

The Legislative and Regulatory Framework for Plastic Surgery doctors

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Abstract:

Cosmetic surgery is considered one of the most prominent surgical procedures performed by people, especially women, as interest in it has increased in recent years. Technological development has helped in the spread of cosmetic surgery greatly. The doctor can choose the appropriate shape for his patient. Thus, he makes him enjoy his beauty because it aims in body reconstruction and restoration, especially if the patient has a congenital deformity or an accident that causes psychological pain. According to the International Plastic Surgery Survey (ISAPS), the number of women undergoing plastic surgery have reached more than 20 million in the world, and is likely to increase dramatically. Most of the legislation was strict with regard to the doctor's responsibility in plastic surgery, unlike other surgeries. The judiciary recognized plastic surgery as a branch of general surgery in other surgeries. There is strictness regarding determining the obligations of the plastic surgeon, unlike the obligations of the ordinary surgeon.

Keywords: patient, plastic surgery, obligations, responsibility, surgeon

1. Introduction

Although plastic surgery is relatively recent in its emergence, it has distinguished itself from ordinary surgery. This type of surgery constitutes a novel concept in the field of legal sciences.

Plastic surgery is considered one of the most debated medical procedures among legal scholars. It refers to surgical interventions not aimed at curing a disease, but rather at eliminating a physical deformity.

Most jurists distinguish between two types of plastic surgery:

- **Reconstructive plastic surgery**, which aims to correct congenital deformities or those resulting from work accidents or traffic incidents; and
- **Purely aesthetic plastic surgery**, which refers to procedures undertaken by individuals dissatisfied with their external appearance and seeking to enhance it.

The increasing number of victims of medical errors committed by physicians during cosmetic procedures—whether in public hospitals or private healthcare institutions—has become a matter of concern, especially considering that such procedures are often driven more by commercial motives than humanitarian ones. According to the International Society of Aesthetic Plastic Surgery (ISAPS), the number of women undergoing cosmetic surgery worldwide has exceeded 20 million and is expected to increase at an exponential rate.

Most legal systems have adopted a stringent approach regarding the liability of cosmetic surgeons, unlike the more lenient stance often taken in other forms of surgery. While cosmetic surgery has been recognized by the judiciary as a branch of general surgery, the legal obligations imposed on cosmetic surgeons tend to be stricter than those placed on ordinary surgeons.

This raises several key questions: What is the conceptual framework of cosmetic surgery? How can the civil liability of the cosmetic surgeon be legally characterized? And what are the legal obligations incumbent upon the cosmetic surgeon? To answer these questions and to provide a comprehensive analysis of the subject matter, it is necessary to first outline the conceptual framework of cosmetic surgery (First Section), followed by an

examination of the obligations of the cosmetic surgeon and the legal classification of the surgeon's civil liability (Second Section).

1. The Conceptual Framework of Cosmetic Surgery:

Cosmetic surgery differs from other forms of surgery in that it is not primarily intended to cure an illness or treat a medical condition. Rather, its principal purpose is to correct a deformity that offends aesthetic sensibilities or causes psychological distress.

There are numerous definitions of cosmetic surgery provided by legal scholars and medical professionals, which vary depending on its different types and underlying purposes.

1.1. Definition of Cosmetic Surgery :

The term originates from two root words: the first, *chirurgie*, refers to manual or operative procedures; the second, *aisthétikos*, is derived from the Greek and denotes the capacity to perceive or feel beauty. Over time, the term evolved into the English expression *plastic surgery*, referring to reconstructive or aesthetic surgical procedures.

A. Terminological Definition of Cosmetic Surgery

Cosmetic surgery is medically defined as an intervention involving the incision of the skin with the aim of enhancing beauty, attractiveness, and aesthetic appearance of the human body.

However, this definition may appear insufficient when considering the various types of cosmetic surgeries recognized in medical practice, as some procedures may not fall strictly within the parameters of that definition.

According to Dr. Dartigues, founder and director of the Scientific Society of Cosmetic Surgery in France, cosmetic surgery is defined as:

"A set of procedures related to appearance, aimed at treating natural or acquired defects affecting the external human form, which impact an individual's personal or social value."

