

## File identification

Resolution of the rights protection procedure no. PT 155/2021, referring to the Catalan Health Institute (Arnau de Vilanova University Hospital).

## Background

1. On 12/23/2021, the Catalan Data Protection Authority received a letter from Mrs. (...) (hereinafter, claimant), for which he formulated a claim for the alleged neglect of the right of rectification that he had exercised on 09/24/2021 before the Arnau de Vilanova University Hospital, dependent on the Institut Català de la Salut (henceforth, the ICS), given that having access to his medical history he observed "*annotations that are not true*" for which he requested their rectification or, in his case, their deletion.

First of all, the claimant pointed out that his medical history (clinical course) did not include the medical visit of 01/26/2021 with a certain specialist in the neurosurgery service. Added the person claiming that not only was the visit not recorded in the history, but neither was "*the comment*". In this regard, the claimant explained that in that medical visit "*discharge is proposed with a report of sequelae and recommendations and referral to the pain clinic. At that time, the radiograph is reviewed (March 5, 2020) and instability of the sacral screws is suspected, so a CT scan is requested, and obviously the discharge is NOT performed, unless on February 23 2021, I am included in the surgery list excluding myself on May 25, 2021, currently (September 20) in the surgery list of the Hospital Vall d'Hebron in Barcelona*".

And, secondly, the claimant explained that this same medical professional had noted in the clinical course, in relation to the medical visit of 03/05/2019, the following: "*refere que está caminando, y asistiendo a aquagym*".

Regarding this last note, which the claimant stated was not true, it indicated that "*it was extremely harmful when going to the ICAM for the review of an incapacity (already recognized a few months earlier) and that it was denied in this review, since the medical examiner asked if I did aquagym and my answer was negative, he questioned my whole story*". The person making the claim states that in subsequent visits, he asked the doctor to correct this note, but he did not do it.

Along with his letter, the person making the claim provided, among others, the following documentation:

- Copy of the request with entry registration date 09/24/2021 to exercise the right to rectification or, where applicable, to delete the data.
- Traceability document corresponding to the period between 01/01/2021 and 01/06/2021, which shows the accesses to the claimant's clinical history, and specifically, also the access carried out by the doctor specializing in date 01/26/2021.
- Copy of proof of stay at the ICS, certifying the claimant's in-person medical visit on 01/26/2021.
- Copy of the plan of visits, complementary and analytical tests, where it is stated that, on 26/01/2021, the claimant had successive visits with the specialist doctor.
- Copy of the claimant's clinical course, where the reference to the medical visit dated 01/26/2021 is missing.

- Copy of a non-attendance report issued on 11/09/2019, by the Municipal Sports Center (CEM) of (...), according to which they did not record having sold any tickets or passes to the person making the claim and that, for therefore, it does not develop any activity.
- Copy of the proposed opinion issued by the Ministry of Labor and Social Security on 04/25/2018.
- Copy of the medical opinion of the request for permanent incapacity from the Catalan Institute of Medical Assessments (ICAM) issued on 02/08/2019.

2. On 02/02/2022, the claim was transferred to the ICS so that within 15 days it could formulate the allegations it deemed relevant.

3. On 02/21/2022, the ICS sent its statement of objections, in which it stated the following:

- That on 09/24/2021, the claimant requested the exercise of the right of rectification.
- That on 05/12/2021 a response is given to the person claiming in relation to his request, in which the letter of 30/11/2021 from the specialist doctor of the neurosurgery service is attached.
- That, by means of a letter dated 30/11/2021, the specialist doctor of the neurosurgery service gave an answer in relation to the data that was requested to be rectified.
- That in view of what was stated by the specialist, the request for rectification or deletion does not correspond to modifying the annotation corresponding to the visit of 05/03/2019 regarding that "*refiere que está caminando, y asistiendo a aquagym*", since it is not inaccurate or incorrect, nor are any of the circumstances foreseen to obtain the deletion of the data.
- That the information provided by the applicant does not prove the existence of an error.

The ICS provided the response letter from the specialist doctor dated 30/11/2021, in which he responded to the request for rectification made by the person making the claim, in the following terms:

- In relation to the visit of 03/05/2019, he explained "*(...) I want to express that I have no way to support your assistance, as I do not usually request records when such activities are carried out. But I regularly ask, in case of persistent pain, if they have done rehabilitation, either in a gym or Aquagym, and I don't ask for proof of attendance if this activity is done in a private center (...) With respect to not attending Aquagym, I express that the performance or not of said activity does not represent a test of recovery from the injury, because these are only exercises to strengthen the muscular structures damaged by a neural condition and these may or may not be effective*".
- Regarding the rectification of the annotation made on 05/03/2019 ( "*refiere que está caminando, y asistiendo a aquagym*" ) the doctor indicated that "*I did not consider his elimination since what was reflected in his medical history was commented on, although I repeat 'I cannot demonstrate his attendance at said recuperative activities' because I never request evidence of said activities.*"
- In relation \_ with the visit dated 01/26/2021, the doctor stated that "*Yes, it is true that in said visit I requested a medical discharge, no medical history or physical examination was performed, so it was not reflected in the medical history, but in the previous visit (08/04/2020), you stated lumbar pain and was waiting to be assessed in the Pain Unit*".
- The doctor added that "*Taking into account his illness and his request for discharge with sequelae, I made a review of his history, finding very discrete radiological signs of instability in the lumbosacral X- ray taken on 05/05/2020, for this reason I was willing to*

*request ” certain tests . ”In subsequent visits I informed her about her diagnosis and that she should undergo surgical intervention again. For this reason, he could not be discharged medically with consequences as was his wish”.*

The ICS provided various documentation.

