File identification

Resolution of the rights protection procedure no. PT 120/2022, relating to the Health Care Institute (IAS).

Background

1. On 12/23/2022, the Catalan Data Protection Authority received a letter from Mrs. (...) (from now on, the claimant), for which he made a claim for the alleged disregard of the right to delete data contained in his medical history, which he had previously exercised before the Assistance Institute Health (IAS).

In particular, the claimant pointed out that he had received the response from the IAS rejecting his request to exercise the right to delete a medical diagnosis of the year (...), which he considered "erroneous and hasty (...), and with many errors in the clinical history". In relation to this, he requested that said medical diagnosis be deleted and that the health professionals in charge of his most recent medical follow-up re-evaluate and rectify it.

The claimant provided various documentation relating to the exercise of this right:

- A letter dated (...), addressed to the person making the claim and signed by (...) of the User Service Office (Parc Hospitalari Martí i Julià) of the IAS, with the following answer :

  "Dear Ms.,

  You submitted a request for Informational Self-Determination Rights (Suppression/cancellation) regarding your own clinical history before the Health Care Institute.

  In compliance with Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights; Law 41/2022, of November 14, basic regulation of patient autonomy and rights and obligations in terms of information and clinical documentation; and Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy and clinical documentation, and in response to your request I would like to inform you that the professionals who authored the course clinic in respect of which he requested the deletion do not consider it appropriate to attend to his request, given the clinical relevance of its content due to the monitoring of what is the subject by the different doctors involved.

  Likewise, to remind you that it is important for your health care to have access to relevant data on your health from any health center where you may receive care.

  All this, without prejudice to the legal retention periods for the different medical documentation by the health centers.

With this communication we consider your request resolved, although against this diligence you can claim the protection of the Catalan Data Protection Authority (...)."

- Copy of a clinical report dated (...), signed by a professional clinical psychologist and psychoanalyst from the health center (...), certifying that the claimant "is being treated in the Psychiatry unit and Psychology of this health center, since the day (...)" and that "This same year, the patient has shown a favorable evolution."

- Copy of a clinical report dated (...), signed by a professional from the same health center (...), which, among other things, indicated that "(without expert value)" the claimant " continues a psychiatric and psychological follow-up" in the referenced health center.

2. On 01/18/2023, the claim was transferred to the Institute of Health Care (IAS), so that within 15 days it could formulate the allegations it considered relevant.

3. On 08/02/2023, the IAS formulated allegations by means of a letter dated 06/02/2023, in which, in summary, it stated the following:

- That "On (...) the lady (...) requested from the IAS User Service Unit the cancellation of three diagnoses from her medical history, as well as the reports related to these, from the year (...) to the year (...) (approximately 200 reports)."

- That "On (...) the User Service Unit transferred this request to the (...) service of the Acute Psychiatry Hospitalization Unit of the IAS and to the (...) of the Gironès Mental Health Center in order to analyze the circumstances of the case from a medical point of view and the subsequent assessment of the patient's therapeutic interest. Likewise, the consultation on the deletion deadlines was carried out at the (...) of the Medical Documentation Unit of the IAS."

- That "On the days (...) the User Care Unit received the respective responses to the reports indicating the inadvisability of deleting the aforementioned diagnoses and reports given that they are of particular relevance to the patient so for his health and essential for future professionals who will have to attend to him if necessary."

- That "On (...) the (...) of the Medical Documentation Unit informed of the deletion deadlines established in law 21/2000, of December 29, on the rights to information concerning health and the autonomy of the patient, and the clinical documentation, which in its article 12 establishes the obligation to keep the discharge reports and those of complementary examinations for 15 years from the discharge date of each care process. "

- That "Given that the oldest reports whose deletion is requested, date from the year (...), the retention period established by law has not yet been met."

- That, consequently, "On date (...), eleven days after receiving the request, the User Service Unit responded to Mrs. (...), informing her of the rejection of the data deletion request in accordance with the considerations set forth."

The claimed entity accompanied its written response with the following documentation:

- Copy of the request to exercise the right of deletion/cancellation, initially registered with the IAS on (...), through which the person making the claim requested the deletion of the "diagnoses and reports related to these: Bipolar disorder with manic episode, hypomania , and anxiety disorder, from (...) to (...) (approx. 200 reports)."

- Copy of the email from (...), sent by (...) of the Acute Hospitalization Service of the IAS, in response to the request for prior information from the Care Unit IAS user, in which he indicates the following:

  "With regard to this request, and after reviewing the case, I consider that in the reports that the patient requests to delete (all), there is clinical information of particular relevance to the patient in terms of her health and essential for future professionals who have to attend to it (if necessary).
  In this sense (...), data regarding diagnosis, treatments and poor tolerance to these are important enough to ensure good possible future care."

