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Autoritat Catalana de Protecció de Dades

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File identification

Resolution of sanctioning procedure no. PS 5/2021, referring to the General Sub-Directorate of Medical Assessments (Catalan Institute of Medical Assessments -ICAM-).

Background

1. On 02/03/2020, the Catalan Data Protection Authority received a letter from a union for which it lodged a complaint against the General Sub-Directorate of Medical Assessments (Catalan Institute of Medical Assessments - ICAM -), due to an alleged breach of the regulations on the protection of personal data. Specifically, the complainant union complained about the following: a) access by the medical assessment staff of the ICAM to the clinical histories of the users, without their explicit consent and without having complied with the right to information ; and, b) that the nursing staff has *"computer privileges of an evaluating doctor",* so that they can access the health data included in the clinical history, a fact that they consider *a "violation of the security of personal data" .*

2. The Authority opened a preliminary information phase (no. IP 77/2020), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 03/10/2020 and 11/26/2020, the reported entity was required to report on the following:

- The legal basis that would legitimize access to the clinical histories of ICAM users, by the medical assessment staff.
- If the access by the medical assessment staff of the ICAM is made to the clinical histories contained in the e-cap (clinical history management application of the primary care centers).

- If the system limits the access of the medical assessment staff to those clinical histories relating to people who are immersed in a process of incapacity; and, in turn, also limited to the clinical course - and associated diagnoses - related to the injuries or diseases that have given rise to that process.
- What is the entity or body that provides ICAM healthcare professionals with privileges to access clinical histories; and if such privileges are provided, not only to the medical staff, but also to the nursing staff. In this sense, it is necessary to detail the privileges assigned to each of these groups.

Carrer Rosselló, 214, esc. A, 1r 1a
08008 Barcelona

- The way in which ICAM complies with users' right to information, especially with regard to eventual access to your medical history.

4. On 11/06/2020 and 14/12/2020, ICAM responded to the above requests through separate written statements that set out the following:

a) That *"the medical staff of the ICAM access it, in a differentiated way, both to the e-CAP and to the shared clinical history of Catalonia, with the registration and traceability of all the accesses made by the professionals and, always with prior acceptance of the terms of access and confidentiality. Traceability is maintained for both accesses (E-cap and clinical history) in accordance with the records and in accordance with the role of the professionals".*

b) That *"the medical staff of the ICAM in the medical evaluation that they carry out in the full exercise of their functions, only consult what they consider necessary and essential to be able to carry out a correct evaluation and limiting access to the clinical documentation and other medical data, strictly related to the injuries and/or illnesses that are relevant to the resolution of the procedure and always in strict compliance with the current data protection regulations, as reflected in the medical opinion issued .*

Likewise, and in order to access the shared clinical information, the ICAM evaluating doctor must have generated and created a file on the application portal (GEA) and can then access it, therefore, no no improper access can be made if there is no file that is the subject of the procedure".

c) That the legal basis that legitimizes the treatment of the data contained in the clinical histories is that provided for in article 6.1.e) and 9.2.b) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter, RGPD), in relation to what is provided for in article 71.3 of the Consolidated Text of the General Social Security Law, approved by Royal Legislative Decree 8/2015, and Royal Decree 625/2014.

d) With regard to access to clinical records by the nursing staff, it is reported from following:

d.1) That on 08/11/2019, following the presentation of a claim, the data protection delegate of the Department of Health issued a resolution in which *"recommended opening a phase of prior analysis regarding the possible unauthorized access by the nursing staff of the General Sub-Directorate",* so that at that time the General Directorate of Health Planning and Regulation - on which the ICAM depends - blocked access as a precautionary measure for part of the nursing staff to the clinical data (including the clinical course) contained in the clinical histories *"until the question raised was resolved".*

d.2) That *"from the research actions carried out it appears that the accesses would have occurred to the e-cap solely to transmit information in relation to the episode of temporary incapacity and to transfer to the Public Service of Health of the medical discharge proposal issued by the doctor of the mutual collaborator in the management of Social Security and once validated by the medical inspector. The actions taken are part of those foreseen in Royal Decree 625/2014 for the control of temporary incapacity processes during the first 365 days of duration. And the channel used is the only communication channel with primary assistance until the establishment of communication via IS3 which will be used for communication*