It has also been defined as a procedure intended to treat congenital or war-related defects that cause physical or psychological suffering, or as a means of enhancing a person's appearance in pursuit of beauty beyond what is naturally present.

Medical professionals have also defined cosmetic surgery as a medical art used to treat conditions either by excision, implantation, or other methods, all of which rely on surgical procedures involving incisions and suturing.

B. Doctrinal Definition of Cosmetic Surgery

The Algerian legislator has remained silent and has not defined cosmetic surgery, neither in the Public Health Law nor in the Medical Ethics Code. Furthermore, no specific legal provisions have been enacted to regulate this area, a deficiency that was not addressed in the latest amendment to the new Health Law No. 18-11.

Therefore, it can be deduced from all these definitions that the term originally derives from the Greek language and refers to surgery aimed at correcting deformities without affecting the physical health of the body.

1.2. Justifications and Motivations for Undergoing Cosmetic Surgery and its Types:

Certain circumstances may compel some women—and even men—to undergo specific types of cosmetic surgery. The justifications for undergoing such procedures can, in certain cases, rise to the level of necessity.

Initially, the primary purpose of cosmetic surgery was to repair damage affecting the external parts of the body. Later, it also came to include the correction of congenital deformities, such as skin appendages, birth-related abnormalities, or extra limbs and features that a person may be born with, leading to disfigurement of visible body parts.

Subsequently, cosmetic procedures began to be performed for less urgent reasons, such as disproportionately large noses or ears—minor imperfections that do not affect the functionality of the organs or significantly impair the overall aesthetic appearance.

In the most recent stage—beginning with the advent of the twentieth century and peaking in its middle—it became common to perform cosmetic surgeries on individuals in good health and with acceptable appearances, merely to achieve a more ideal look or to attain a particular physical appearance that the person prefer.

A: The Nature of the Profession

For certain professions—such as artists, actors, dancers, or circus performers—even a minor physical disfigurement can significantly hinder their ability to perform. If such a deformity is not corrected or treated, it may result in an inability to work or a decline in professional performance, potentially leading to the end of the individual's career and a substantial deterioration in their quality of life. In such cases, undergoing cosmetic surgery becomes a necessary measure.

B: Psychological Disorders

Cosmetic medical procedures are closely connected to the field of psychology. Disorders such as depression, withdrawal, despair, persistent sadness, and social isolation may often stem from dissatisfaction with one's physical appearance—conditions that, in extreme cases, may drive individuals to suicide. Every person holds a mental image of their physical self. When a deformity arises—whether due to illness or an accident—the altered image may become unacceptable to the individual, leading them to seek corrective surgery. Alternatively, some individuals may remain confined by their circumstances, unable or unwilling to pursue surgical intervention.

C. Types of Cosmetic Surgery

Based on the aforementioned medical definitions and classifications, cosmetic surgery may be divided into two primary categories:

-Necessary (Reconstructive) Cosmetic Surgery:

Also referred to as reparative or reconstructive surgery, this category aims to correct congenital or acquired deformities.

From a medical standpoint, physical defects may be divided into two groups:

- **Acquired and Accidental Deformities:** These arise from accidents that result in the amputation of limbs, or from burn injuries that cause disfigurement of the body or face. Although such procedures are performed for enhancement or aesthetic improvement, they fall under the category of necessity due to the physical and psychological harm involved.
- **Congenital Deformities:** These refer to birth defects that require medical intervention for psychological relief, such as cleft lips, fused fingers or toes, or treatment of severe obesity.

- Elective or Aesthetic Cosmetic Surgery:

These procedures are not intended to cure medical conditions. Rather, they aim to correct minor imperfections that, in the eyes of the individual, negatively affect their physical beauty or bodily symmetry.

Thus, **aesthetic (or elective) cosmetic surgery** refers to procedures that are not intended to achieve medical healing. Rather, their primary purpose is to enhance the external appearance of a visible part of the body, based on the individual's belief that certain features detract from their overall physical beauty. Examples include rhinoplasty (nose reshaping), scar removal from the face, or breast augmentation. The objective of such surgeries is to improve appearance and restore a youthful look.

