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The surgeon's responsibility for plastic Surgery

¹Mohamed Lemaini, Mohamed Khider University, Biskra

²Beldjbel Atika, Mohamed Khider University, Biskra

¹mohamed.lemaini@univ-biskra.dz

²a.beldjbel@univ-biskra.dz

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Abstract

With the scientific development that society has known, especially in the medical field, medical work has transformed from its general origin of treatment and ridding the patient of disease and pain to operations that seek beauty and beauty. He bears a great responsibility due to the failure to intend treatment, so the legislator, especially the Algerian, must be alerted to the urgent need to develop legislation that adopts the issue of plastic Surgery on the one hand and the responsibility of the person performing it on the other. Your role in this process is crucial, as you are the ones who can enact these necessary laws.

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Mohamed lemaini, mohamed.lemaini@univ-biskra.dz

Introduction :

Medicine is witnessing significant developments and remarkable progress in all its branches and specialties. The essential characteristic of modern medicine in the eyes of the public has become the positivity and effectiveness that made it go beyond the limits of its original mission, which is the prevention and treatment of illnesses and diseases. The general principle in medical work is that it is for treatment, relieving patients from pain, and trying to heal them. Recently, work that does not aim for this purpose is plastic Surgery, which is considered one of the cases that draws attention and calls for research and contemplation about it, as it is a destination for those who desire goodness and beauty of both sexes, including plastic surgery, a phenomenon that has clearly and dramatically increased in recent years, to the point that many consider it Surgery of the era, through the tremendous developments and broad fields it has reached, and this may be represented in the professionalism of surgeons in intervening in many cases that were difficult before. As soon as the surgeon undertakes Surgery with the intention of cosmetic Surgery, he must be held fully responsible for the reason for the failure of the original. Surgical intervention, which is the treatment, is justified. In light of the importance of the issue of plastic Surgery and our desire to draw the attention of the Algerian legislator To adopt legislation specific to this type of Surgery, we decided to study this issue by answering this problem .

How were plastic surgeries organized? When is the surgeon responsible for such operations?

To answer this problem, the following must be addressed:

The first topic: the concept of plastic Surgery

The second topic: The responsibility of the plastic surgeon

The first topic: the concept of plastic Surgery

Cosmetic Surgery differs from other operations in that the patient does not seek to perform it for treatment but rather to overcome congenital or acquired defects that would affect the person's personal or social value. Therefore, in this section, we will address the definition of Plastic Surgery, explain its types, and determine its terms.

The first requirement: Definition of cosmetic operations

Cosmetic Surgery means operations that treat diseases through surgical intervention or even remove a disfigurement in the patient's body, which may be congenital, functional, or acquired (Jamal Al-Deeb: Plastic surgery in Islamic law, Critical Journal of Law and Political Science, University of Tizi Ouzou, Special Issue 2, 2000, p. 207)

It can also be defined as the type of Surgery that does not aim to cure the patient of any illness but rather a congenital or acquired correction that does not harm the health of the body in any way. It is a group of operations related to appearance, the purpose of which is to treat congenital disabilities in the appearance of the human body that affects personal value. And social for the individual (. Munther Al-Fadl, Medical Responsibility in Plastic Surgery, House of Culture, Amman, Jordan 2000, p. 08.)

This type of Surgery became widespread after World War II, as it found many judicial applications in France, where the French judiciary's view of it was initially filled with suspicion and unacceptance, so this type of Surgery was initially considered illegal. However, the Paris Court of First Instance ruled in its ruling (Judgment on February 25, 1929, quoted from Mounir Riad Hanna: Civil Liability for Physicians and Surgeons, Dar Al-Fikr Al-Jami'i, Alexandria, 01st edition, 2008, p. 436) Once a surgeon performs an operation intended only for beautification, he has made a mistake. He bears all the damages that result from the operation. This ruling underscores the immense responsibility that comes with being a plastic surgeon (Judgment on January 22, 1929, quoted from Mounir Riad Hanna, previous reference, p. 436) . It is a profession that requires not only skill but also a deep understanding of the potential risks and the ability to communicate them effectively to the patient. This type of Surgery must be subject to general rules, provided that the surgeon alerts the person who wants to operate on all possible risks and obtains explicit acceptance from him.

