

## Query from the Child Psychiatric Department of Hospital Tzaneio to the Juvenile Prosecutor of Piraeus

\* Query: Kottorou Dimitra Opinion: Petros Georgios

### Summary.

*Query: In cases where a child psychiatric evaluation has been carried out at our Department upon order of the Juvenile Prosecutor's Office, there have been instances when either both parents of the juvenile assessed or only one of parents (when there is no joint custody) request to receive a copy of the evaluation or the whole relevant file. We request for your opinion, in accordance with Article 25 par. 2 subpar. b of of Law 1756/1988, as to whether, in these specific cases, the administration of requested copies from our Department to either both parents or to one of them constitutes an offense of breach of official privacy (Article 252 of the Penal Code), breach of professional secrecy (Article 370 C of the Penal Code), breach of professional confidentiality (Article 371 of the Penal Code) or breach of personal data (Article 38 par. 2 of L. 4624/2019). Your opinion will greatly help out work with these evaluations.*

*Privilege to information and its restrictions. Keeping medical records, processing data and access to medical records by the patient or third parties. Juvenile Prosecutor's competence for ordering a child psychiatric evaluation. The material collected during the child psychiatric evaluation becomes the content of a social record kept in a special file in the Juvenile Prosecutor's Office until the juvenile comes of age and is not subject to the general provisions of the Code of Criminal Procedure regarding procedural limitations for processing criminal files.*

*Disclosing of the diagnosis to the parents of the minor (or to the person in custody). Request from the parents of the juvenile (or the custodial parent) to the Child Psychiatric Department of the Hospital for a copy of the child psychiatric evaluation carried out following a prosecutor's order or for a copy of the entire relevant file of the child psychiatrist. The Juvenile Prosecutor shall be solely responsible for issuing copies or not, on the basis of specific criteria. The provision of the requested copies by the Hospital or the treating physician - child psychiatrist shall constitute the offenses of breach of duty, breach of official secrecy and breach of professional confidentiality.*

**Keywords:** Access to the patient's medical file, receipt of a copy of the child psychiatric assessment, Juvenile Prosecutor, Child Psychiatric Hospital, breach of duty

In response to the above, we forward the attached opinion No. 9/10.06.2020 of the Juvenile Prosecutor, Mr. Georgios Petros, and request for your actions.

In response to the question posed in your document (No. 7109 dated 21-5-20) regarding the provision to parents of a copy of the evaluation or the entire relevant file of the child psychiatric evaluation upon order of the Public Prosecutor, we advise you the following:

According to the provisions of articles 5A par.1, 9a, 21 par. 1a, 3, 25 par. 1, 87 par. 1, 2, 88 par. 1 and 96 par. 3 of the Constitution: "5A.1. Every person shall have the right to information, as provided by law. Restrictions on this privilege may be imposed by law only, if they are absolutely necessary and justified for reasons of national security, combatting crime or the protection of the rights/privileges and interests of third parties... 9A. Every person shall have the right to legal protection against the collection, process and use, in particular by electronic means, of their personal data as provided by law. The protection of personal information shall be ensured by an independent authority, which is established and operates as specified by law... 21.1. The family, as the foundation of the preservation and advancement of the Nation, as well as marriage, motherhood and childhood shall be under the protection of the State... 3. The State shall ensure the health of citizens and take special measures for the protection of youth, elders, persons with disability and for the care of the destitute... 25.1. The rights of the human being, as an individual and as a member of the society, as well as the principles of the welfare state rule of law shall be guaranteed by the State. All bodies of the State shall be obligated to secure their unhindered and effective exercise. These rights shall also apply to cases of individuals to which they are appropriate. Restrictions of any kind which, according to the Constitution, may be imposed on these rights must be provided either directly by the Constitution or by law, should a reservation exist in the latter's favour, and should respect the principle of proportionality... 87.1 Justice shall be administered by courts composed of regular judges who enjoy functional and personal independence. 2. The judges shall perform their duties according to the Constitution and the law and under no circumstance will they be obliged to conform with provisions which are set to violate the Constitution... 88.1 Magistrates shall be appointed by presidential decree (PD), according to the law that defines the qualifications and the procedure for their selection and shall be ap-

\* The opinion was addressed to the Child Psychiatric Department of the "TZANEIO" Hospital, following the question he had asked the Head of the Department of Juvenile and Domestic Violence of the Prosecutor's Office of First Instance Piraeus, Pedhria, Pedrochia15, Kottorou Dimitra and the Scientific Team of the Department (contact phone: 2104536107).