2. Obligations Imposed on the Cosmetic Surgeon and the Legal Characterization of His Civil Liability

With the growing demand for cosmetic procedures and the consequential medical errors that may cause harm to patients—and considering the specific nature of such interventions—certain legal opinions have moved toward tightening the surgeon's liability,

arguing that the surgeon is bound by an obligation of result. Other opinions, however, maintain that the surgeon, like any other physician, is only bound by an obligation of means. Furthermore, legal debate continues over the distinction between contractual liability and tortious liability in the context of cosmetic surgery.

Performing cosmetic procedures requires the fulfillment of several conditions: specialization in the field, a valid license to practice, and a proportionality between the risks of the operation and its intended purpose. This is expressly provided for in Articles 17 and 18 of the Medical Ethics Code. In addition, cosmetic procedures must be carried out only in facilities that are legally authorized to perform them.

Failure to comply with any of these conditions renders the cosmetic surgery unlawful, and thereby gives rise to medical liability.

In order to determine the appropriate legal characterization, it is essential first to define the specific nature of the cosmetic surgeon's civil liability, and then to identify the nature of the obligations incumbent upon the cosmetic surgeon.

2.1. Obligations of the Cosmetic Surgeon

Performing cosmetic procedures requires the fulfillment of several conditions:

- Specialization in the relevant medical field,
- Authorization to practice, and
- Proportionality between the risks involved and the anticipated benefits of the procedure.

These requirements are clearly stated in Articles 17 and 18 of the Medical Ethics Code, along with the mandatory requirement that such surgeries be performed exclusively in licensed medical establishments.

If any of the aforementioned conditions are lacking, the cosmetic surgery is considered illicit, thereby giving rise to the medical liability of the practitioner.

To accurately determine the legal characterization of such liability, it is necessary to examine both the civil nature of the cosmetic surgeon's responsibility and the specific obligations that govern their conduct.

The cosmetic surgeon is subject to specific legal obligations toward the individual undergoing a requested cosmetic procedure. Given the unique nature of such surgeries—being neither medically necessary nor intended to cure an illness—both legal doctrine and judicial precedent have imposed heightened obligations on cosmetic surgeons. Chief among these is the duty to adequately inform and advise the patient in a comprehensive, clear, and accessible manner. This duty of disclosure must encompass not only the standard risks typically associated with surgical procedures, but also the exceptional or uncommon risks, thereby ensuring that the patient's consent is based on a free and informed will, constituting valid and unvitiated consent.

Accordingly, the obligations incumbent upon the cosmetic surgeon may be summarized as follows:

A. The Obligation to Inform the Patient

Undoubtedly, any disclosure made after the surgical intervention is ineffective and of no value to the patient, as consent given post-operatively is legally and ethically meaningless. Therefore, a mandatory cooling-off period of fifteen (15) days must be observed between the delivery of a signed and dated document—issued by the cosmetic surgeon and containing a detailed report of the surgical procedure and its cost—and the actual performance of the surgery.

In this context, the information provided must be clear and understandable. Any communication made using overly technical or complex medical terminology defeats its intended purpose, particularly given that the vast majority of patients lack familiarity with such terminology. In fact, providing information in this manner may be more harmful than beneficial, as it may provoke anxiety, fear, or apprehension in the patient, while simultaneously impairing their ability to fully comprehend the details of the procedure.

To avoid this, the physician is required to deliver the information using simple, accessible, and comprehensible language, ensuring that the patient can readily understand the nature, risks, and implications of the surgery.

Moreover, the surgeon's disclosure must be complete and exhaustive. The cosmetic surgeon must inform the patient not only of the foreseeable risks, but also of unforeseeable or exceptional risks, given that such procedures do not aim to remove an imminent danger requiring urgent medical intervention, but rather to correct a physical imperfection.

In addition, the information provided must be accurate. This means that the physician is obligated to supply the patient with precise and specific information. Vague or generalized statements regarding surgical risks or potential failure may create a misleading sense of reassurance, only for the patient to later be confronted with an unexpected and undesired outcome. Accuracy is especially crucial when the physician presents alternative treatment options, including the advantages and disadvantages associated with each, so that the patient may make an informed and knowledgeable choice—not one based on ignorance or misunderstanding.

