

**Personal Data Protection Board’s Decision No. 2023/1130 dated 07/06/2023 Regarding “The Sharing of the Data Subject’s Medical Reports and Prescription Records by the Pharmacy with Their Former Spouse”**

**Date of Decision** : 07/06/2023

**Decision No** : 2023/1130

**Subject Summary** : Sharing of the individual’s medical reports and medication records by the pharmacy with their former spouse

The complaint submitted to the institution stated, in summary, that the individual in question had divorced his spouse, but that a custody case was pending between him and his ex-spouse; it was further stated that the court file revealed that the pharmacist had retrieved the individual’s hospital reports and medication records from the Medula system and provided them to the ex-spouse. The complaint requested that the necessary actions be taken in accordance with the Personal Data Protection Law No. 6698 (the Law).

As part of the investigation initiated regarding this matter, the pharmacist was requested to submit a defense, and in the response received, it was stated in summary that:

- The personal information of the individual in question was processed by the Medula system; pharmacies are connected to the Medula system, and during routine procedures, they can view prescription and medication lists by entering them into this system;
- The personal information recorded in the Medula system is processed by authorized staff or physicians at hospitals, outpatient clinics, and family health centers;
- In the event of any medical condition, the patient’s diagnosis and prescription reference number are recorded in the system by the healthcare facility; following this record, the patient visits the pharmacy to obtain the medications recorded in the Medula system,
- Pursuant to Article 5 of the Law, the individual must visit a healthcare facility to consent to the processing of their personal data in the Medula system; if consent is not given, the individual cannot access healthcare services, and the pharmacist does not enter data into the system but only dispenses medications based on the data already recorded in the system,
- The individual’s former spouse came to the pharmacy, asked the pharmacy staff about the individual’s medication reports, and stated that printouts of the reports were needed because they needed to be renewed; unaware that the parties had divorced and that there was a dispute regarding custody between them, the pharmacy staff member, intending to be helpful to the individual, provided the reports to the person they believed to be the individual’s spouse,

- The individual had been a long-time customer of the pharmacy; the medications prescribed in the reports were always picked up by their spouse at the pharmacy; after a period of time, the individual became ill, and the medications prescribed in the reports were again picked up by their spouse at the pharmacy each time; this situation occurred in 2018, 2019, 2020, and 2021, and that the individual consented to their spouse collecting their medications from the pharmacy in their name and on their behalf, submitting their prescriptions to the pharmacy, and handling prescription-related procedures on their behalf for four years,
- It was stated that the individual's spouse handled the prescription of medications, the procurement of medications, the follow-up of medical reports, and renewals, and that the individual had given prior consent to this situation; furthermore, the individual did not inform the pharmacist or state that they did not consent to this situation.

As a result of the investigation conducted regarding this matter, pursuant to the Decision No. 2023/1130 of the Personal Data Protection Board dated 07/06/2023;

- The Medula system is defined in the Regulation on Procedures and Principles Regarding the Review of Invoices and Payment of Fees by Healthcare Service Providers as an electronic information system implemented and operated by the Social Security Institution (SGK) for the purpose of collecting healthcare usage data and processing invoicing based on such data; It consists of four main sub-modules: Medula Pharmacy, Medula Optics, Medula Doctor, and Medula Hospital;
- Medula Pharmacy is an information technology service that verifies the compliance of prescription information for medications obtained by General Health Insurance beneficiaries from pharmacies contracted with the SGK with the rules established by the SGK, records this information electronically, and facilitates billing;
- All healthcare providers using the Medula system must transition to the e-report application; reports must be approved electronically by hospitals; and since the information regarding documents specified to be attached to electronic reports at is already included within the report, no additional documents will be requested, Since the reimbursement of medications tied to the report is subject to verification by both the Social Security Institution (SGK) and pharmacies, and to ensure the medication can be dispensed by contracted pharmacies, it is mandatory for pharmacies to track the patient's prior treatment and medication history as detailed in the report, since it is anticipated that failure to do so would result in the medication not being dispensed and potential patient hardship, permission must be granted for contracted pharmacies to view patients' medication history and report information from the past year via the Medula Pharmacy Dispensation System, Considering that the system does not permit pharmacies contracted with SGK to modify the information written on electronic prescriptions, and that pharmacists contracted with SGK may only substitute the medication listed on the prescription with an equivalent and reduce the quantity of the medication, it is concluded

that pharmacists exclusively contracted with SGK are authorized to use this system, the fact that accessing both personal data and special category personal data belonging to individuals by logging into the system using their Turkish ID numbers would not be sufficient to designate them as data controllers, and that the nature of the data processing activity in the specific case must also be examined,