pointed for life ... 96.3 Specific laws shall regulate matters pertaining to the juvenile courts. Provisions of articles 93 (2) and 97 need not apply. The judgments of these courts may be pronounced in camera..." Furthermore, based on the provisions of articles 98 and 99 of PD 28/15: "98. (Article 1 of Law 3418/2005) 1. A Medical practice is defined as a procedure aimed, by means of any scientific method, at the prevention, diagnosis, treatment and restoration of a person's health. 2. Medical practice can also have research purpose as long as a more accurate diagnosis, rehabilitation and/or improvement of the health of persons and the advancement of science is sought thereby. 3. The meaning of 'medical practice' shall also include written prescription, doctor's prescription for all types of paraclinical examinations, the issuance of medical certificates and, in general, the counselling and support of the patient. 4. According to the Medical Code of Ethics: a) 'patient' shall include every user of the healthcare system, b) 'intimate' shall include all blood relatives or in-laws in a linear line, foster parents and foster children, wives and husbands, permanent companions, brothers and sisters, brothers' and sisters' husbands and wives and permanent companions, as well as the guardians or tutors of the patient and all those subject to guardianship. 5. The provisions of the present chapter shall apply to medical practice and the services rendered in primary, secondary and tertiary healthcare in the public or private sector whether in the manner or the form of the medical practice, privately, in groups, or as a medical company, or on a freelancer basis. 99 (Article 14 of Law 3418/2005) 1. The doctor shall be obligated to keep medical records, in an electronic or other form, of facts that are inextricably or causally connected to the illness or the health of his/her patients. The provisions of Law 2472/1997 shall apply in respect of the keeping and processing of such records. 2. Medical records must include the given name, surname, father's name, gender, age, profession, patient's address, appointment dates, as well as any other essential information related to the care provided to the patient, including but not limited to, and depending on the medical specialty, the reason for the visit and their health issues, primary and secondary diagnosis or the treatment followed. 3. Clinics and hospitals shall also maintain in their medical records the results of all medical and non-medical examinations. 4. The obligation of medical record keeping shall apply: a) to private clinics and other primary healthcare units of the private sector, for a period of ten (10) years from the patient's last appointment and b) in all other cases, for a period of twenty (20) years from the patient's last appointment. 5. The doctor shall take all necessary measures to avoid the disclosure of any patient information and any data relating to their person, in the case of scientific publications. Where, due to the nature of the publication, it is necessary to disclose the identity of the patient or information that indicates or may lead to the identification of his/her identity, his/her special written consent shall be required. 6. The doctor shall keep their professional records in such a way as to ensure medical confidentiality and the protection of personal data. 7. Medical records should not contain judgments or comments about patients, unless they relate to their illness. 8. The patient shall have the right to access his/her medical records, as well as to receive copies of their medical records.

After the patient's death, the right to access and receive copies of their medical records shall be exercised by his/her heirs, as long as they are blood relatives up to the fourth degree. 9. No third party shall be allowed access to the patient's medical records. Access shall be exceptionally granted: a) to the judicial authorities and the Public Prosecutor's office in the course of their duties ex officio or at the request of a third party claiming a legitimate interest and in accordance with legal procedures; b) to other executive bodies of the Greek State which, based on their statutory provisions, shall have such right and jurisdiction. 10. The patient shall have the right to access, in accordance with relevant provisions, the national or international records where data concerning his/her person have been entered." Also according to the provisions of articles 13 par. 1, 5 and 28 par. 4, 5 of L. 3418/05: "13.1. The physician shall be obligated to keep strictly confidential any information that comes to their attention or is disclosed to them by the patient or third parties, within the framework of their duties, and which concerns the patient or his/her relatives... 5. Physicians performing the public services of auditing, inspection or expert opinion shall be exempt from the obligation of medical confidentiality only towards their principals and only as to the subject of the order and the other terms of its granting... 28.4. The psychiatrist shall be obliged to know and acknowledge that the person suffering from mental disorders is a rightful partner in the healing process. The therapeutic relationship shall be based both on the doctor's confidence and on mutual trust and respect, in order to allow the person suffering from mental disorders to participate in the decision-making process, according to his/her personal values and preferences. 5. The psychiatrist shall inform the person suffering from mental disorders about the nature of his/her condition, the therapeutic procedures, as well as any alternatives to them, as well as the possible outcome of the therapeutic procedures." According to the provisions of Article 10 paragraph 5, 42, 44 par. 1 subpar. a', m', 59, 84 of Law 4624/19: "10.5. The Authority shall not be competent to audit personal data processing carried out by judicial authorities and by order of the Public Prosecutor's office in the context of their judicial function and judicial duties, or of the processing classified personal data carried out for activities relating to national security... 42.1. The provisions of article 5 of the Code of Administrative Procedure concerning the issuance of documents by public sector bodies that fall within the scope of article 1 of the above Code, as well as other provisions concerning the issuance of documents by the respective body or authority or service shall remain unaffected where the contents of these documents constitute personal data. 2. The provisions of Article 22 of the Code of Courts Rules and Judges' Status (Law 1756/1988, A' 35) shall remain unaffected... 44.1. For the purposes of this Chapter: 1) 'personal data' means any information relating to an identified or identifiable natural person (data subject); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, ID number, location data, online ID or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person and which allow or confirm the unique identification of that natural person, such as facial images or