Some jurists hold that a doctor who deals with a healthy organ under the pretext of beautification goes outside the limits of the profession permitted

by his academic certificate, and this departure is considered an unacceptable ac(Munir Riyad Hanna, previous reference, p. 437)

The general rules of liability require that surgical intervention be for a therapeutic purpose, such as ridding the patient of an illness, but the therapeutic purpose conflicts with this principle.

It was not long before jurisprudence and jurisprudence gradually changed its view of Plastic Surgery. After the World War, cases of war-related deformities increased, which led some countries to hide these people away from people's sight for fear of their discontent with the authorities.

In light of these results, jurisprudence changed its traditional, strict view regarding plastic Surgery, and the judiciary followed suit, distinguishing between two types of plastic Surgery. Cases of severe disfigurement that rise to the status of a pathological illness. Ordinary cases, including operations intended for beauty only, such as face and abdomen lift operations, nose size reduction...

Some jurists believe that people, especially women, are not satisfied with what God has divided for them. The older woman wants to become young; the fat woman wants to become thin; the short woman wants to be tall; the tall woman wants to be short; the brunette wants to become white, and vice versa, and so on (Munther Al-Fadl, previous reference, p. 12.)

Second requirement: Types of Plastic Surgery:

There are two types of plastic Surgery: partial plastic Surgery and enhancement plastic surgery. This is detailed below:

First, necessary plastic Surgery: This Surgery beautifies congenital acquired or accidental defects. The former means those defects that a person is born with (Jamal Al-Dheeb, previous reference, p. 222.) , and there are many defects, of which we mention:

_ Organ plastic surgery by cutting off appendages, such as a person who is born with extra fingers or extra or extended teeth...

_ Teeth grinding: . What is meant is spacing between them, such as a woman filing the teeth between her teeth with a file or something else in its place, and women usually resort to it to become friendly and good-looking.

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The second type of Surgery is cosmetic Surgery for acquired or emergency defects, which means defects arising from outside the body, such as deformities resulting from accidents, burns, and diseases, such as facial fractures and skin deformities due to burns or machine accidents.

Second: Enhancement plastic surgery: Surgery to improve appearance, also called shape surgery. This Surgery is resorted to without the presence of necessary ailments or diseases that require Surgery. Some also call it Surgery to rejuvenate and remove aging, so the older adult appears afterward as if he is in the prime of life and vigor Youth (. Jamal Al-Dheeb, previous reference, p. 230.)

This Surgery includes two types:

_Shape operations: The most important forms are the beautification of the nose by making it smaller, the beautification of the breasts by making them smaller if they are large and vice versa, and the lips by thickening them...

_ Rejuvenation operations. These are operations performed on older adults and are intended to remove the effects of aging, such as beautifying the face by tightening its wrinkles, beautifying the hands to make the owner appear younger, hair transplant operations, and others.

It is worth noting that this type of Surgery is not permissible according to Islamic law because there are no necessary reasons for medical intervention, as God Almighty says, "...And I will command them, so that they may tempt God's creation. And whoever takes Satan as a friend instead of God has certainly suffered a clear loss." (Surah An-Nisa, Verse No. 119.)

It has been authentically reported on the authority of Abdullah bin Masoud that he said: "May God curse the women who have tattoos, the men who wear tattoos, and the women who show off their beauty and change God's creation. Why should I not curse someone who curses the Prophet while it is in the Book of God, and whatever the Messenger gives you, take it..."(Narrated by Al-Bukhari in Al-Sahih, Chapter on Al-Mutaffalajat by Al-Hasan, No. 5587, vol. 5, p. 2216, on the authority of Jamal Al-Dheeb, previous reference, p. 550) In a narration, he said: "I heard the Messenger of God. May God curse the impersonating women who change the creation of God Almighty." (Narrated by Al-Nasa'i Ahmad bin Shuaib Abu Abd Al-Rahman, who died in 303 AH, in Al-Sunan Al-Kubra, 01st edition, verified

by Abd Al-Ghaffar Suleiman Al-Bandari, Sayyid Kasravi Hassan, Dar Al-Kutub Al-Ilmiyyah, Beirut, Lebanon, No. 9399, vol. 5, p. 425. On the authority of Jamal Al-Dheeb, previous reference, p. 223.)

The third requirement: Conditions for Plastic Surgery

It is one of the medical procedures that occur in the human body. Since no particular legal text regulates it and specifies the conditions for its practice, it is subject to the general conditions that govern medical procedures: patient satisfaction, insight, and proportionality between the operation risks and its benefits.

