

## **DECISION:**

### **For the issuing procedure of the authorization for personal data processing regarding the health state, in the conditions of the art.9 paragraph (3) and (4) from the Law no. 677/2001 with regard to the personal data processing and on the free movement of such data**

Issued in applying the provisions of the art.21 paragraph (3) letter c) reported at the art.9 paragraph (3) and (4) from the Law no. 677/2001 with regard to the personal data processing and on the free movement of such data, with the subsequent amendments and completions.

Seeing the Approval Paper no. 14 from November 18<sup>th</sup>, 2008 of the Authorization Bureau within the National Supervisory Authority for Personal Data Processing referred to the proposition of issuing a decision regarding the recognition of an adequate personal data processing level of the health state, in absence of the written and unequivocal consent of the person in question,

Taking into consideration the provisions of the European Parliament and European Council Directive 95/46/CE, with regard to the processing of personal data and on the free movement of such data, according to which the member states can derogate from the interdiction to process special data when this is justified by reasons of important public interest to some domains such a public health or health insurance.

Considering that in some circumstances the data subject is in the impossibility of given its consent or refuses to give it for the processing of his personal data, especially those regarding the health state.

Considering that the fundamental right to an intimate, family and private life can be limited with the purpose of realizing some public interest, as well as for protecting the public health or that of protecting life, physical integrity or health of other person than the data subject,

Seeing the exception under the art.7 paragraph (2) from the Law no. 677/2001 with the subsequent amendments and additions, according to which the data processing regarding the health state can be done when the law expressively provides, with the purpose of protecting an important public interest, with the condition that the processing

is done with respecting the data subject rights and also of the other warranties provided by the Law no. 677/2001,

Seeing the warranties provided by the Law no. 677/2001 with the subsequent amendments and additions, according to which the data processing regarding the health state can be done only by or under the supervision of a medical person submitted to the professional secret, or by the other person submitted to an equivalent obligation regarding keeping the secret.

Taking into consideration the principles established by the art.4 from the Law no. 677/2001, with the subsequent amendments and completions, according to which the persona data must be processed in good faith and according to the effective legal provisions, collected for determined purposes, explicit and legitimate.

Considering the fact that the art.22 from the Law no. 677/2001, with the subsequent amendments and completions, imposes the operator the obligation to notify the National Supervisory Authority for Personal Data Processing before doing any processing or of any processing ensemble, having the same purposes

By virtue of art. 3 paragraph (5) and (6) from the Law no. 102/2005 with regard to setting, organization and functioning of the National Supervisory Authority For Personal Data Processing, with the subsequent amendments and completions, named hereinafter the National Supervisory Authority, as well as of the art. 6 paragraph (2) letter b) and art. (8) from Organization and functioning Regulation of the National Supervisory Authority For Personal Data Processing, approved through the Senate Permanent Bureau Decision no. 16/2005,

**The president of the National Supervisory Authority For Personal Data Processing** issues the present decision:

**Art. 1** (1) Processing the personal data regarding the health state, with the purpose of protecting the life, physical integrity and health of other persons than the data subject or of the public in general, in the situations in which the data subject did not consent in writing and in an unequivocal way, can be done by the operator only after him obtaining the authorization of the National Supervisory Authority.

(2) The authorization model referred to in the paragraph (1) is established through the annex being integral part of the present decision

**Art. 2** (1) In the authorization issuing process provided in the art. (1) the following conditions must be respected:

a) Notify the National Supervisory authority in the conditions of the art.22 from the Law no. 677/2001 with the subsequent amendments and completions, or where applicable by the completion/amending of a previously registered notification.

b) filling a solicitation together with the exculpatory documents containing at least the following information: the purpose of data processing, category or categories of the in question persons, personal data processed, estimated data for completing the processing operation, collecting source of the personal data, description of the data processing conditions and, where applicable of the reasons justifying the emergency.

(2) If the solicitation provided in the paragraph (1) letter b) is incomplete, the National Supervisory Authority can solicit information and supplementary documents.

**Art. 3** If the conditions established by the art 1 and 2 are not fulfilled, the National Supervisory Authority will instruct the solicitor in that direction.

**Art. 4** (1) For issuing the authorization, the National Supervisory Authority solicits for the consultative notice of the Romanian College of Physicians.

(2) The provisions of the paragraph (1) are not applicable in case of the existence of justified emergency reasons , according to the art. 2.

**Art. 5** This Decision shall be published in the Romanian Official Gazette, Part I and becomes effective starting February 1<sup>st</sup>2009.

**The President of the National Supervisory Authority for Personal Data Processing,**

**Georgeta Basarabescu**

No. 101 from December 29, 2008

**AUTHORIZATION**

**No. .... From:...**

**regarding the health state processing of personal data, in the conditions of the art. 9 paragraph (3) and (4) from the Law no. 677/2001 with regard to the personal data processing and on the free movement of such data**

*By virtue of art.21 paragraph (3) letter c) reported at the art. 9 paragraph (3) and (4) from the Law no. 677/2001, with the subsequent amendments and completions,*

*Taking into account:*

Demand no. from:...

Presented by

Processing purpose:

.....

Category or categories of the persons in question:

.....

processed personal data:

.....

Estimation date for completing the processing operations:

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Data collecting source of personal data

.....

Data processing conditions:

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Reasons justifying the emergency:

.....

Solicit the consultative notice of the Romanian College of Physicians.<sup>1</sup>

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<sup>1</sup> Except the emergency reasons.

**The President of the National Supervisory Authority for Personal Data Processing,**

***AUTHORIZES***

Processing of personal data regarding the health state, done by .....<sup>2</sup>, processing notified with the no. ....<sup>3</sup>.

Processing of the personal data outside the limits established by the authorization is forbidden.

The present authorization does not exonerate the operator from accomplishing the other obligations incumbent under the Law no. 677/2001, with the subsequent amendments and completions, including the obligation to be subjected to the control by the National Supervisory Authority.

According to the law, the National Supervisory Authority can dispose of any measure where it is established the breach of the operator's obligations.

**PRESIDENT,**

**Georgeta Basarabescu**

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<sup>2</sup> Operator name/denomination

<sup>3</sup> Specify the notification registration number in the personal data processing evidence register..