### **Fundamentals of Law**

1.- The Director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1 , of the Catalan Data Protection Authority.

2.- Although the claim made by the person making the claim before the Authority referred to the lack of attention to his right to rectification or, in his case, to the right to deletion by the ICS, it is considered more adjusted to right to link it to the exercise of the right of rectification, to the extent that what the person claiming here intends is, on the one hand, the rectification of the note made by the doctor on 05/03/2019 who considers that is *“uncertain”* ; and on the other, that the face-to-face visit of 01/26/2021, which is not included, be included in his clinical course.

Having said that, the claim that is resolved here is made with respect to a request to exercise the right of rectification that was presented to the ICS on 09/24/2021.

Article 16 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 circulation thereof (in hereinafter, the RGPD), regulates the right of rectification in the following terms:

*“The interested party will have the right to obtain without undue delay from the controller the rectification of inaccurate personal data concerning him. Taking into account the purposes of the treatment, the interested party will have the right to complete the personal data that is incomplete, including by means of an additional declaration.*

For its part, article 14 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), determines the following, also in relation to the right of correction:

*“When exercising the right of rectification recognized in article 16 of Regulation (EU) 2016/679, the person affected must indicate in his request which data it refers to and which correction it has to be done . It must be attached , when be it necessary , the supporting documentation of the inaccuracy or character incompleteness of the data subject to treatment .”*

Also, regarding the rights contemplated in articles 15 to 22 of the RGPD, article 12.4 of the RGPD establishes the following:

*“4. If the data controller does not proceed with the request, it will inform you without delay, no later than one month after receiving the request, of the*

*reasons for its non-action and of the possibility of filing a complaint with a control authority and to take legal action."*

In relation to the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, regarding the protection of the rights provided for by the regulations on personal data protection, provides the following:

*"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within the established deadline, they can submit a claim to the Catalan Data Protection Authority."*

**3.** Having explained the applicable regulatory framework, it is then necessary to analyze whether the ICS resolved and notified, within the period provided for by the applicable regulations, the right of rectification exercised by the person making the claim, since precisely the reason for his complaint which started the present rights protection procedure, it was the fact of not having obtained a response within the period provided for the purpose.

With regard to the alleged neglect of the right to rectification that is the subject of a claim, it is proven that on 09/24/2021 a letter from the person making the claim was received by the ICS through which he exercised the right of rectification (and in his case, of deletion) .

In accordance with article 12.3 of the RGPD, the ICS had to resolve and notify the request to exercise the requested right within a maximum period of one month from the date of receipt of the request legality

Well, as can be seen from the documentation provided in this file, the ICS responded to the claimant's request made on 09/24/2021, by means of a letter dated 12/05/2021 2021, without this Authority having evidence of the date on which the documentation was received by said person.

In any case, it is notable that the ICS responded to the person making the claim when the one-month deadline provided for that purpose had already been exceeded.

Consequently, since the claim was based on the lack of response to the request to exercise the right of rectification, the present claim should be upheld. This notwithstanding what will be said below regarding the substance of the claim.

**4.** Next, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, rectification of the data in the terms requested by the person making the claim is necessary in this case.

As a starting point, it should be borne in mind that articles 16 of the RGPD and 14 of the LOPDGDD regulate the right of rectification as the right of the affected person to have inaccurate or incomplete data modified.

The right of rectification regulated in the RGPD and the LOPDGDD is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. This is why the limitations to this right of rectification must be

minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed. Thus, the causes of denial of the right to rectification are found in article 23 of the RGPD, which must be provided for *"through measures legislative"* (Article 23.1 of the RGPD).

Next, the two rectifications requested by the person making the claim are addressed separately.

4.1. About the data provided by the claimant during his medical visit on 03/05/2019.

First of all, the claimant requests the rectification of the entry incorporated into his medical history on 05/03/2019 regarding the fact that *"he says he walks and does aquagym"*, which he considers was not true.

To prove the existence of the annotation error in his clinical course, the claimant provides a certificate of non-attendance issued by the CEM of (...) on 09/11/2019, for the purposes of certifying that did not carry out any activity in that municipal center. At this point, it should be pointed out that this letter would only serve to certify that the person making the claim did not carry out any activity in that centre, but not in other centres.