- Copy of the e-mail from (...), sent by the (...) of Medical Documentation of the IAS to the User Service Unit of the IAS, which replied as follows:

  "Regarding the cancellation request, I would like to remind you of the retention periods for the clinical history according to Law 16/2010, of June 3, amending Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation.

  Keep for 15 years from the date of registration of the healthcare process:
  -Informed consent
  - Discharge reports
  -Surgical reports and birth records
  -Anesthesia data
  -Complementary exploration reports
  - Necropsy reports
  - Pathological anatomy reports

  Keep for 5 years from the date of registration of the healthcare process:
  The rest of the documentation: clinical course (...)"

- Copy of an email from (...), sent by (...) from the Mental Health Center of Gironès and Pla de l'Estany, for which the following was the answer:

  " This lady is not from our care area. It is from SSMM (...). I don't know why he was visiting with us. She is diagnosed with Bipolar Disorder. The last visit to our service was in (...) after an outpatient visit by our psychiatry resident. (...)

  In the case of this lady, I do not think it is a responsible action to delete key data from her clinical history that may influence the development of her therapeutic trajectory. (...)"

- Copy of the letter from (...), signed by (...) of the IAS User Service Office, in response to the "deletion/cancellation" request " formulated by the person claiming the day (...). The content of this letter has been transcribed in the 1st antecedent.

Fundamentals of law

1. The director of the Catalan Data Protection Authority is competent to solve 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. Article 17 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 (RGPD), regulates the right of deletion in the following terms:

> "1. The interested party will have the right to obtain without undue delay the deletion of the personal data concerning them from the controller, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:
> a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
> b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;
> c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2;
> d) personal data have been treated unlawfully;
> e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;
> f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1.
> 3. Sections 1 and 2 will not apply when the treatment is necessary:
> a) to exercise the right to freedom of expression and information;
> b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge;
> c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;
> d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment, or
> e) for the formulation, exercise or defense of claims."

Article 15 of Organic Law 3/2018, of December 5, on protection of personal data and guarantee of digital rights (LOPDGDD), determines the following, also in relation to the right of deletion:

> "1. The right of deletion will be exercised in accordance with the provisions of Article 17 of Regulation (EU) 2016/679.
> 2. When the deletion derives from the exercise of the right of opposition in accordance with article 21.2 of Regulation (EU) 2016/679, the person in charge will be able to retain the identification data of the affected person necessary in order to prevent future treatments for the purposes of direct marketing."

Article 32 of the LOPDGDD regulates the duty to block deleted data in the following terms:

> "1. The person responsible for the treatment is obliged to block the data when carrying out the rectification or deletion.
> 2. The blocking of data consists of the identification and reservation of these, with the adoption of technical and organizational measures, to prevent their treatment, including display, except for making the data available to judges and courts, the Public Prosecutor's Office or the competent public administrations, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the limitation period thereof.
> After this period, the data must be destroyed.
> 3. Blocked data cannot be processed for any purpose other than that indicated in the previous section. (...)"

In relation to the rights provided for in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD establish the following:

> "3. The person in charge of the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended another two months if necessary, taking into account the complexity and number of applications. 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 whenever possible, unless the interested party requests that it be provided in another way.
> 4. If the person in charge of the treatment does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the possibility of submitting a claim before a control authority and exercise judicial actions.
> 5. The information provided under articles 13 and 14 as well as all communication and any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the person in charge may:

> a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or
> b) refuse to act in respect of the request.
> The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request.
> (…)"

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 exposed the applicable regulatory framework, 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, in this case the data should be deleted in the terms requested by the person making the claim .

Before analyzing the merits of the claim, it is necessary to indicate that the claim presented to this Authority on 12/23/2022 is against the denial of the exercise of the "right to deletion", in relation to a diagnosis which the claimant considers "erroneous and hasty (...), and with many errors in the medical history". In this sense, the claimant asked to exercise the right to deletion and also the right to rectification "of the diagnosis by professionals" who would be doing "the follow-up and treatment".

However, the literal terms with which the claimant requested the exercise of the right of deletion at the IAS, on date (...), differ from what he set out in the claim presented to this Authority on 12/23/2022.

In the request dated (...) presented to the IAS, the claimant requested the deletion of "diagnoses and reports related to these: Bipolar disorder with manic episode, hypomania , and anxiety disorder, from (...) to (...) (approx. 200 reports)", without making any reference to the existence of incorrect diagnoses and/or data in your medical history.

Therefore, this resolution only analyzes the issue related to the right of deletion exercised by the claimant before the IAS, since the exercise of the right of rectification was not part of her initial request made before the IAS , whose response is the subject of this claim.