First: Patient satisfaction: Obtaining patient satisfaction is considered one of the general conditions for undertaking any medical work, and this condition cannot be dispensed with except in cases of necessity and urgency to preserve the patient's health and perhaps his life. The Algerian legislature emphasized this in the Health Law and its Promotion (Article 154 of Law No. 05-85, dated February 16, 1985, relating to health protection and promotion, Official Gazette No. 08, issued on February 18, 1985.)

. which states: "Medical treatment is provided with the consent of the patient or those authorized by law to give their consent to that..." and also in the Code of Medical Ethics (Article 44 of Executive Decree No.: 276-92, dated July 6, 1992, including the Code of Medical Ethics, Official Gazette No. 52, issued on July 8, 1992) , which stipulates: "Every medical procedure in which there is a serious risk to the patient is subject to the patient's consent." Free and informed, or with the consent of persons authorized by him or by law”.

The condition of consent is of great importance in plastic Surgery, as it is a medical procedure that poses a severe risk to the patient. At the same time, it is not intended to treat the person or cure him of a specific illness. Also, no urgency or necessity in this Surgery necessitates quick intervention. However, it is done carefully, so the plastic surgeon must obtain the person's consent before operating. This consent must be free, free of financial or moral pressure, and frank, clear, and unambiguous. Implicit consent is not considered in these operations, and there is no way to exempt him. Commitment in any case.

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It is preferable for the consent for Plastic Surgery to be written so that it is easy to prove before the court. Also, due to the seriousness of these operations, the legislator has required written consent for human organ transfer and transplantation for the same reason Article 162 of the Health Protection and Promotion Law, source mentioned previously) , which is the practice in cosmetic clinics in general.

If the person is a discriminating minor, his consent must be obtained along with the approval of his legal representative, and not just the latter's approval, because the issue here relates to the right to bodily integrity and not to the financial rights of the person. If he is indiscernible due to his young age or some disability, then the approval of his legal representative must be obtained(Article 154 of the Health Protection and Promotion Law, source mentioned previously).

Second: Informing the patient: The obligation to inform the patient is one of the obligations imposed by the general rules regulating medical work. The doctor must try to benefit his patient with transparent and honest information regarding every medical procedure (Articles 43, 44, 47 of the Code of Medical Ethics, a previously mentioned source) so that the patient's consent is free and informed.

Given that cosmetic Surgery is a technical medical procedure that does not require the necessity of treatment in its narrow sense, the obligation to be informed about it is very strict, as the person undergoing it must be informed of all the risks that may result from the operation, even those exceptional risks that rarely occur, in addition to informing him of the circumstances in which it takes place. It includes this operation and its burdens and costs, the recovery period, and the instructions that must be followed after Surgery to ensure its success. It would be preferable if this notification were in writing and signed by both parties to avoid any dispute over its availability in the future.

There is no particular text about proving informed consent. Therefore, we apply the general rules in the Civil Code(Order No. 58-75, dated September 26, 1975, including the Civil Code, Official Gazette No. 78, issued on September 30, 1975) , where we find Article 323, which states as follows: "The creditor must prove the obligation and the debtor must prove its

disposal. The creditor here is the person undergoing Surgery, or the debtor is the surgeon, as the patient must prove the medical relationship between him and the surgeon. As for the obligation to obtain the patient's consent and insight is a legal obligation that does not require proof. For the surgeon to pay the responsibility, he must prove that he obtained the patient's consent after being informed of the consequences. The process is fully explained.

Third: The proportionality between the risks of the operation and its benefits: Medical work aims to improve health and alleviate the patient's physical and psychological suffering within the framework of respect for his dignity and the integrity of his person. Therefore, the doctor must refrain from exposing the patient to unjustified risk during his medical examinations or treatment and must not use a new treatment when he is confident that this treatment will benefit the patient directly (Articles 17 and 18 of the Code of Medical Ethics, previously mentioned source.)

Considering that plastic surgery is a medical procedure not intended to cure a specific disease, he must refrain from operating if it becomes clear that the expected risks outweigh the expected benefit, even if the person insists on performing it. Indeed, the surgeon is not committed to achieving complete beauty. However, he must refrain from operating if it becomes apparent to him that it will lead to a condition worse than what was the case before it was performed. It is sufficient for the person's condition after the operation to be worse than before for the doctor to be responsible, even if he operated according to the principles agreed upon in medicine.