Carrer Rosselló, 214, esc. A, 1r 1a
08008 Barcelona

between professionals, as already exists in the Public Health Service. (...) With regard to administrative data, given that access to this data is necessary for the performance of the tasks of the nursing staff and, as is done by the rest of the Sub-Directorate's staff General who performs administrative tasks, access in accordance with what is provided for in article 11 of Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and the clinical documentation, and in article 16 of Law 41/2002, basic regulation of patient autonomy and rights and obligations in the field of information and clinical documentation, which they do by strictly keeping the confidentiality obligation of the data to which they have access to which they are subjected

d.3) That *"the situation caused by the pandemic has meant an increase in the actions of the ICAM which have led to the fact that it was considered essential to strengthen the tasks of support to the medical staff evaluating in the processes of temporary incapacity under the jurisdiction of the ICAM by the nursing staff, so article 1 of Decree-law 48/2020, of December 1, on measures of an organizational nature in the health, social and public health field to deal with the health crisis caused by COVID-19 and amending Decree-Law 30/2020, of August 4, and Decree-Law 41/2020, of December 10, enables nurses attached to the ICAM to access to clinical histories in pending temporary incapacity processes, as long as the PROCICAT Action Plan remains activated for emergencies associated with emerging transmissible diseases with potentially high risk".*

e) That, with regard to compliance with the right to information, the ICAM *"considers that the obligation to inform interested parties could be exempted in accordance with the provisions of article 14.5.c) of the Regulation, and on the basis of Royal Decree 625/2014";* but that nevertheless, in order to bring transparency to its performance, the user's right to information is being complied with through the inclusion of an information clause in the subpoenas, and also with the 'exposure to the ICAM offices of an informative document.

The reported entity provided the following documentation: a) a model summons that contains an informative clause that contemplates certain ends of those provided for in article 13 of the RGPD; b) the document which, according to the ICAM, is exposed in its dependencies, and which includes an informative clause drafted in similar terms to that included in the aforementioned subpoenas.

5. Based on the related antecedents and the result of the investigative actions carried out within the framework of the previous information, on 04/02/2021 the director of the Authority agreed to initiate a sanctioning procedure against the ICAM - in relation to the facts described in the "Proved facts" section of this resolution - for the commission of an alleged infringement provided for in article 83.5.a), in relation to article 9 ; both of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereinafter, RGPD).

This initiation agreement was notified to the imputed entity on 02/11/2021.

Carrer Rosselló, 214, esc. A, 1r 1a
08008 Barcelona

On the other hand, also on the same date, an archive resolution was issued regarding the rest of the reported conduct related to the access by the medical staff of the ICAM to medical data included in the primary medical records and the compliance with the right to information. In that resolution, the reasons that led to its filing were justified.

6. In the initiation agreement, the accused entity was granted a term of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of evidence that it considered appropriate to defend their interests.

7. On 02/25/2021, the ICAM made objections to the initiation agreement.

8. On 03/25/2021, the instructor of this procedure formulated a resolution proposal, for which she proposed that the director of the Catalan Data Protection Authority admonish the General Sub-Directorate of Medical Assessments as responsible of an infringement provided for in article 83.5.a) in relation to article 9, both of the RGPD.

This resolution proposal was notified on 03/26/2021 and a period of 10 days was granted to formulate allegations.

9. The deadline has been exceeded and no objections have been submitted to the proposed resolution.

proven facts

The ICAM nursing staff accessed the medical data included in the primary care clinical histories - through the e-cap application - of those people immersed in a process of incapacitation. This access occurred from an undetermined date until 08/11/2019, the date on which the General Directorate of Health Planning and Regulation - on which the ICAM depends - blocked the access of this staff to this health information.

Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of DT 2a of Law 32/2010, of October 1, of the Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. The accused entity has not made allegations in the resolution proposal, but it did so in the initiation agreement. In this regard, it is considered appropriate to reiterate below the most relevant part of the instructor's motivated response to these allegations.

