



## PSYCHIATRIC HEALTH RECORDS ARE NOT PUBLICLY AVAILABLE DOCUMENT

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### ABSTRACT

**Objectives:** The purpose of this paper is to present an invasion of privacy posed by the public availability of health data. State archives around the world seek to take over health records and archives. Above all, it is the archives of the war and post-war period and notes about celebrity. The social environment in which the individual lives is vital to its development and communication activities in relation to the other, which contributes respect for privacy, personal rights and dignity. The aim of data protection is to protect the rights of individuals in dealing with others with their data and respect for self-determination information. Privacy is a concept that allows each individual to decide to whom, how much and what information about yourself will provide. The fundamental human right to self-determination and the right information to protect the names and personal details, which ends with death. In order to protect the dignity of the individual after his death, the law provides protection to restrict access to personal information. With the help of preskriptivne methods I identify, on the basis of which the laws of privacy is protected health records for the extradition of the National Archives. In order to determine the protection of privacy in the archival documentary material, on the basis of descriptive methods shown in the management of health records after the death of the individual, as the holder of personal rights, is no more. I looked both domestic and foreign explanations court decisions relating to personal data and privacy, the Recommendation of the Council of Europe on access to official documents and legal rules and domestic laws of copyright works. The discussion follows the inadequacy of existing legislation and at the same time the necessity of regulating the health records of its management, providing security and data processing.

### INTRODUCTION

Public and private physicians are obliged by law to keep medical records of the health and illness of individuals. Another healthcare professional law imposes no such obligation. Legislation on the other hand, does not define the management of individual documents, nor does it provide privacy when health records fair archival material.

Research in the world touching privacy in health dokumntaciji the time of the patient's life. Archival research on the impact of health of the dossier in the National Archives on the privacy of individuals and their relatives but practically not. In my hypothesis hard to health records when it arrives in the state archives do not provide any more individual privacy. Since this is an important area of ensuring the dignity of the scope of protection of the health records of psychiatric patients it can not be neglected. Therefore, the law should also regulate this part of privacy in health records.

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Review Article



## HEALTH AND NO MEDICAL DOCUMENTATION

Records of personal data of persons who are important to the history of the nation gather around the world state archives, where they become publicly accessible after a certain time of the death of an individual subject and are an important source for research of recent history. Health documentation has a broader concept of medical documentation. Health documentation to create different profiles of health workers, while medical documentation generated only by a doctor. This collection of health data on individual creates, from birth to death of the person to whom it relates. Create by healthcare professionals in public and private hospitals. Contains records of the history and development of the disease, also on the same pathological signs of other family members, and the results of tests planned treatment and the nature and success of the treatment. In addition to sensitive information of the individual in history (the history of) diseases described health and personal information of other individuals. This is most common for family members, relatives and other close persons. Therefore, in accordance with Irish law on the protection of personal data controller of such health information need not be disclosed without the consent of the persons to whom the data relate. [1]

## HEALTH RECORDS AFTER DEATH

Based on a review of domestic legislation that the acquisition of information on health after death is regulated by the Patient's rights in Article 42. The patient is under the legal provisions of the right to self-determination and the ability to maintain dignity. Respect for the dignity but also represents the right to self-determination in life, who will be his health data is transmitted even after his death.

From the review of the justification for decisions of the European Court of Justice (ECJ) that the dignity of man is a fundamental part of European Community law. This assertion is confirmed in the grounds of the decision of the *Netherlands v European Parliament and the Council*, C-377 / 98[2] Human dignity is the minimum legal standard of civilization and the special status that people enjoy because of their humanity.

From the inspection of foreign judgments that health records of people with mental health problems, according to the Commission, should not never be accessible to the public, but only exhaustively listed beneficiaries of the law and other documents. [3]

Review Recommendations of the Council of Europe in terms of access to archives (recommendation), taking into account the number of facts requires governments of the Member States to take all necessary measures to enforce the law on access to archives. Recommendation further defines the protection of personal information relating to an identified or identifiable individual, and the court's opinion can not be supplied to the public without compromising the interests of the entity. As access to the archives of the right of individuals in a

democratic society, the state must regulate such access both to determine the general and unrestricted access to public archives and the general period of limitations on the availability. The recommendation referred to in Article 7 shall also provide exceptions to the general inaccessibility period, but must have a legal basis. Exceptions to the discovery of documents ensures accessibility to the public, are possible due to: the protection of significant public interest or the protection of the individual against disclosure of his private life. How long to use protection post mortem personality rights is an issue because this legislation does not specify.