All of these conditions must be met in Plastic Surgery; if the surgeon violates them, his work is considered illegal. He bears responsibility for all .damages that befall the patient due to operating on his body

The second topic: The responsibility of the plastic surgeon

There is no particular text regulating the liability of a doctor or plastic surgeon, so it is subject to the same rules upon which medical civil liability is generally based, with some stringency given the seriousness of these operations and their deviance from the intention of treatment.

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The doctor's responsibility is related to the nature of his commitment and also to the availability of its elements, and this will be addressed in the following two requirements:

The first requirement: The nature of the plastic surgeon's commitment: The basis of the doctor's commitment is that it is a commitment to provide care, as the doctor is committed to exercising sincere and vigilant care consistent with the existing conditions and established scientific principles to heal the patient and improve his health condition (See the decision of the Supreme Court in File No. 399828, issued by the Civil Chamber, First Section, dated January 23, 2008, published in the Supreme Court Journal, issue 2/2008, pp. 175 et seq).

. However, some believe that the plastic surgeon's commitment is to achieve The result is that the patient's condition after the operation is better and more beautiful than it was before (Munther Al-Fadl: Medical Responsibility, 1st edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2010, p. 37.)

Another group believes that a distinction must be made between the two types of plastic Surgery; in corrective or prosthetic operations, the surgeon is committed to exercising care because they are subject to the general rules that govern therapeutic medical procedures. As for ameliorative operations, the goal of which is purely aesthetic, the surgeon must achieve a result: The person's condition after the operation is more beautiful than before.(Muhammad Qarmaz Nadia: Plastic surgery, legal and legal aspects (comparative study), 1st edition, Dar Al-Thaqafa for Publishing and Distribution, p. 261.)

The judiciary affirmed in its rulings that the obligation owed to the plastic surgeon is an obligation to exercise care and not to achieve a result, but it is more definite and strict care than the care required of him in other surgical situations (See the decision of the Egyptian Court of Cassation dated June 26, 1969, referred to in Sahra Douadi: The Doctor's Responsibility in Plastic Surgery, a memorandum for obtaining a master's degree in legal sciences, Faculty of Law and Political Sciences, University of Ouargla, 2006, p. 99.)

Responsibility varies according to whether the surgeon must exercise care or achieve a result. In the first case, his responsibility applies unless the patient proves that the surgeon failed to provide the necessary care. As for the obligation to achieve a result, the fact that the result was not achieved is sufficient for the surgeon to be at fault.

The second requirement is elements of a plastic surgeon's responsibility. Article 124 of the Algerian Civil Code states: "Every act, whatever it is that a person commits through his fault and causes harm to others, obligates whoever caused it to occur to compensate." Civil liability

exists if its elements of error, damage, and causal relationship are present

First: Error: The element of error in plastic surgery is distinguished from that in civil liability in general, whether in terms of defining it or proving it. The error in plastic surgery is the surgeon's breach of his obligations towards the patient, whether contractual or legal. The criterion for determining a plastic surgeon's error is to compare his behavior with the behavior of another plastic surgeon at the same level and specialty, taking into account the external circumstances surrounding the erring surgeon, the extent of his exercise of sincere care and vigilance imposed on him by the principles of the profession, as well as the patient's condition, age, and profession. Plastic Surgery on a twenty-year-old girl is different. An operation for an older man in his seventies and Plastic Surgery for an ordinary person is different from plastic Surgery for a famous artist and so on.

Concerning proof of error, the plastic surgeon's obligation is considered an obligation to exercise care in the first place, even if this care is more intense than in ordinary Surgery. Accordingly, it falls on the patient to prove the surgeon's mistake and negligence in exercising the care due to him, so the latter's responsibility is established. However, given the extreme care due in these surgeries, the judiciary considers the mere occurrence of damage evidence of the surgeon's error.

In addition to the obligation to provide insight, obtain the patient's consent, maintain medical confidentiality, and ensure proportionality between the risks of the operation and its benefits, all of these were considered

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obligations to achieve a result and placed the burden of proof on the surgeon, who must prove the occurrence of the foreign cause in which he had no hand if he wants to escape responsibility.

Second: Harm: An error on the plastic surgeon's part is insufficient for him to be liable. Instead, this error must harm the person undergoing the operation. Studying the element of harm requires addressing its definition, determining its types, and then explaining its conditions.