dactyloscopic data... 13) 'data concerning health' means personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status... 59. In the context of criminal investigation and proceedings, the rights to being informed on the personal data processing, access, rectification or deletion and restriction, by virtue of Articles 54 to 56, shall be exercised in accordance with the provisions of the Code of Criminal Procedure, special procedural provisions and the Code of the Organization of Courts and the Status of Judges, as applicable... 84. Without prejudice to the definitions in Article 2, which makes explicit reference to the legislation relating to personal data, to the second to the last paragraph of the case b) of Article 2 on the communication and disclosure of personal data and subparagraph b' of paragraph 2 of Article 3, only in respect to the offenses described therein, to the third to the last subparagraph of indent b' of paragraph 2 of Article 13 of the above law on the installation and operation of surveillance systems, to Article 13(3), to the establishment of the Authority by paragraph 1 of Article 15, Article 18(2) and (3) and Article 21 concerning the imposition of administrative sanctions in accordance with Article 13 (4) of Law 3471/2006 (A'133) which remain in force, the Law 2472/1997 on the Protection of the individual from the processing of personal data shall be repealed." Moreover, according to the provisions of article 3(2), part b of Law 2427/97: "3.2. The provisions of this law shall not apply to the processing of data carried out: ... b) by the judicial authorities and on the Public Prosecutor's Office order and by the services acting under their direct supervision in the context of the administration of justice or to serve the needs of their operation for the purpose of attesting crimes punishable as felonies or misdemeanours, especially crimes against life and freedom, the economic exploitation of life, against personal freedom; against property, against property rights, violations of drug law, public order intrusion and acts against juvenile victims. The substantive and procedural criminal provisions in force shall apply to the above." Furthermore, according to the provisions of article 10(13) of the Rules of Procedure of the Internal Service of the Prosecutor's Office of Piraeus (Government Gazette 2609 / 28-6-19, issue B'), the Juvenile Prosecutors of Domestic Violence shall have, among other things, the competence to "order a social investigation and child psychiatric evaluations to be carried out, either ex officio upon written complaint, or at the official request of any interested party, and shall also take any other action they deem appropriate in the interest of the juvenile. The collected material shall constitute the content of a social record that is to be kept in a special file until the juvenile reaches adulthood and shall not be subject to the general provisions of the Code of Criminal Procedure regarding the procedural commitments on the processing of criminal cases..." According to the provision of article 1510(1) of the Civil Code: "The care for the juvenile is a duty and a right of the parents (parental care), that shall be exercised jointly. Parental care shall include custody of the person, management of wealth and representation of the child in any case or legal act or proceedings, concerning the person or his/her wealth." In addition, the child psychiatric evaluation shall aim at diagnosing and investigating the factors related to the mental