Carrer Rosselló, 214, esc. A, 1r 1a
08008 Barcelona

In its statement of objections to the initiation agreement, ICAM largely reproduced the statements it had made during the preliminary information phase that preceded this procedure, regarding the legitimacy of access to the clinical history by the nursing staff of the ICAM, namely: a) that *"the medical act of the evaluation corresponds solely and exclusively to the evaluating doctor (...). The tasks carried out by staff with a diploma in nursing are support tasks for the inspection function";* b) that the nursing staff's access to the HC *"occurred solely to transmit information in relation to the episode of temporary incapacity and to transfer to the Public Health Service the medical discharge proposal issued by specialist of the mutual collaborator with the management of the Social Security and once* validated *by the medical inspector";* c) that *"the actions carried out by the nursing staff are actions in support of the evaluating doctor and are part of those foreseen in Royal Decree 625/2014, of July 18";* and, d) that the data from the medical records accessed by the nursing staff are those necessary for the performance of the tasks assigned to them, which corresponds to the uses of the medical records provided for in the health regulations (art. 11 of Catalan Law 21/2000 and art. 16 of Basic State Law 41/2002); and added
that when the affected people provide paper medical documentation to prove their situation, this staff also accesses health data, without this implying improper access to said information.

Then, they explained that, in accordance with the resolution of 8/11/2019 of the DPD of the Department of Health, *"which recommended to the Department to open a preliminary analysis phase regarding the possible unauthorized access by the nursing staff of the Integrated Care Organization"*, the access of this staff to the HC was provisionally suspended until this matter was analyzed, but that, before it could be resolved, *"the pandemic caused by covid19 appeared, which assume that the study could not be completed during that period, but that we think it is extensively detailed"* with the exposed. In this regard, they stated that, despite the fact that this study *"remained awaiting conclusions",* the increase in the actions of the ICAM caused by the health crisis made it absolutely essential to strengthen the tasks of support to the evaluating medical staff by the staff of 'nursing, reason for which *"it was considered appropriate to approve Decree Law 48/2020, of December 1",* which enables nursing staff attached to the ICAM to access clinical histories.

As the instructor explained in the proposal, first of all it must be said that there is no doubt about the legality of access by the ICAM nursing staff to the HC from the entry into force of Decree Law 48/2020, of December 1, which article 1 expressly provides that the nursing staff assigned to the ICAM can access clinical histories in pending temporary incapacity processes; access that will be maintained, in accordance with what is determined by the additional provision of the same rule, as long as the PROCICAT Action Plan remains activated for emergencies associated with emerging communicable diseases with high potential risk. Indeed, the adequacy of these precepts to the data protection regulations has been endorsed by this Authority in its report no. PD 13/2020 (which can be consulted on the website www.apdcat.cat).

At least the mentioned legal norm is later than the time period in which the reported accesses to the HC by the nursing staff took place, and what is more relevant, according to its additional provision, the authorization for these accesses has transitory character, as long as the aforementioned PROCICAT Action Plan remains activated, which reveals that the will of the legislator is not to maintain this legal authorization over time.

That being the case, what needs to be analyzed is whether the access carried out by this staff to the primary HCs, from an undetermined date until 08/11/2019 - date on which the General Directorate of Planning and Health Regulation, on which ICAM depends, blocked this access - it had a legal basis to legitimize it. Well, it is already clear here that the answer to this question is negative in accordance with what will be said below. It should also be noted that the processing of health data by ICAM nursing staff is not imputed in this procedure, which will obviously be given to a greater or lesser extent given the functions entrusted to them; rather, the conduct that is considered contrary to the right to data protection, as recorded in the proven facts, is the access by this staff, to the primary HC of the affected persons, through the E-chap application.

Having established this, it is then necessary to analyze whether the regulations invoked by the ICAM - on the one hand, article 11 of the Catalan Law 21/2000 and article 16 of the Basic State Law 41/2002); and on the other hand, Royal Decree 625/2014 would legitimize the access of nursing staff to primary HCs.

According to the RGPD, the processing of health data requires the concurrence of a legal basis from those provided for in its article 6; and, in addition, that some of the exceptions established in article 9.2 of the same rule are given.

The RGPD also stipulates that the legal basis must be established in the law of the member state that applies to the controller or the law of the European Union which, in any case, must determine the purpose of the treatment. With regard to the quality of this rule, it must fulfill an objective of public interest and must be proportional to the aim pursued (art. 6.3 if/).

