In Spain, the law distinguishes between private medical insurance and social insurance. The latter is a way of protecting the workers’ rights by means of an immediate legal obligation; the workers are not bound by a private insurance contract. Another difference is that private insurance schemes are organized on the basis of profit for the insurance company, but social insurance does not have such a profit motive – it is organized with a view to achieving social solidarity. With private medical insurance, the insured pays a regular premium; with social medical insurance the premium is paid not by the insured himself but by his employer and by the State.\textsuperscript{24}

Health care and the ensuing medical responsibility are governed by the General Law of Social Security of 30 May 1974. Article 2 of this law states that through the social security system the State assures adequate protection against situations defined by the law in the medical, cultural and economic spheres. The beneficiaries of social security are: the self-employed; employees, including civil servants and members of the armed forces; and students. The social security system includes medical assistance in the case of: maternity, industrial or other disease, and industrial or other accidents. Industrial disease is defined by the law as disease arising in consequence of one’s employment; for each type of industrial disease the causative factors are also defined by law.


The choice of doctor is not absolutely free: article 122-1 of the above law states that “if in a given area or territorial zone several doctors offer their services to the Social Security, the beneficiaries may choose the doctor they prefer; otherwise the choice of doctor will be governed by Social Security ordinances”. This possibility of choice still remains a desideratum for both patients and doctors.

When social security services are given in the case of an accident or disease caused by a criminal or other offence committed by a third party or by the employer, the cost can be reclaimed. Article 97-3 of the above law rules that in such a case the service is paid for in the first instance by the Social Security managing entity or by the employer’s mutual insurance system, and then these entities will claim indemnity from the injurer. The injured worker or his relatives can also claim indemnity at a civil or criminal court, depending on the case. The same article also states that “independently of the claim made by the injured worker or his family, the National Institute for Welfare (today the National Institute for Health), the workers’ mutual insurance organizations and, depending on the case, the employers’ mutual insurance organizations have the right to reclaim the cost of medical services from

\textsuperscript{24} Santos Briz, J., “La Responsabilidad Civil”, op. cit., pages 353 ff.
the third party responsible or from the individual with subsidiary civil responsibility. Employers who collaborate in Social Security management will have the same right. Such a claim can be made through a civil or criminal court, depending on the nature of the injury (civil or criminal). The First Hall of the Supreme Court declared in a decision of 1 June 1981 that the prescription for claims for the recovery of medical expenses is not 1 year, as ruled by article 1968-2 of the civil code, but 15 years as ruled by article 1964 of the same code, which concerns personal actions.

The rules contained in the General Law of Social Security have been developed since 1966 by different legal dispositions. We are interested in the following rules.

1. The Social Security Medical Institutions Management Statute approved by the order of 7 July 1977 and completed by the decree of 28 October the same year. This statute defines the patient’s rights as follows:
   a) The right to receive a diagnosis and to be informed about the disease
   b) The right to receive proper medical treatment
   c) The right to ask the doctor to keep professional secrecy concerning the disease in accordance with the deontological rules
   d) The right to be informed about serious medical problems in order to be able to consent to authorize risky surgical interventions or therapeutic treatments
   e) The right to receive spiritual attendance
   f) The right to be visited during in-patient treatment in a clinic or hospital, in accordance with the clinic or hospital rules
   g) The right to refuse medical treatment by a physician who does not belong to the social security system. (As an exception, in special cases the collaboration of a non-Social-Security doctor can be requested.)

   Of all these rules we can mention the patient’s right to be informed, the requirement of consent and the right to refuse a non-Social-Security doctor as the most important ones.

   Labour jurisprudence (Central Labour Courts and the Sixth Hall of the Supreme Court) has said that when a doctor performs his services for a firm, this is a civil relationship rather than an employment relationship (decisions of 23 January 1981 of the Sixth Hall). It has also declared that the services of a physician who does not belong to the social security system will not be reimbursed to the patient except in cases of extreme urgency (decisions of the Central Labour Court of 30 June 1982 and of the Sixth Hall of the Supreme Court of 20 May 1982). This can cause some problems to the beneficiary when the service required is not covered by the social security system, as in the case of psychiatric care.25

2. The Decree of Medical Assistance of 16 November 1967, in accordance with article 102-3 of the General Law of social security, forbids the social security institutions to pay back to the beneficiary expenses for medical care given by a physician not working for the social security system, except where assistance had been refused by a Social Security doctor or in cases of serious urgency, but as is declared by the decision of the Central Labour Court of 30 March 1981, serious urgency is not sufficient reason to go to a private doctor; there must also be difficulty in getting to a Social Security doctor.

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