health of the juvenile. The child psychiatrist is the treating physician who observes, evaluates, diagnoses and announces the appropriate treatment plan. The child psychiatric assessment shall always be conducted in the best interests of the juvenile (child or adolescent). It may also contain information from other documents available to the child psychiatrist, e.g. data from social investigation, if any, data collected from the opinions of psychologists or other doctors, etc. It shall also include data from the child's developmental, medical, cognitive, family and social history, observations on the juvenile's behaviour, interview findings and findings from the use of assessment tools, summary of findings, conclusions and (any) specific treatment suggestions. "Psychiatric interview" is the art through which emotions are released and facts are highlighted, real and/or psychological. An essential condition for the promotion of the goals of a psychological-therapeutic approach is the establishment of an interpersonal relationship of confidentiality, mutual respect and trust between the juvenile and the child psychiatrist. In the context of this trust, the juvenile very often discloses facts regarding his/her parents or one of the parents and asks that they remain solely within the doctor's knowledge. It has been ascertained that in child psychiatric cases, issues of reckless behaviour (that is, the considerable probability that a minor patient will act recklessly toward himself/herself or toward third parties) also emerge when parents' behaviours are dangerous for the child's physical and mental integrity e.g. in cases of physical or sexual abuse (which do not only risk the child's physical integrity but are also an issue as they risk having serious psychological effects and complications to the child) or in cases when children are recipients of verbal and psychological violence within the family environment. In these cases, the protection and improvement of the juvenile's mental health becomes a priority. The diagnosis cannot be kept secret from the parents but caution must be exercised with the procedure followed to disclose it and it can be restricted when the protection of the juvenile's life and physical integrity is at stake. On the other hand, if the child psychiatrist detects suicidal ideation, parents must be informed immediately so that they can contribute to dealing with the problem. It should be noted that the Data Protection Authority (HDP) has stated that the right of access to a medical file may be restricted even to the patient, that is, data regarding the patient's health may not be given in all cases, especially when this is dictated by reasons of protection of the patient's health (Decision No. 7/2016 of HDP). Also, the patient's full access to his/her file may be denied when another party's physical or psychological condition may be impaired. In particular, where the file includes facts regarding another person as well, the official responsible for processing the file shall not be obligated to disclose data from the file, unless: a) the third person is a health professional or has contributed to the health file, b) the third party, although not a health professional, has explicitly given consent to the disclosure of this information or it is reasonable that it is disclosed given the special circumstances surrounding the health of the patient. Therefore, the child psychiatric evaluation may not be given to the juvenile's parents, when this is considered necessary for the protection and improvement of the child's mental health; however, parents must be informed of the diagnosis.

From the above mentioned and in the main line of thinking of the present article, the following conclusions can be drawn: the Public Prosecutor is a judicial official serving for life and his exercised duties have the status of a judicial function; additionally, he acts upon the reassurance of his functional and personal independence. As a representative of the State, he acts for the benefit of juveniles, which includes ordering for a child psychiatric evaluation to be conducted, which becomes part of the content of the juvenile's social record, it is archived in a special file at the Public Prosecutor's Office (Juvenile Division) until adulthood and does not fall under the Rules of the Code of Criminal Procedure regarding the procedural limitations for the processing of penal cases. The order for a child psychiatric evaluation is considered a judicial provision and the report compiled is considered part of the child's social record which is maintained in the above mentioned special file at the Prosecutor's Office. The Juvenile Prosecutor is responsible for either handing over or not, a copy of that child psychiatric evaluation, taking into consideration the juvenile's best interest as well as the necessity to protect simple and sensitive personal information which is included in the child psychiatric evaluation. Therefore, the hospital or the child psychiatrist cannot hand over a copy of the child psychiatric evaluation which has been compiled upon order of the Juvenile Prosecutor nor a copy of the documents of the related file to the juvenile's parents or to either of which (where they do not share joint custody of their underaged child); however, taking into account the right as well as the necessity for the parents to be informed and participate in the resolution of their juvenile's problems, the diagnosis must be announced to them so that the child's behaviours are clearly understood, more appropriate behaviours are formed toward the child and the therapeutic goals are better served based on the best interest and needs of the child. Handing these over is punishable and carries penal sanctions for breach of duty (article 259 of Penal Code), breach of official secrecy (article 252 of Penal Code) and breach of professional confidentiality (article 371 of Penal Code) against the assigned doctors and officers. In view of the above, the hospital and treating physician-child psychiatrist are obligated not to give copies of the child psychiatric evaluation which was compiled following the Juvenile Prosecutor's order or copies of the documents of the relevant file to the juvenile's parents or to one of them (where they do not have joint custody of their underaged child).

Piraeus, 10/6/2020  
 Juvenile Prosecutor of Piraeus

Georgios A. Petros  
 Public Prosecutor at the First Instance Court

#### Bibliographic documentation

Legislation  
 Constitution of Greece  
 Penal Code  
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 Civil Code  
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