and the

requested to send to this Agency the means of proof that allow verifying

only the start-up and result of the actions communicated in the

mentioned brief of arguments to the proposed resolution, but also the

implementation and result of the measures ordered, in accordance with the provisions of the

article 58.2.d), in this resolution within a period of one month, counting from the

day following the date of your notification.

Therefore, in accordance with the applicable legislation and valued the

concurrent circumstances whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST:

IMPOSE THE ANDALUSIAN HEALTH SERVICE - COMPLEX

HOSPITALARIO DE JAEN, with NIF Q9150013B, a sanction of Warning, of

in accordance with the provisions of article 58.2.b) of the RPGPD, for an infringement of the

article 32.1.b) of the RGPD in its relationship with the provisions of sections d) and f) of the

article 5.1) of the same rule, typified in article 83.4.a) of the aforementioned legal text

SECOND: IMPOSE THE ANDALUSIAN HEALTH SERVICE- COMPLEX

HOSPITALARIO DE JAEN, with NIF Q9150013B, a sanction of Warning, of

in accordance with the provisions of article 58.2.b) of the RPGPD, for an infringement of the

article 16 of the RGPD, typified in article 83.5.b) of the aforementioned legal text

THIRD: ORDER the ANDALUSIAN HEALTH SERVICE (COMPLEX

HOSPITALARIO DE JAEN), with NIF Q9150013B, in accordance with the provisions of article

58.2.d) of the RGPD, which proceeds to fully attend the request to exercise

right of rectification formulated by the claimant, extracting from the clinical history

of the same the radiological report dated January 10, 2017 with health data of

another patient and including it in the clinical history of the patient in question, which

will notify the affected party and this Agency. This measure must be executed and accredited

its realization before this Agency within a month computed from the day

following which this resolution is notified.

FOURTH: NOTIFY this resolution to the ANDALUSIAN HEALTH SERVICE-

JAEN HOSPITAL COMPLEX.

FIFTH: COMMUNICATE this resolution to the Ombudsman, in accordance

with the provisions of article 77.5 of the LOPDGDD.

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

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, 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 a period of two months from the

day following the notification of this act, as provided in 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the 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 October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

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