Based on a review of copyright works and international law is not entirely clear what the concept of dignity really means and how this is done. The exact definition concept and realization is a guarantee of consistent exercise. Skeptical attitude towards human dignity, can lead to a reduction clauses. Therefore dignity will not be accepted as a whole, human rights, but will become unrealistic. [4] Many countries this area does not devote special attention. This is also confirmed by the fact that the posthumous privacy rarely tidy in modern societies and constitutions of civilized nations. The reason for the absence of regulation is that legal protection after the death of crashes. Termination of legal capacity of the individual after death, it means it's no longer the holder of rights.

German law is therefore in this context has developed three theories:

- Personal rights after the death of the individual remain,
- The deceased recognized the partial subjectivity,
- Transfer of rights to relatives. (Bismark theory)

Undeniably derives from the home of a copyrighted work duty archives preserve documents based on their historical, scientific and cultural significance. Thus, preserved archives can still serve for centuries; legal and natural persons for the official, legal, business and personal purposes [5]

Full research is focused on the presentation of legal sources governing the processing of medical data. The focus is on the processing of medical documentation (and the data in it) in the event that the National Archives designated as archival material.

## PERSONALITY RIGHTS

Overview of domestic literature led to the conclusion that in modern democracy is the right to information is very strong. Because information is liable to endanger the personal rights in a hierarchy of fundamental rights in the first place, before all other rights [6] Personality rights are valid against all (*erga omnes*), all are obliged to respect and encroachment on prohibited. Personality rights resulting from the creation of the member and his death also goes out; not by the power of inherited, transmitted to others and never outdated. In a modern democracy acquired the right to information could endanger the personal rights in a hierarchy of fundamental



rights in the first place, before all other rights and strong [6] Personality rights relating to personal property, including physical and mental integrity, health, honor, privacy and reputation. Personality rights can only benefit the persons to whom they relate. These rights are extinguished with the death of the holder, the transfer of these rights can not be, not in life, not after death [6] Processing of personal data at the time of life is governed by the Constitution of the Republic of Slovenia, the Law on the protection of personal data and the Patients Rights Act. The retention time of medical records is governed by the law of the databases in health care. This Act requires the operator of the storage of basic medical records, 10 years after the death of the individual. After this period, the storage of medical records is no longer a legal basis. If, after reviewing the National Archives determines that there is important information for the history of the nation, such documents would like to take to your collection. The right of access to such information is therefore necessary to consider each case separately, especially when compared with the legitimate interests of others [7].

#### **The foundation of personal rights after death**

The judgment Mephisto dignity of the deceased gets its foundation. At a time when it happened in Germany, the general rule on the protection of personal rights after the death of a person, as long as the memory of the deceased alive judgment [8]. The right to privacy against the state is realized only when the individual has the power itself determine the order of who knows what and when about him. The Federal Constitutional Court in its decision stated that the personal data by means of an information system today, regardless of the distance can immediately create in combination with other databases. The data thus collected can create a partial or nearly complete picture of the personality of the data without the knowledge of the person to whom they relate. Such uncertainty can lead to individual psychological pressure of public sympathy and protection of the court has been settled in full. Therefore, in assessing intrusion important to distinguish the processing of personal data without the individual's consent and against their will [9]. The right to privacy is intended "to protect the freedom of conduct and privacy". The Law on Personal Data Protection, which must be sufficiently sure that the conditions and in the areas of protection and contain appropriate legislative measures to protect the rights of individuals with clearly defined legal channels and procedures [10] of the Council of Europe recommendations on access to archives, published in Article 7 b statutory obligations of the State to determine the general unavailability of dates. The deadline for restricted access to archives can be extended to protect the individual against the publication of data from their privacy. Setting a deadline for closing or opening the historical documentation of who are the creators of documentary material, except in cases where this right is

granted to the National Archives [11]. The importance of the dignity of the individual after death were well aware of the directors of psychiatric hospitals in Slovenia. In the 9th meeting of the Association of Slovenian health care institutions, psychiatric hospitals are on, 10.2.2011 unanimously adopted conclusions on the basis of which the health records and archives stored in hospitals, which will ensure the security and availability of only to persons who have this legal basis. Health records, which has the character of archival material becomes publicly available for research and other purposes, 60 years after the death of an individual, or 150 years after creation of health records (at the date of death unknown). However, it should be noted that this decision was only a recommendation and not a binding nature.