Regarding the range of internal law, recital 41 of the RGPD states that *"When this Regulation refers to a legal basis or a legislative measure, this does not necessarily require a legislative act adopted by a parliament, without to the detriment of the requirements of conformity of the constitutional order of the Member State in question".*

It must be taken into account in this regard that, in Spanish law, the rule that establishes the treatment must be a rule with the status of law, as follows from Article 53 EC, to the extent that it involves the limitation of a fundamental right. In this sense, article 8.2 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD) establishes that *"The treatment of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible, in the terms provided for in article 6.1.e) of Regulation (EU) 2016/679, when it derives from a competence attributed by a*

Carrer Rosselló, 214, esc. A, 1r 1a
08008 Barcelona

norm with the rank of law". Article 9 of the LOPDGDD is pronounced in similar terms regarding the processing of data from special categories of data, such as health data.

Article 66.1.a) of the Consolidated Text of the General Social Security Law approved by RDLEG 8/2015, determines that the National Institute of Social Security (INSS) is responsible for the management and administration of the financial benefits of Social Security system and, in this sense, this entity manages the financial benefits for temporary disability, permanent disability and for death and survival, with prior determination of the contingency from which the situation of need arises.

The INSS - management entity attached to the Ministry of Labour, Migration and Social Security - is therefore entrusted with the management and administration of certain financial benefits of the Social Security system, in accordance with what is established by Royal Decree 2583/1996 , of December 13, on the organic structure and functions of the INSS and partial modification of the General Treasury of the Social Security. Among the procedures necessary to realize the recognition of these benefits are those of the medical control of temporary disability allowances, among others.

The Administration of the Generalitat of Catalonia, in accordance with the provisions of Royal Decree 1517/1981, of July 8, on transfers of Social Security services to the Generalitat of Catalonia in the field of Social Security (INSALUD and INSERSO) is competent to provide Social Security Health Care and, through the optional staff of its public health service, extend the medical parts of leave, confirmation of leave and discharge that establish the start and duration, with general character, of the IT processes in its territory and, through the Medical Inspection (Subdirectorate General of Medical Assessments) of the Department of Health, participate in the responsibility of managing and controlling the provision together with the managing and collaborating entities of Social Security in accordance with RD 625/2014.

Decree 6/2017, of January 17, on the restructuring of the Department of Health establishes, among the functions performed by the General Sub-Directorate of Medical Assessments, the inspection, evaluation and monitoring of medical and health processes corresponding to benefits of the Social Security system in the matter of work disabilities

On December 5, 2017, the Ministry of Labor and Social Security (INSS) and the Administration of the Generalitat of Catalonia, through the Department of Health, signed a collaboration agreement, for the control of temporary incapacity during the period 2017 to 2020, for which the INSS entrusted the Generalitat de Catalunya with the medical controls in IT processes, so that after the first 365 days, the INSS or the Social Institute of the Navy (ISM) in each province issues the corresponding resolution.

In accordance with the aforementioned regulations, the legal basis that would enable the processing of the data of people immersed in a process of incapacitation by the ICAM staff would be that provided for in article 6.1.e) of GDPR (processing is necessary for the fulfillment of a mission

carried out in the public interest or in the exercise of public powers conferred on the data controller).

Since one of the legal bases provided for in Article 6 of the GDPR is concurrent, it must be seen if any of the exceptions provided for in Article 9 of the GDPR are granted, which would allow the treatment under discussion.

a) The ICAM invoked, on the one hand, the health regulations as enabling the access of the nursing staff to the primary school clinical history, specifically:

Article 11 of Law 21/2000, of 29 December, on the rights of information concerning the patient's health and autonomy, and clinical documentation, in relation to the uses of the clinical history which determines:

"1. The clinical history is an instrument primarily intended to help guarantee adequate assistance to the patient. For this purpose, the care professionals of the center who are involved in the diagnosis or treatment of the patient must have access to the clinical history.
2. Each center must establish the mechanism that makes it possible that, while assistance is provided to a specific patient, the professionals attending to him can, at all times, have access to the corresponding clinical history.
3. The clinical history can be accessed for epidemiological, research or teaching purposes, subject to the provisions of Organic Law 15/1999, of December 13, on the protection of personal data, and the Law of State 14/1986, of April 25, general health, and the corresponding provisions. Access to the clinical history for these purposes obliges the preservation of the patient's personal identification data, separate from those of a clinical care nature, unless the latter has previously given consent.