- In other words, merely verifying patients' reports and medication information through this system does not, by itself, establish data controller status; furthermore, pharmacists are not responsible for determining the purpose or means of processing these data, nor are they responsible for the establishment or management of the Medula system,
- In this context, pharmacists are not authorized to conduct a separate data processing activity regarding the data entered into the Medula system during the medication dispensing process; they do not possess the characteristics of a data controller under Article 3 of the Law, and since they carry out data processing activities to complete payment processes, they hold the status of data processors,
- On the other hand, if data processing activities exceeding what is necessary for the function of the Medula system are carried out—for example, by printing reports and medication lists of relevant individuals to create a special folder regarding patients or by sharing such data with a third party—these individuals would hold the status of data controller,
- Article 6 of the Law, “(1) *Data regarding a person's race, ethnic origin, political views, philosophical beliefs, religion, denomination, or other beliefs, attire, membership in associations, foundations, or trade unions, health, sexual life, criminal convictions, and security measures, as well as biometric and genetic data, constitute special category personal data. (2) The processing of special category personal data without the data subject's explicit consent is prohibited. (3) Personal data listed in the first paragraph, excluding health and sexual life data, may be processed without the data subject's explicit consent in cases provided for by law. Personal data related to health and sexual life, however, may be processed without the data subject's explicit consent only by persons or authorized institutions and organizations subject to a duty of confidentiality, for the purposes of protecting public health, preventive medicine, medical diagnosis, treatment, and care services, as well as the planning and management of health services and their financing. (4) In the processing of special category personal data , it is a condition that the sufficient measures determined by the Board be taken.*”
- Article 12, paragraph 1 of the Law states: “*The data controller must: a) Prevent the unlawful processing of personal data, b) Prevent unlawful access to personal data, c) Take all necessary technical and administrative measures to ensure an appropriate level of security for the protection of personal data.*” The fourth paragraph of the same article stipulates that data controllers and data processors may not disclose personal data they

have obtained to third parties in violation of the provisions of the Law, nor may they use such data for purposes other than those for which it was processed,

- Article 5b.2 of the Good Pharmacy Practice Guidelines published by the Turkish Ministry of Health states: *“The pharmacist demonstrates professional and ethical conduct within the framework of applicable legislation and protects the patient’s privacy and confidentiality”*; Article 6.5 states: *“In the pharmacy, patient confidentiality is taken into account during consultations between the pharmacist and the patient, and such consultations are conducted accordingly”*; Article 10.c.5 states: *“The pharmacist presents the information to be provided to the patient or their relative in a structured manner; explains key points at the beginning of the consultation and reiterates them at the end.”*;
- The scope of confidential information that the pharmacist must keep is broad; information that, if disclosed to others, would cause the patient to suffer material or emotional harm, be stigmatized, excluded, or feel psychologically distressed is considered confidential;
- Patients may seek compensation for breaches of the duty of confidentiality; just as with other obligations, the pharmacist is liable under Article 116 of the Turkish Code of Obligations for the actions of persons employed by them in connection with the duty of confidentiality;
- A pharmacist who fails to provide information or documentation demonstrating that they exercised the necessary objective care and diligence in the selection, training, supervision, and instruction of their staff—or who, even if they did so, cannot prove that such actions would have prevented the harm—and who is deemed to have acted in violation of the duty of care in a manner that results in the sharing of the relevant individual’s health data with a third party, (the data controller) based on the assessment that they have failed to fulfill the obligation under Article 12 of the Personal Data Protection Law to take all necessary technical and administrative measures to ensure an appropriate level of security aimed at preventing the unlawful processing of personal data;
- It has been determined that the data controller, a pharmacist, shared special category personal data pertaining to the data subject—obtained through the Medula system—with a third party, namely his divorced spouse, without relying on any of the conditions for data processing set forth in Article 6 of the Law; In this context, it is assessed that the data controller failed to fulfill the obligation to take all necessary technical and administrative measures to ensure an appropriate level of security to prevent the unlawful processing of personal data, as stipulated in Article 12 of the Personal Data Protection Law . Consequently, an administrative fine of 50,000 TL is imposed on the data controller pursuant to subparagraph (b) of paragraph (1) of Article 18 of the Law (1)(b) of the Law,

- It has been decided to warn the data controller, the pharmacist, to exercise the utmost care and diligence in complying with the Law and the Board's Decision No. 2018/10 dated 31/01/2018 titled "Sufficient Measures to Be Taken by Data Controllers in the Processing of Special Category Personal Data" to ensure data security.