#### **PUBLIC NOTICE OF HEALTH INFORMATION FROM THE ARCHIVES**

Certificate of necessity different health care documentation is the result of the Berlin National Archives. The National Archives in Berlin from the clinic for nervous disorders Karl Bonhoeffer in 2008 received 90,000 copies of the health records of patients treated in the period 1880-1960. This is a health documentation that has been given to the National Archives in Berlin. The records represented the time of the Third Reich and its victims. This is an important documentary material for research in the nation. During the archive health documents was also the health documentation Nakszynskega Klaus (artistic name Klaus Kinski), which is in a psychiatric clinic spent three days in September 1950, when he was 26 years old patient. After the release of medical information to see the German tabloid published medical data Klaus Kinski. The National Archives has relied on the protection of posthumous personality set of health records of hospitalized more than 30 years has passed; resulting in the National Archives is entitled to grant access. Klaus Kinski widows competent authorities of the archive has not been informed of the intention to release medical records to the public, nor to ask for permission [12]. Health records shall include a statement that the patient Kinski trust your doctor and psychologist, in which they were written confidential information between doctor and patient, and the patient has a legitimate expectation of privacy and confidentiality. The Supreme Court in this meeting with the delicate balance between the public's right to information, details about the lives of persons significant for Contemporary History and the right to privacy of the individual and the question of how long after the death of the person who is being protected individual rights [13] Opinions regarding the protection of personal rights, were very different. According to the authors Wenzel and Burkhardt-period in which it must be ensured protection of human rights in connection with the publication of texts and images of people, 30 years after his death [13].



Jung argued that there should be a period of death until the publication of sensitive personal data for 70 years. Restrict access to data by the death of a person of public interest means the legitimate interest of the public to know the facts of life of people in their time. Timing availability is therefore not based solely on the assumption that by increasing the time of death of the person requires less data protection. Since the constitution also protects the honor and the personality of the deceased, was. The German Federal Constitutional Court ruled that it is necessary to respect the dignity of the deceased. Such posthumous protection of personality arises from human dignity. The man in your life more freely behaving and take decisions if he knows that his dignity even after his death, the protection of the rights of a living person.

### HEALTH RECORDS IN THE NATIONAL ARCHIVES IN SLOVENIA

Privacy and access to archived medical records in the Republic of Slovenia regulated by the Law on the protection of documents and archives and archives The social environment in which the individual lives is vital to its development and communication activities in relation to the other (ZVDAGA) [14] In democratic countries that are otherwise readily available public information. Public access to personal data is a violation of constitutional rights, so the state must establish rules for the protection of individual privacy. In this context, it is a provision on the time of the unavailability of such documents and access rights. In relation to health data long-term lack of access to archives not prevent interference with the right to dignity of the individual after death.

On the basis of the applicable provisions of Article 63 ZVDAGA it is possible to become familiar with the medical information to anyone. The written request must contain only the purpose of processing the data obtained. Health information of the deceased in accordance with Article 65 of the ZVDAGA are also available to researchers for 10 years after the death of the individual. Such unrestricted access to medical information was unconstitutional, as evidenced by the dissenting opinion Horvat Korpič in the grounds of the decision of the Constitutional Court of Slovenia in the case of U-II-2 / 11 [15] The National Archives of the Republic of Slovenia wanted to take over health records from the occurrence of the Psychiatric Clinic of Ljubljana in 1881 and 1977, which is on the initiative of the operator collections (Psychiatric Clinic Ljubljana), the Constitutional Court ruled. The Constitutional Court suspended the implementation of all the provisions of ZVDAGA in the part where the public archives ranked medical records. From the reasoning of the decision UI-70/12 is therefore based on the importance of protecting health information from publicly available in order to protect the dignity of the person to which it relates [16].

### HEALTH RECORDS FOR RESEARCH PURPOSES

Health records from the first record operations performed in Egypt around 2750 BC to the present day, in the future an important source of development. Prohibition of research would therefore strongly influenced the development of the profession.