4. The staff who take care of the administration and management tasks of the health centers can access only the data of the clinical history related to said functions.
5. The personnel in the service of the Health Administration who perform inspection functions, duly accredited, can access the clinical histories, in order to check the quality of the assistance, the fulfillment of the patient's rights or any other obligation of the center in relation to patients or the Health Administration. 6. All staff who use their powers to access any type of clinical history data remain subject to the duty of confidentiality."

And, article 16 of State Law 41/2002, of November 14, regulating patient autonomy and rights and obligations regarding information and clinical documentation, which establishes:

"1. The clinical history is an instrument primarily intended to guarantee adequate assistance to the patient. The healthcare professionals of the center who carry out the diagnosis or treatment of the patient have access to the patient's clinical history as a fundamental tool for their adequate assistance.
2. Each center will establish the methods that enable access to the clinical history of each patient at all times by the professionals who assist them.

Carrer Rosselló, 214, esc. A, 1r 1a
08008 Barcelona

3. Access to clinical history for judicial, epidemiological, public health, research or teaching purposes is governed by the provisions of Organic Law 15/1999, of December 13, on the Protection of Personal Data, and in Law 14/1986, of April 25, General Health, and other applicable rules in each case. Access to the clinical history for these purposes requires the preservation of the personal identification data of the patient, separate from those of a clinical and healthcare nature, so that, as a general rule, anonymity is ensured, unless the patient himself has given his consent to don't separate them.
The cases of investigation by the judicial authority are excepted in which the unification of the identification data with the clinical assistance is considered essential, in which it will be according to what the judges and courts have in the corresponding process. Access to clinical history data and documents is strictly limited to the specific purposes of each case.

When it is necessary for the prevention of a serious risk or danger to the health of the population, the health administrations referred to in Law 33/2011, General Public Health, may access the identification data of patients for reasons epidemiological or public health protection. Access must be carried out, in any case, by a healthcare professional subject to professional secrecy or by another person subject, likewise, to an equivalent obligation of secrecy, with prior motivation on the part of the Administration that requested access to the data."

Well, as we have seen, in accordance with Decree 6/2017, of January 17, restructuring the Department of Health, the General Sub-Directorate of Medical Assessments has functions of control, inspection and evaluation of the corresponding medical processes to the benefits of the Social Security system in the matter of work incapacity; but it does not have any assistance function attributed to
That being the case, as the instructor explained in the resolution proposal, it must be ruled out that the transcribed health regulations enable the access of nursing staff attached to the ICAM to primary HCs.

b) On the other hand, the ICAM also cited Royal Decree 625/2014 for the control of temporary incapacity processes during the first 365 days of duration as enabling regulations for the controversial treatment, and defended that *"the actions carried out by the nursing staff are support actions of the evaluating doctor and fall under the provisions"* in the aforementioned rule.

Well, this Authority considers that this rule would not legitimize the access by ICAM nursing staff to the HCs either. In this regard, it should be noted that Royal Decree 625/2014, specifically, article 4.3 - dedicated to complementary and control reports, and article 8 - relating to the monitoring and control of financial benefits and situations of temporary disability -, in connection with what is determined by article 71.3 of Royal Legislative Decree 8/2015, of October 30, by which the revised text of the General Social Security Law is approved, solely and exclusively provide for access in the primary medical records by the ICAM medical evaluation staff, so only in relation to this specific staff would the exception provided for in article 9.1.h) of the RGPD apply, that would legitimize the said access (in this sense, you can consult the opinion CNS 61/2015 and Resolution on the archive of the IP no. 77/2020, on the website www.apd.cat). So, it cannot be admitted at all that the aforementioned

Carrer Rosselló, 214, esc. A, 1r 1a
08008 Barcelona

regulations enable the ICAM nursing staff to access the primary medical history through the E-cap application.

In view of the above, the allegations made by the ICAM in this procedure cannot succeed.