The physician must also act with honesty and transparency, supplying the patient with truthful and complete information about the procedure, including whether it will leave any physical traces or scars. This obligation is reinforced by Article 43 of the Algerian Code of Medical Ethics, which states: **“The physician or dental surgeon must strive to provide the patient with clear and truthful information regarding the reasons for any medical procedure.”**

B. The Obligation to Advise the Patient

Among the fundamental duties incumbent upon the cosmetic surgeon is the duty to advise, warn, and refrain from performing surgeries whose potential benefits are disproportionate to the associated risks.

This principle is expressly stated in Article 17 of the Algerian Code of Medical Ethics, which provides:

“The physician or dental surgeon must refrain from exposing the patient to any unjustified risk during medical examinations or treatments.”

Accordingly, the surgeon must evaluate each case individually and recommend against any intervention that does not offer sufficient therapeutic or aesthetic value relative to its risks, thus acting in the best interest of the patient.

C. The Obligation to Ensure Postoperative Follow-up

It is well established that the medical contract is a continuous obligation, given that medical examinations, treatment, and patient follow-up may extend over varying lengths of time, depending on the circumstances.

To ensure continuity of care, the physician is required to observe the following principles:

- Avoid haste in medical decision-making, and thoroughly verify the patient’s health status prior to any intervention.

Commitment to diligent and loyal care: Once the physician agrees to take on a treatment request, he or she is obliged to deliver care that is devoted, conscientious, and in line with current scientific knowledge.

The physician must also provide the patient with the means to contact him and must be reachable between scheduled appointments. In this regard, Article 50 of the Code of Medical Ethics stipulates:

“The physician or dental surgeon may cease to provide care, provided that the continuity of treatment for the patient is ensured.”

D. The Obligation of the Cosmetic Surgeon to Maintain Professional Confidentiality:

The physician's duty to preserve professional secrecy is among the most fundamental ethical and humanitarian obligations in medical practice.

Accordingly, Articles 37, 39, and 40 of the Code of Medical Ethics define the scope of confidentiality that a physician must observe.

Article 37 provides:

"Professional secrecy encompasses everything the physician or dental surgeon sees, hears, understands, or is entrusted with in the course of performing his or her profession."

2.2. The Legal Characterization of the Civil Liability of the Cosmetic Surgeon:

To determine the appropriate legal classification of the cosmetic surgeon's liability, it is necessary to first identify the specific nature of such civil liability, and then to analyze the legal nature of the surgeon's obligations.

A- Tortious Liability of the Physician in Cosmetic Surgery:

Tort liability arises when a person causes harm to another as a result of fault-based conduct. Therefore, a physician may be held tortiously liable if no contractual relationship exists between the surgeon and the patient, or even if a contract does exist, but the damage did not arise from that contract.

An examination of Algerian Law No. 18-11 of 2018 on Public Health reveals no explicit provision that clearly distinguishes between tortious and contractual liability for physicians. However, by reference to the general principles of Algerian civil law, one can deduce that a physician's liability for professional fault is governed by tort law, as established by Article 124 of the Algerian Civil Code, which states:

"Any act whatsoever that is committed by a person through his fault and causes harm to another shall render the person who caused the harm liable for compensation."

Accordingly, the legal obligation whose breach constitutes fault in tort law is always an obligation of means, requiring the obligor to act with vigilance and care so as not to harm others. Any deviation from this standard of conduct, when committed by a person who is aware and capable of discernment, is considered a tortious fault that gives rise to liability—this is a well-established principle in both legal doctrine and judicial precedent.

there are various scenarios in which a physician may incur tortious liability in cosmetic surgery. The most notable include:

- When the surgeon intervenes on his own initiative, without giving the patient an opportunity to choose their physician.
- When the resulting disfigurement is so severe that it becomes a burden on the patient's life, potentially pushing them toward suicidal ideation. In such cases, the cosmetic surgeon must support the claim with a certificate from mental health specialists; the surgeon's personal assessment is insufficient to conclude that the patient's condition was hopeless.