Despite the importance studied in the research activities are already subject to legal provision that researchers can receive only anonymized information. Due to the abundance of work on this aspect of privacy and ignores all researchers in clinical settings get health records with full personal data. Since the patient is not required, nor consent to the processing of data neanonymiziranih. For the processing of medical data obtained consent from patients with researchers fraud, since they are familiar only with the fact that the published data anonymous. To protect the privacy of research is required in addition to the laws of the change in the doctrine of researchers. In this play the biggest role as educational institutions that research grant. In practice however, that except in tracing genetic diseases accurate personal information is not required to researcher can identify the development of specific diseases and the impact of psycho-it.

Modern health archives would therefore allow research on anonymised data. Employees in the archives on the basis of a request to check whether there is any prohibition by the patient. Health information to prepare so that copies of it will not recognize the power of the individual. The task of the archive would also exercise the statutory provision recovery of medical records, according to a survey carried out and destroy such copies

### RULES

The public has a right to know the details of the private lives of public figures, but this is not our only on the performance of public functions. The right of public access to information is limited. In accordance with German law is absolute privacy is protected only in the home. Since the decision of the court is clear that without a doubt privacy is protected even in situations outside the home, where isolated area away from the public, the individual privacy clearly expected and wanted to be alone [17]. On the basis of the argument a simili ad simile is the same privacy and confidentiality are expected within the medical data. A dead man can not be a holder of rights. This is a legal vacuum. The general right to privacy, according to the German Federal Constitutional Court, the so-called "open event" because it is not specifically regulated by law. Health records shall contain highly sensitive data, individual confession, anxiety and feelings of the individual. It is because of the intrusion into the private sphere, I think that deserve special protection of such data even after the death of an individual. Based on Patient Rights Act [18] the patient has the option to prohibit access to health information after his death. Interpretation duty in the field of realization of patient



rights is not accessed health care professionals. Patients those rights do not know and do not know how to implement. On the other hand, the absence of a prohibition of the use of health information for research purposes make a significant contribution to the development of the profession. Despite the policies adopted by the EU, which requires informed consent in research purposes in practice the medical data to the presumption of consent. On the other hand, the Republic of Slovenia, health information managers do not have complete control over the management of health information in paper form. Also, research shows that individuals influence on the processing and security of health data for the last 30 years has strongly decreased. Quality of life of the individual and his descendants depends on the degree of legal protection of personality rights. Personality rights that belong to each person with his death also extinguished. These rights can not be inherited or transferred to another; also no statute of limitations.

### CONFIRMING THE HYPOTHESIS

The hypothesis that the behavior of the National Archives does not protect the privacy of medical records, I confirmed. This claim is based with the decision of the Constitutional Court of Slovenia, which had suspended the operation ZVDAGA in that Article, which provides that the creator of the National Archives give archival material, even if it is sensitive personal information. The decision of the Slovenian Constitutional Court is a major step towards protecting personality within historical documentation.

### CONCLUSION

Today, the right of privacy in healthcare documentation, following the death of an individual, do not

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pay enough attention. Even so, the law already allows you to create archives in health care facilities. It is therefore considered to investigate to what extent would this field provide greater privacy inside archives in health care facilities. However, due to health facilities for clinics that are educational institutions, it is undisputed role of health records for research. To enhance the protection of health data, in my opinion, will help health archiv. Health data availability neanoniziranih subject to strict conditions to protect trade secrets. Such data can only hereditary ass beneficiaries. All other researchers should undertake a study on the basis of already existing legislation - on the basis of anonymous data.

I'm in the archives of the University Psychiatric Clinic Ljubljana already established obtain health information only upon written request and legal basis and the return copies of health records from the experts. These copies of the record and then destroyed workers archive. To carry out research on anonimiziranih health records are primarily responsible mentors for researchers and faculty. Protecting the privacy patient should be primarily especially in the sphere of the faculty so high that it will be possible to explore only on anonymised data.

Today the faculty of plagiarism note thesis, I sincerely hope that in the near future very well identified the respect privacy within the research tasks. I believe that the completion of the study and implementation of research should be allowed only on the basis of the statutory conditions - this is anonymised data.

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### CONFLICT OF INTEREST:

The authors declare that they have no conflict of interest.



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