What is meant by damage that befalls a person in his life, bodily integrity, feelings, emotions, dignity, or honor (. Article 182 bis of the Civil Code states: “Compensation for moral injury includes any infringement on freedom, honor, or reputation.”)

and is called moral damage, or that befalls him on his financial liability and is called material damage.

A plastic surgery patient may be exposed to material damage represented by the costs of the operation, stopping work for a certain period, transportation expenses, etc. He may also be exposed to moral damage in the event of a failure of the operation, which may cause him psychological pain and frustration, especially if the result after the operation is worse than it was. This was the case before it was done.

The damage must be actual, meaning it has occurred or will occur. It must be direct, i.e., resulting directly from the surgeon's error. It must be expected if the liability is contractual or tort, in which case compensation will be given for expected and unexpected damage.

Since the relationship between the plastic surgeon and the patient is mostly a contractual relationship governed by the contract concluded between them, it follows that the damage requiring compensation in these operations is only the expected damage, that is, the damage that could have been expected at the time of contracting with the patient, even if it usually rarely occurred. This applies only to cases of fraud and grave error (See Article 182, paragraph 2, of the Algerian Civil Code, a previously mentioned source).

When estimating compensation for the damage to the injured person, the judge considers the circumstances, such as where the operation was performed, the injured person's age, his gender, his profession, and other

matters that affect the compensation estimation (See Article 131 of the Civil Code, source mentioned previously.).

Third: Causal relationship: For medical civil liability to exist, there must be a direct relationship between the error committed by the doctor and the damage that befell the injured person. Proving the element of causation in the medical liability field is considered a complicated matter for the patient to prove, so the judge often seeks the assistance of an expert to find out the cause. Damage to the patient.

The judiciary tends to be lenient in proving the causal relationship out of consideration for the interest of the injured person in order to enable him to obtain compensation by either establishing a presumption of the existence of causation between the error and the damage or relying on the estimated or implied error(Muhammad Qarmaz Nadia, previous reference, p. 172.)

The judiciary sometimes resorts to missing the opportunity in cases where the causal relationship between the error and the harm that befell the patient is not proven. If the opportunity is possible, then missing it is inevitable, and the compensation in this case is partial. There is no causal relationship if the surgeon proves that the damage to the injured person resulted from a sudden accident, force majeure, or that it came from the injured person himself or a third party. In this case, he is not obligated to compensate. (See Article 127 of the Algerian Civil Code, the source cited previously)

Thus, it becomes clear that the judiciary is moving towards bringing the plastic surgeon's responsibility closer to the objective responsibility that makes harm a basis for establishing responsibility.

Conclusion :

Through our study of the issue of the surgeon's responsibility for plastic surgery, we conclude that the development that has befallen the science of Surgery has led to the emergence of what is called plastic surgery, which has contributed to combating disease and bringing pleasure and happiness to patients, and in order to balance the problematic equation that requires the patient's desire to remove the deformity and thus his psychological comfort. Among medical work characterized by possibility and risk, the

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judiciary, and behind it jurisprudence, intervened to impose conditions that the doctor must verify before undertaking cosmetic medical work.

Although the French legislator and judiciary have created legislative and legal texts related to plastic Surgery, we are still waiting for the Algerian legislator to issue texts that keep pace with the development witnessed by this type of Surgery, so it is subject to the rules regulating medical work, meaning that the patient's consent and information must be obtained. By the nature of the operation and its risks, the doctor must be qualified to carry out the work.

All of these conditions are difficult to meet in Plastic Surgery, especially those operations intended only to improve the appearance and highlight the beauty of the body.

We conclude our research by emphasizing that plastic Surgery has today become a reality imposed on us by life circumstances and the media. It is practiced on a large scale and by people who do not have the necessary competence, which puts the safety and lives of the people subject to it at risk. Therefore, we appeal to the legislator to intervene quickly to regulate these operations and state their conditions and rules. Responsibility for it because it protects both the people subjected to it and the doctors who perform it.

Source :

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2. Munther Al-Fadl, Medical Responsibility in Plastic Surgery, House of Culture, Amman, Jordan 2000

3. Judgment on February 25, 1929, quoted from Mounir Riad Hanna: Civil Liability for Physicians and Surgeons, Dar Al-Fikr Al-Jami'i, Alexandria, 01st edition, 2008

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