Medical fault, within the framework of tort liability, may occur in several circumstances, such as:

- When the physician proceeds with the surgical procedure without prior agreement with the patient.
- When the physician enters into a contract with the hospital, and subsequently performs surgery on a patient who did not select the physician themselves. In this scenario, the contract exists between the physician and the hospital, with the patient being a third party and not a party to the contract.

Fault may manifest in two forms:

1. **Technical (Professional) Fault:** This relates to the scientific principles and technical standards governing medical practice. It

occurs when a physician either lacks knowledge of these rules or applies them incorrectly, causing harm to the patient as a result.

2. **Material (Ordinary) Fault:** This stems from a failure to observe basic caution and prudence, which all individuals are expected to uphold—regardless of profession. It is not connected to the scientific or technical standards of the medical field. In such cases, the physician is held liable if the fault leads to a legally punishable outcome, whether the error is serious or minor. This is well established in both legal doctrine and jurisprudence.

B. Contractual Liability:

To establish contractual medical liability, there must first be a valid contract between the cosmetic surgeon and the patient. This contract must meet all the elements of a valid agreement, including:

- Mutual consent (offer and acceptance), free from defects of will.
- A determined and lawful object.
- A legitimate cause.

The cosmetic surgeon's fault must arise from a failure to fulfill obligations that stem directly from this medical contract.

Contractual fault in the medical domain has been defined by some as a breach of a contractual obligation. This means the physician fails to uphold the specific duties imposed by the profession. A doctor is subject to two obligations: the obligation of means (duty of care) and the obligation of result. In this context, the physician must ensure that the patient's condition does not deteriorate following cosmetic surgery. Any failure in diagnosis, evaluation, or placing the patient in a state of suffering may constitute negligence.

Thus, the liability of the cosmetic surgeon is primarily contractual. The very act of a patient entering the surgeon's clinic is considered acceptance of the surgeon's offer to provide services. Furthermore, cosmetic surgery is generally performed at the request of the patient, which gives rise to the legal effects of a contractual relationship.

Unlike other medical fields, a valid medical contract is a prerequisite for lawful cosmetic surgery. The medical contract, in this context, is often regarded by legal scholars as an innominate contract, i.e., a sui generis agreement that differs in subject matter and governing rules from standard contracts.

Ultimately, the contractual liability of the cosmetic surgeon becomes evident through various judicial and doctrinal principles aimed at protecting harmed individuals and establishing liability for medical error.

3. Conclusion :

Our study concludes that the evolution of the medical field has expanded the concept of treatment. It is no longer confined to the traditional meaning of curing physical illness or injuries, but now includes any form of care that enhances a person's well-being, alleviates psychological or social distress, and utilizes modern technical methods.

Through our study of this subject, we were able to arrive at a number of conclusions, which can be summarized in the following points

- Cosmetic surgery is no longer limited to procedures that aim to cure illness or specific physical injuries. It now includes addressing psychological pain resulting from appearance-related concerns.
- The liability of cosmetic surgeons is fundamentally contractual, based on the existence of a valid agreement with the patient. However, it may also be tortious, in the absence of such a contract or in cases of breach of a legal obligation.
- Cosmetic surgery has become a widespread reality, largely driven by the media, and is sometimes performed by individuals lacking the necessary qualifications—thereby endangering the health and safety of patients. This calls for prompt legislative intervention by Algerian lawmakers to regulate such procedures and establish clear rules governing related liabilities.

Based on the findings of this study, several recommendations can be proposed to support and enhance the legislative and regulatory framework for plastic surgery doctors

- We urge Algerian legislators to review existing medical laws in order to reinforce the duties of cosmetic surgeons, given that their interventions are non-essential, unlike other surgical procedures.
- Cosmetic surgery should only be performed in licensed and specialized medical centers, approved by the Ministry of Health.
- The Algerian Civil Code should be revised to clearly determine the right of heirs to claim compensation in the event of a patient's death, as is the case under Egyptian law.
- Cosmetic surgeons must fully inform patients, after the necessary medical examinations, of all potential risks associated with the procedure.
- We recommend promoting awareness campaigns to educate the public about the risks and potential long-term side effects of cosmetic surgery.
- A specialized regulatory body should be established to monitor compliance with legal standards governing the practice of cosmetic medical procedures.

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