As a starting point, it should be borne in mind that the right to deletion is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data (Article 18.4 EC).

Article 17 of the RGPD defines the right to deletion as the right of the affected person to obtain from the controller the deletion of the personal data affecting him, if any of the circumstances provided for in article 17.1 occur of the RGPD and provided that none of the exceptions noted in articles 17.3 and 23 of the RGPD apply.

As indicated in the first antecedent, through the letter of (...) the claimed entity responded to the request made by the claimant on (...) and informed her of the impossibility of deleting the personal data that appear in your clinical history, in accordance with Law 41/2002, of November 14, basic regulation of patient autonomy and rights and obligations in the field of clinical information and documentation, and Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation.

Regarding this, the response states that the reasons why the deletion of the diagnosis and medical reports are not appropriate are the following: "the professionals who authored the clinical course in respect of which the deletion was requested do not consider it appropriate to attend to their request, given the clinical relevance of its content on the part of the different doctors involved", and that in order to guarantee adequate health care, it is necessary " access to those relevant data on your health from any health center in which you may be served". It is also informed about the existence of "legal retention periods for the different medical documentation" that prevent the claimant's deletion request from being made effective.

Apart from the above, as part of the hearing procedure of this guardianship procedure, the claimed entity detailed the actions that the IAS had carried out to respond to the claimant's request. Regarding this, the User Service Unit transferred the request from (...) "to the (...) service of the Acute Hospitalization Unit of Psychiatry of the IAS and the (...) of the Mental Health Center of Gironès in order for them to analyze the circumstances of the case from the medical point of view and the subsequent assessment of the patient's therapeutic interest", which, finally, they concluded that it was not appropriate to delete the "diagnoses and reports" indicated by the claimant in his request for (...), "given that they are of particular relevance to the patient in terms of her health and essential for future professionals who have to attend to it if necessary". The claimed entity made "the inquiry about the deletion deadlines to the (...) of the Medical Documentation Unit of the IAS", which pointed out that "law 21/2000, of December 29 , on the rights of information concerning the health and autonomy of the patient, and the clinical documentation, in its article 12 it establishes the obligation to keep the discharge reports and those of complementary examinations for 15 years from registration date of each care process."

As reported by the IAS, health regulations oblige to keep part of the clinical information for five or fifteen years, or even for a longer period depending on the document in question, from the date of the 'attention received.

Article 12.4 of Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation, in its wording given by Law 16/2010, of June 3, amending Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and the clinical documentation, establishes, for what is of interest here, the following in relation with the preservation of the clinical history:

> "4. The following documentation must be kept from the clinical history, together with the identification data of each patient, for at least fifteen years from the date of discharge of each care process:

a) The informed consent forms.
b) The discharge reports. c) The surgical reports and the birth record. d) The data relating to anesthesia. e) The reports of complementary examinations. f) The necropsy reports. g) The reports d) 'pathological anatomy.

(...)

6. The documentation that makes up the clinical history not mentioned in section 4 can be destroyed once five years have passed from the date of registration of each care process.

7. Notwithstanding what is established in sections 4 and 6, the documentation that is relevant to care effects, which must incorporate the document of advance wishes, and the documentation that is relevant, especially for epidemiological purposes, research or organization and operation of the National Health System. In the processing of this documentation, the identification of the affected persons must be avoided, unless anonymity is incompatible with the purposes pursued or the patients have given their prior consent, in accordance with current regulations on Protection of personal information. Clinical documentation must also be kept for judicial purposes, in accordance with current regulations.

8. The decision to keep the clinical history, in the terms established by section 7, corresponds to the medical management of the health center, at the proposal of the doctor, with the prior report of the unit in charge of managing the clinical history in each center. This decision corresponds to the doctors themselves when they develop their activity individually."

In accordance with the above, the claimant's request to delete the medical diagnosis and the medical reports related to this diagnosis, which date from the year (...) to (...), is not it complies with the provisions of health legislation, since the legal term of 15 years for which it must be kept has not expired.

Therefore , this Authority considers that the IAS acted in accordance with the law by dismissing the request to delete the date (...), and that it gave the person making the claim a specific and adjusted answer to what is provided for in the health legislation, having taking into account the importance of keeping your "relevant data" of health to ensure adequate health care "from any health center."

resolution

For all this, I resolve:

1. Dismiss the guardianship claim made by Mrs. (...) against the Institute of Health Care (IAS).

2. Notify this resolution to the Health Care Institute (IAS) and the person making the claim.

3. Order the publication of the resolution 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 interested parties may file an appeal 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 the LPAC. You can also 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, governing the contentious administrative jurisdiction.

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

The director