3. In relation to the facts described in the proven facts section, it is necessary to refer to article 5.1.a) of the RGPD, which regulates the principle of lawfulness of data determining that personal data will be *"treated in a lawful (...)".*

For its part, article 9.2 of the RGPD, regarding the treatment of special categories of data, provides that the prohibition of their treatment does not apply if one of the following circumstances is present:

> *"a) the interested party gives his explicit consent for the treatment of said personal data with one or more of the specified purposes, except when the Law of the Union or Member States establishes that the prohibition mentioned in section 1 cannot be lifted by the interested party; b) the treatment is necessary for the fulfillment of obligations and the exercise of specific rights of the person responsible for the treatment or of the interested party in the field of labor law and of social security and protection, to the extent that this is authorized by the Law of the Union or member states or a collective agreement in accordance with the law of the member states that establishes adequate guarantees of respect for the fundamental rights and interests of the interested party; c) the treatment is necessary to protect the vital interests of the interested party or another natural person, in the event that the interested party is not physically or legally able to give their consent; d) the treatment is carried out, within the scope of its legitimate activities and with due guarantees, by a foundation, an association or any other non-profit organization, whose purpose is political, philosophical, religious or trade union, provided that the treatment refers exclusively to members*

> *current or former of such organizations or persons who maintain regular contacts with them in relation to their purposes and provided that personal data is not communicated outside of them without the consent of the interested parties; e) the treatment refers to personal data that the interested party has made manifestly public; f) the treatment is necessary for the formulation, exercise or defense of claims or when the courts act in the exercise of their judicial function; g) the treatment is necessary for reasons of an essential public interest, on the basis of the Law of the Union or of the Member States, which must be proportional to the objective pursued, essentially respect the right to data protection and establish measures adequate and specific to protect the fundamental interests and rights of the interested party;*

Carrer Rosselló, 214, esc. A, 1r 1a
08008 Barcelona

h) the treatment is necessary for the purposes of preventive or occupational medicine, evaluation of the worker's labor capacity, medical diagnosis, provision of health or social assistance or treatment, or management of health and social care systems and services, on the basis of the Law of the Union or of the Member States or by virtue of a contract with a healthcare professional and without prejudice to the conditions and guarantees contemplated in section 3; i) the treatment is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health, or to guarantee high levels of quality and safety of health care and medicines or sanitary products, on the basis of the Law of the Union or Member States that establishes appropriate and specific measures to protect the rights and freedoms of the interested party, in particular professional secrecy. j) the treatment is necessary for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, on the basis of the Law of the Union or of the Member States, which must be proportional to the objective pursued, essentially respect the right to data protection and establish appropriate and specific measures to protect the fundamental interests and rights of the interested party."

During the processing of this procedure, the fact described in the section on proven facts has been duly proven, which is constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies the violation of the *"principles basics of the treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9",* among which the principle of legality of the treatment of special categories of data is contemplated (articles 5.1.a/ and 9 RGPD) .

The conduct addressed here has been included as a very serious infraction in article 72.1.e) of the LOPDGDD), in the following form:

"e) The processing of personal data of the categories referred to in article 9 of Regulation (EU) 2016/679, without any of the circumstances provided for in the aforementioned precept and article 9 of this Law organic."

4. Article 77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected.
The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

Carrer Rosselló, 214, esc. A, 1r 1a
08008 Barcelona

And section 3 of art. 77 LOPDGDD, establishes that:

> *"3. Without prejudice to what is established in the previous section, the data protection authority must also propose the initiation of disciplinary actions when there are sufficient indications to do so. In this case, the procedure and the sanctions that must be applied are those established by the legislation on the disciplinary or sanctioning regime that is applicable.*
> *Also, when the infractions are attributable to authorities and managers, and the existence of technical reports or recommendations for the treatment that have not been properly attended to is proven, in the resolution in which the penalty is imposed, to include a warning with the name of the responsible position and it must be ordered to be published in the "Official Gazette of the State" or the corresponding regional newspaper.*

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010, determines the following:

> *"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects . In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".*

In the present case, it is not appropriate to require corrective measures since access to the primary school medical records through the E-cap application that is currently carried out by the nursing staff of the ICAM is lawful for be expressly provided for in article 1 of Decree Law 48/2020; access that will be maintained, in accordance with what is determined by the additional provision of the same rule, as long as the PROCICAT Action Plan remains activated for emergencies associated with emerging communicable diseases with high potential risk.

For all this, I resolve:

1. Admonish the General Directorate of Medical Assessments as responsible for an infringement provided for in article 83.5.a) in relation to article 9, both of the RGPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 4th legal basis.

2. Notify this resolution to the General Directorate of Medical Assessments.

Carrer Rosselló, 214, esc. A, 1r 1a
08008 Barcelona

3. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

4. Order that this resolution be published on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003 , of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with the provisions of article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating the administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director,