For his part, the practitioner who included this annotation has confirmed its accuracy, in the sense that *"the reflection was commented on"*.

As things stand, in the present case there are two conflicting versions of what the claimant would have expressed during the visit of 03/05/2019. Well, to the extent that there are not sufficient elements in the present rights protection procedure to confirm the inaccuracy of this entry, the claim regarding the rectification of the entry dated 05/03/2019 in clinical course of the claimant.

4.2. About the visit dated 01/26/2021.

The claimant also requests that his clinical course be corrected to reflect the visit of 01/26/2021 with the same specialist doctor, which is not included.

The claimant provides various documentation to prove that on 26/01/2021 she was visited by a specialist doctor.

For its part, the ICS confirms the existence of this medical visit, but to justify the denial of the rectification it provides the letter from the claimant's doctor dated 11/30/2021, where he indicated that *"Yes, it is true that in said visit I was asked to leave the hospital, no medical history or physical examination was performed, so it was not reflected in the medical history, but in the previous visit (08/04/2020), you reported lower back pain and she was waiting to be assessed in the Pain Unit"*.

In relation to this reason for refusal, it is necessary to start from the consideration that the clinical history is configured in article 11.1 of the Catalan Law 21/2000, of December 29, on the rights of information concerning health and autonomy of the patient (Law 21/2000), and the clinical documentation as *"an instrument primarily intended to help guarantee adequate assistance to the patient"*. And, in article 9 of the same rule, it is pointed out that the clinical

history "collects the set of documents relating to the healthcare process of each patient while identifying the doctors and other healthcare professionals who have intervened."

In turn, article 10.1 of Law 21/2000 lists which data must be part of the content of the clinical history, specifically, in its section b) it lists which clinical care data must be part of it:

*"b) Clinical care data :*

*Physiological and pathological family and personal history.*

*Description of the disease or current health problem and successive reasons for consultation.*

*Clinical procedures used and their results, with the corresponding opinions issued in the case of specialized procedures or examinations, and also the interconsultation sheets .*

*Clinical course sheets, in case of admission.*

*Medical treatment sheets.*

*Informed consent form if applicable.*

*Information sheet provided to the patient in relation to the diagnosis and the prescribed therapeutic plan, if applicable.*

*Epicrisis or discharge reports , if applicable.*

*Voluntary discharge document, if applicable.*

*Necropsy report, if available.*

*In the case of surgical intervention, the operating sheet and anesthesia report must be included, and in the case of childbirth, the registration data." [The emphasis is by this Authority.]*

Therefore, the clinical history of each patient must reflect the description of the disease or the current health problem and the successive reasons for consultation, so that in the specific case the medical visit of 01/26/2021 should be recorded where the claimant had applied for discharge with sequelae. The need to reflect this visit in the clinical course is reinforced by the fact that the doctor specified in his letter of 11/30/2021 that, following this request, he reviewed the medical history of the claimant " *encontraando signos radiológicos muy discretos de inestabilidad en Rx lumbosacra hecha on 05/05/2020* " and that, for this reason, he requested several tests .

Given the above, the present claim should be considered in relation to the rectification of the clinical course of the claimant, so that the medical visit that took place on 01/26/2021 and also its content is recorded.

**5.** In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for protection of rights, the manager of the file must be required so that within the term of 10 days to make effective the exercise of the right, regarding the rectification of the lack of the note and the comment regarding the face-to-face visit on 01/26/2021. In accordance with this, it is necessary to require the claimed entity so that within 10 counting days from the day after the notification of this resolution, proceed to rectify the clinical course of the person making the claim in order to that the visit of 01/26/2021 and its content be reflected in terms of the reason for consultation, the assessment of the medical professional, as well as the actions derived from this consultation such as those indicated by the same medical professional in his letter of 11/30/2021 (review of medical history and request for evidence) . Once the right of rectification has taken effect



in the terms set out and the person making the claim has been notified, in the following 10 days the claimed entity must give an account to the Authority.

For all that has been stated, I resolve:

- 1.-** Declare the response provided by the Catalan Institute of Health as extemporaneous, by which the request for rectification made by Mrs. (...), by not having responded within the period established in the applicable regulations.
- 2.-** Estimate the claim with regard to the rectification of the clinical course of the claimant in relation to the visit of 01/26/2021, in accordance with the provisions of the 5th foundation of law, and dismiss it with respect to the sole request for rectification of the annotation contained in his clinical course in relation to the medical visit dated 03/05/2019, for the reasons explained in the 4th legal basis.
- 3.-** Request the Catalan Institute of Health in order to proceed with the rectification of the clinical course of the claimant in the terms set out in the 5th legal basis, and certify before this Authority that it has complied with this requirement within the period there pointed out.
- 4.-** Notify this resolution to the Catalan Institute of Health and the person making the claim .
- 5.-** Order the publication of the Resolution on the Authority's website ( [www.apd.cat](http://www.apd.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 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or directly file an administrative contentious appeal before the administrative contentious courts of Barcelona , 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 administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,